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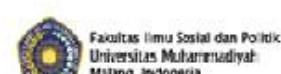
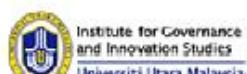
## **THE UUM INTERNATIONAL CONFERENCE**

### **ON GOVERNANCE (ICG)2014**

**29 – 30 NOVEMBER 2014**  
**Flamingo Hotel by the Beach Penang**



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# **PROCEEDINGS**

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# **LEGAL ISSUES IN PARTNERSHIP LAW CONCERNING MUSHARAKAH AL-MUTANAQISAH PRACTISED BY ISLAMIC FINANCIAL INSTITUTIONS IN MALAYSIA**

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## **ABSTRACT**

One of the Islamic Banking products in Malaysia is Islamic Partnership Home Financing Facility-*Musharakah al-Mutanaqisah* ('MM'). It is a trite practice that for Islamic Banking products to be legal and shariah compliant, the products must fulfill the requirements of the shariah (Islamic law) and Malaysian law. Under the Malaysian law, Partnership Act 1961 (Act 135)('PA') governs partnership. It follows that, as a matter of course, MM shall also be governed by the PA. This paper will highlight the issues in the provisions of the existing PA with regard to MM. The authors use a legal research methodology to under take the research. The authors also provide, at the end part of this paper, some suggestions in dealing with the issues to warrant the validity of the MM in the legal perspective.

**Keywords:** Partnership Act 1961 (Act 135); *Musharakah al-Mutanaqisah* Home Financing; legal issues.

## **INTRODUCTION**

Islamic banking and finance aroused quite an interest in the 1960s and 1970s following the resurgence of Islam in the early twentieth century with the momentum being spearheaded particularly by Egyptian Muslim scholars<sup>4</sup> and thinkers such as Muhammad Abduh, Rashid Rida, Hassan al-Banna and Jamaluddin al-Afghani. Islamic banking and finance eventually gained foothold in Malaysia with the establishment of Bank Islam Malaysia Berhad in 1983.<sup>5</sup> Islamic banking and finance facilities has since expanded to meet and serve the customers' demand for user-friendly banking and finance facilities and products. These Islamic banking and finance products include *Mudarabah* - a general and special investment deposit in the nature of profit sharing between the depositors/customers and the bank, acting as the entrepreneur; *Wadiah* - where the bank simply acts as the safe-keeper of the deposits of the depositors/customers but it may provide returns to the depositors as a gift (*al-Hibah*); *Murabahah* (partnership and equity financing); *Ijarah* (leasing); *Istisna'*(a sale contract by way of order for certain

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<sup>4</sup> Pioneered by Mir Ghamir Local Savings Bank, which was established in 1964 in a provincial rural centre in the Nile Delta of Egypt. See also Sudin Haron & Bala Shanmugam. 1997 *Islamic Banking System, Concept & Application* Pelanduk Publications, Selangor, at p. 1.

<sup>5</sup> See generally in Sudin Haron & Bala Shanmugam, 1997 Chapter 1.

product), *Qard* (loan contract), *Rahn* (pledge), *Tawarruq/Commodity Murabahah* (purchasing an asset with deferred price), *Wakalah* (agency contract), *Bay' Dayn* (sale of debt with debt), *Bay' Inah* (sale contract followed by repurchase by the seller at a different price), *Musharakah* (partnership) and *Bay' Bithaman al-Ajil* (BBA) (ie sale by deferred payment). Due to increasing demand for these Islamic banking and finance products, Islamic windows (Islamic banking and finance products) are likewise introduced by the conventional banks (Yakcop, 1996). The Islamic banking and finance operators in Malaysia is called 'Islamic Financial Institutions' ('IFIs').

### **DEFINITION OF MUSHARAKAH**

The word *musharakah* comes from the word *sharaka*. *Sharaka* means to share. In practice *musharakah* means to share and to participate, between two or more persons, in a business undertaking subject to the terms and conditions of the agreement between the parties (Kamus Besar Arab – Melayu, 2006). The sharing and participation between these persons can be in the form of capital financing and management of the venture. The parties will share in the profits and losses arising from the business undertaking. In IFIs in Malaysia, *musharakah* concept is applied in investment and financing transactions. Financing based on *musharakah* embraces working capital financing, trade financing and asset financing (Bank Negara Malaysia, 2010).

### **Musharakah Mutanaqisah('MM')**

MM is a home financing product offered by IFIs in Malaysia. It is based on the principle of *Musharakah* (Islamic partnership). In MM, the house purchaser and the IFI purchase the housing unit. The purchaser normally pays 10% of the purchase price as deposit, while the IFI pays 90% of the purchase price. The purchaser and the IFI are considered partners in the housing transaction. Then IFI requires the purchaser to buy up the 90% share of the IFI for certain duration, monthly and gradually, by way *ijarah* (lease), until the whole 90% portion has been decreased and fully bought by the purchaser. If the 90% of the portion has been fully bought, the whole housing unit will be transferred and registered into the purchaser's name (Bank Negara Malaysia, 2010).

### **LEGAL ANALYSIS**

The legal analysis that this paper will deal with is the Partnership Act 1961 (Act 135) ('PA') insofar as MM is concerned.

### **Partnership Act 1961 (Act 135) ('PA')**

The discussion under the PA will involve the following provisions.

- 1) Section 3(1) of the PA;
- 2) Section 6 of the PA; and,
- 3) Section 47 of the PA.

### **Section 3(1) of the PA: The Definition of Partnership**

Section 3(1) of the PA provides:

*"Partnership is the relation which subsists between persons carrying on business in common with a view to profit"*

Pursuant to section 2 of the PA, "business" includes every trade, occupation or profession. According to the above provision, it is a must that the persons, forming a

partnership, have a relation of carrying on business in common with a view to profit. If there is no such a relationship, there will be no partnership recognized by the PA. In other words, their relation does not constitute a partnership.

In this respect, Lee Heng Cheong JC in *Martin Mairin Idang v Rakanan Jaya Sdn Bhd & Anor* (High Court of Borneo at Sandakan) [2011] MLJU 670, said:

*"Partnership is the relation, which subsists between persons carrying on business in common with a view to profit. There cannot be a partnership under Section 3 Partnership Act 1961 if there is no "view to profit". I find that the Plaintiff is not doing business in common with PW4 Mr. Rantau in Sandakan and I find that the Plaintiff does not share with PW4 Mr. Rantau in the profits of the Sandakan legal firm. Nor does the Plaintiff exercise any degree of management or control over the Sandakan legal firm or vice versa... As clearly stated at Page 13 under General Note on the Partnership Act 1961, "there can be no partnership if there is no business carried on with a view to profit" and a person cannot be a partner if he has no beneficial right to share profits."*

In the Federal Court case of *Chooi Siew Cheong v Lucky Heights Development Sdn Bhd* (1995) 1 MLJ at Page 521, the Federal Court held:-

*"The term "partnership" is defined in S. 3(1) of the Act as the relationship which subsists between persons carrying on a business with a view to profit. In deciding whether a partnership exists, the Court must have regard to the relevant rules in S. 4 of the Act and intention of the parties."*

*... Applying the above principle to our present case, I find that the Plaintiff and PW4 Mr Rantau never intended to be partners*

*... Finally, I refer to the dicta of Tan Sri Richard Malanjum in *Fu Yen Development Sdn Bhd* (suing as a firm) v *Shelley Yap Leong & Co* (sued as a firm) (2001) 3 AMR 3736 his Lordship said:-*

*"Having perused the trading license exhibited as "A" in Encl 61 agreed with learned counsel for the respondent that the word "New" was obviously written on it. And there was only one name as the proprietor. Nothing to indicate that it had any connection with the previous trading licence issued under the same name. Accordingly I was inclined to accept that on the trading licence alone it was obvious that there was no partnership in existence when the action was commenced.*

*No doubt the appellant could adduce other evidence to show existence of a partnership. But from the several affidavits filed they contained nothing more than assertions of the deponents. Surely there should be at least some evidence of partnership in the form of accounts, bank statements or income tax returns if indeed there was one. Even if it was not in operation at the material time there should have been records to show that there was a continuation of the partnership since 1979 onwards. I was aware of the explanation given for the absence of such documents. But I do not think it would make any difference if the same assertions were to be repeated by the same deponents in a full trial.*

*In this case the trading licence indicated nothing more than it was a new licence. Steps could have been taken to rectify the error in the 1995 trading licence if indeed there was partnership even at the material time. That is the first limb of Order 77 r 1 of the Rules.” (emphasis added).”*

**Issue:**

Whether in MM Home Financing, the partnership so formed may not be said as “carrying on business in common with a view to profit”? In MM, it is observed that there is a lack of activities in carrying business to get profit, at least by the customer/purchaser partner. Only the IFI can be considered as carrying out a business for profit. On the other hand, it may be argued that the IFI and the customer/purchaser partner will get profit and benefit from the partnership. The IFI will get the monthly installment consisting of rental (*Ijārah*) payment (installment payment) from the customer/purchaser partner. While the customer/purchaser partner will get gradual accumulating equity/share in the house property which increases in pro-rata with the monthly installment payment made to the IFI. The greater the settlement made by the customer/purchaser partner, the greater will his proprietorship equity/share be in the house property.

Following the above contention, a question can be posed, *viz* whether the IFI and the customer/purchaser partner in the MM are carrying out “business”?

If the former argument is true, i.e the MM’s theory and practice do not involve ‘persons carrying on business in common with a view to profit’, MM cannot be considered a ‘partnership’ under the PA and thus it shall not be subject to the PA altogether. In this situation, MM may fall into the definition of ordinary contract which is subject to the Contract Act 1950 (Act 136, Revised 1974) and the contract law, not to the PA.

Nevertheless, if the latter argument is preferable to the former, MM is a partnership recognized under the PA and shall be subject to the PA.

It is suggested that in order to warrant MM to still fall under the PA, certain provisions in the PA, particularly section 3(1) should provide some *proviso/qualification* to the effect of covering MM as well.

The above issue so far has not been dealt with by courts in Malaysia. Thus, in the near future, it is the hope of the authors that the above issues can be determined by courts for the benefit of the stakeholders.

**Section 6 of the PA: Meaning Of Firm And Firm-Name**

This section stipulates:

*“Persons who have entered into partnership with one another are, for the purposes of this Act, called collectively a firm, and the name under which their business is carried on is called the firm-name.”*

According to the above provision, the partnership venture composing the partners will be called a firm. All the ventures the partnership undertakes will use the firm name.

**Issues:**

- 1) Whether the venture between the bank and the customer partner in the MM must be called a firm?

- 2) Whether a firm must be formed for the purpose of implementing MM?
- 3) Is there a need to establish a firm, before MM can be practised?

It is opined, if the current practice of MM does not in need of creating and establishing a firm as required by the above provision, the practice is against the PA and will affect its legality. Unless and until the current practice of MM is further governed by other provision legalizing its establishment and operation without the need to comply with the above provision, the legality of MM may be at stake.

Similarly this issue has not been dealt with by courts in Malaysia, for otherwise, the findings and decisions can be helpful to the industrial players of MM.

### **Section 47 of the PA**

Section 47(1) of the PA states:

*"The rules of equity and of common law applicable in partnership shall continue in force, except so far as they are inconsistent with the express provisions of this Act."*

While section 47(2) provides:

*"Nothing in this Act shall be read to permit any association of more than twenty persons to be formed or to carry on any business in partnership contrary to paragraph 14 (3) (b) of the Companies Act 1965.[Act 125]"*

The provision under section 47(1) above requires that the partnership venture must comply with the law prescribed by the PA. However, the rules of equity and common law of England may be applicable as long as they do not contravene the PA. This is also in line with the provisions under section 5 of the Civil Law Act 1956, which emphasizes that the rules of equity and common law of England shall be applicable to commercial cases, including partnership as long as there is no written law on partnership. As there is a written law passed by the Malaysian Parliament on partnership *viz* the PA, then the rules of equity and common law of England shall not be made applicable to partnership's matters if the matters have been determined under the PA.

Section 47(2) requires that the total number of persons that can form a partnership is twenty. If the number is more than twenty, then that venture shall not become a partnership. It will become a company subject to the Companies Act 1965 (Act 125).

Issues:

- a. Whether the above subsection 1 of section 47 can be made applicable in the MM products?
- b. Whether subsection 2 of section 47 can be applied to MM products?

It is opined that section 47(1) emphasizes the universal duty to uphold justice and equity. It follows that this call also does not go against the *Shariah*. This is because Islam also calls for justice and equity. Nonetheless, it is opined that, the obligation to apply the rules of equity and fairness may be a heavy duty and responsibility on part of the IFIs in implementing *Mushārakah*. This is because the terms and conditions in *Mushārakah* should be equitable and fair to both parties – the partners. There should not be any one sided agreement and unfair contract terms favourable to one party only. For an instance, in MM, there is no corresponding and reciprocal duty and liability of the IFIs in case the housing developer abandons its housing project. In this situation, the IFIs should join the

customer/purchaser partner (being also the purchaser and the borrower) to become plaintiff or claimant to sue and get appropriate remedies from the defaulting abandoned housing project's developer, not that the IFIs commence legal action against the customer/purchaser partner owing to the customer/purchaser partner's default on the loan. Otherwise, it is unfair, absurd and oppressive to the customer/purchaser partner altogether. The major reason leading to abandoned housing projects is usually due to the faults of the housing developer, not the customer/purchaser partner (the purchaser/borrower). Thus, the customer/purchaser partner should not be unfairly overburdened with the legal action of his partner (being the IFIs) in abandoned housing projects. What is fair and just for both partners – the IFIs and the customer/purchaser partner, is to ensure that the abandoned housing projects can be revived, the customer/purchaser partner can get the duly completed house and thus he can service the monthly installment to IFIs until settlement not otherwise (Md. Dahlan, 2009 & 2011; Md Dahlan & Aljunid, 2011; Md Dahlan & Aljunid, 2010a; Md Dahlan & Aljunid, 2010b).

On the other hand, it is opined that, there are certain provisions in the PA that give flexibility in the formation and practice of partnership in order to depart from the obligation to follow section 47(1) above, if the partners so agree and incorporate this in the partnership agreement. This statutory flexibility can be used creatively to implement MM in home financing. These provisions in the PA are as follows:

*Section 20. Revocation of continuing guarantee by change in firm.*

*"A continuing guarantee given either to a firm or to a third person in respect of the transactions of a firm is, **in the absence of agreement to the contrary**, revoked as to future transactions by any change in the constitution of the firm to which, or of the firm in respect of the transactions of which, the guarantee was given" (emphasis added).*

*Section 21. Variation by consent of terms of partnership.*

*"The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, **may be varied by the consent of all the partners**, and such consent may be either express or inferred from a course of dealing"* (emphasis added).

*Section 23. Property bought with partnership money.*

*"**Unless the contrary intention appears**, property bought with money belonging to the firm is deemed to have been bought on account of the firm."* (emphasis added).

*Section 24:Conversion into personal estate of land held as partnership property.*

*"Where land or any interest therein has become partnership property, it shall, **unless the contrary intention appears**, be treated as between the partners (including the representatives of a deceased partner), and also as between the heirs of a deceased partner and his executors or administrators, as personal and not real estate"* (emphasis added).

*Section 26. Rules as to interests and duties of partners, subject to special agreement.*

*“The interests of partners in the partnership property, and their rights and duties in relation to the partnership, shall be determined, **subject to any agreement, express or implied, between the partners**, by the following rules:...”* (emphasis added).

*Section 27. Expulsion of partner.*

*“No majority of the partners can expel any partner, unless a power to do so has been conferred by express agreement between the partners”* (emphasis added).

*Section 34. Dissolution by expiration or notice.*

*“(1) Subject to any agreement between the partners, a partnership is dissolved -*

- (a) if entered into for a fixed term, by the expiration of that term;*
- (b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking; or*
- (c) if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership”* (emphasis added).

*Section 35. Dissolution by bankruptcy, death or charge.*

*“(1) Subject to any agreement between the partners, every partnership is dissolved as regards all the partners by the death or bankruptcy of any partner.*

*(2) A partnership may, at the option of the other partners, be dissolved if any partner suffers his share of the partnership property to be charged under this Act for his separate debt”* (emphasis added).

*Section 45. Retiring or deceased partner's share to be a debt.*

*“Subject to any agreement between the partners, the amount due from surviving or continuing partners to an outgoing partner or the representatives of a deceased partner in respect of the outgoing or deceased partner's share is a debt accruing at the date of the dissolution or death”* (emphasis added).

*Section 46. Rules for distribution of assets on final settlement of accounts.*

*“In settling accounts between the partners after dissolution of partnership, the following rules shall, **subject to any agreement**, be observed:*

*(a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits; and*

*(b) the assets of the firm, including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order:*

*(i) in paying the debts and liabilities of the firm to persons who are not partners therein;*

*(ii) in paying to each partner ratably what is due from the firm to him for advances as distinguished from capital;*

*(iii) in paying to each partner ratably what is due from the firm to him in respect of capital; and*

(iv) the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible" (emphasis added).

As regards section 47(2), which requires the maximum total number for a partnership is 20 persons, MM home financing should adhere to this requirement. For otherwise, the transaction will not be called a partnership and unenforceable and will not be subject to the PA. If the total number of partner exceeds 20, the venture shall be subject to the Companies Act 1965 (Act 125) and must be registered as a company. Thus, if there are 20 purchasers buying a house/property financed through MM, then this transaction cannot be considered a 'legal' partnership and shall not be subject to the PA.

Likewise, unfortunately, to date, the above issues have not been dealt with by courts in Malaysia.

## **CONCLUSION AND SUGGESTIONS**

The above discussions illustrate some of the legal issues concerning MM in the PA. So far there is no case law that have dealt with the above issues. It is suggested that some amendments should be made to the PA to accommodate and settle the issues as discussed and proposed above.

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# **ABANDONED HOUSING PROJECTS IN MALAYSIA: SOCIAL ENTREPRENEURSHIP AS A PANACEA FOR INSECURITY CHALLENGES IN NORTHERN NIGERIA**

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## **ABSTRACT**

The myriad of problems facing Northern Nigeria, especially high poverty incidence, illiteracy, economic inequality, and conflicts cannot be adequately overcome by the government alone. There is the urgent need for an alternative community intervention mechanism to compliment government's efforts in confronting social problems on sustainable basis. Today, Social Entrepreneurship is considered critical in achieving vital socio-economic objectives in nations worldwide. Unfortunately, the subject has not received adequate attention in academic and policy discussions in Nigeria. This paper, therefore, is aimed at examining the concept of Social Entrepreneurship in the Nigerian context and also shows how innovative social interventions have assisted in reducing the menace of insecurity problems in Northern Nigeria. The analysis conducted in the paper has benefitted extensively from contemporary literature on the subject, observations and interviews with members of three community organisations in northern Nigeria. Accordingly, the paper found that social entrepreneurship has not been fully understood in Nigeria, even though the activities of social groups have tremendously help in reducing the problem of insecurity bedevilling the region. The community organisations observed lacked proper organisation, funding and capacity. With better enlightenment and sensitisation, coupled with improved capacity to generate and manage funding, community organisations will be in better position to augment government's initiative in restoring peace and security in the northern Nigeria.

**Keywords:** Social entrepreneurship, insecurity, northern Nigeria, nonprofits, terrorism

## **INTRODUCTION**

Many developing countries are faced with increasing economic inequality, famine, illiteracy, inadequate healthcare and infrastructural facilities coupled with unemployment and high poverty incidence. The myriad of these problems led to various forms of safety and security challenges many of which cannot be resolved by the government alone. Northern Nigeria, particularly the North East, has been badly hit by insurgency that is being attributed to some of the socio-economic challenges that engulfed the region for a long time (Salaudeen, 2013). The current violence emanating from the Northeast perpetrated by the activities of Boko-Haram sect caused wanton destruction of lives and

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property in many parts of Nigeria. Ironically, the youth, which constitutes a very significant portion of the population, were easily recruited by violent groups and other elements to achieve their self-centred political or economic interests. This trend can hardly be addressed without concerted efforts to re-orient and economically engage the youth and other vulnerable members of the society.

It is against this backdrop that the establishment of community/social organisations with the aim of uniquely understanding and resolving social challenges are gaining prominence world over. This makes enquiries into the concept of social entrepreneurship imperative. Although social entrepreneurship is a relatively new concept, it is increasingly gaining considerable research interests and resources by international organizations, world-class universities, governments, public agencies, private corporations (Dees, 2007; Chell, Nicolopoulou, & Karatas-Özkan, 2010). Because of this increased acknowledgement, social entrepreneurship has now evolved into a global phenomenon (Nicholls, 2008; Jiao, 2011). This trend gained prominence because governments world over have limited capacity and resources to resolve the major social challenges. This is even more so for countries like Nigeria where the government has not been forthcoming in overcoming socio-economic problems of the nation due to poor governance and misallocation of resources and confused priorities. This paper is, therefore, aimed at examining the social organisations in Nigeria with the primary aim of addressing the security challenges facing Northern Nigeria in particular, and the country in general. This will help greatly in better understanding the challenges faced by these organisations and how they can be better organised to achieve their objectives of drastically reducing the current insecurity in the country.

## **THE CONCEPT OF SOCIAL ENTREPRENEURSHIP**

Social entrepreneurship is a new emerging field challenged by competing definitions, gaps in research literature, and limited empirical data (Mair & Marti, 2006; Nicholls, 2006). However, Dacin, Dacin and Matear (2010) have identified no less than 37 different definitions to social entrepreneurship. Principally, Entrepreneurship is the process that results in the creation of economic and social value as people and organisations search for opportunities (Drucker, 1985). In this sense, social entrepreneurship promotes opportunity discovery leading to positive social change. (Mair and Marti; 2006, Ashoka; 2011). Specifically, Roberts and Woods (2005) describe social entrepreneurship as a construct that bridges business and benevolence by applying entrepreneurship in the social sphere. Thus, a common denominator in explaining social entrepreneurship is societal value creation through innovation (Austin, Stevenson, & WeiSkillern, 2006; Lepoutre et al., 2011. Alvord et al (2004) insist that social entrepreneurship could be a veritable means for alleviating social problems and catalyze social transformation. This explains why social entrepreneurs do not pursue economic goals rather they build social organization that produces public goods (Thomson et al 2000; Leadbeater, 1997). Today, social entrepreneurs are increasingly realizing opportunities to meet the unmet needs of global communities in different ways (Zahra et al 2008; Zahra et al, 2009).

The scope of social entrepreneurship is very broad but scholars have attempted to come up with three different types of social entrepreneurship namely: private social entrepreneurship, non-profit social entrepreneurship and public sector social entrepreneurship (Roper and Cheney, 2005).

- i. **Private social entrepreneurship:** working within the private sector gives social entrepreneurs an advantage in terms of the orientation towards planning, profit and innovation. The private social entrepreneurs do not necessarily set up purely social enterprises, but they embed social values into their businesses (Roper &

Cheney, 2005). The private social entrepreneur targets profit but at the same time uses part of their profits to solve social problems by way of corporate social responsibility.

- ii. **Social entrepreneurship in the not-for-profit sector:** The not-for-profit sector is the most fertile source for social entrepreneurship and in fact social entrepreneurship has been going on in this sector for a long time and is partly spurred on by the increased competition for funding resources (Leadbeater, 1997; Roper & Cheney, 2005). Furthermore, non-profit organisations that implement an entrepreneurial approach are less hesitant to implement concepts and practices from marketing, strategic planning and systems in order to analyze and control costs (Roper & Cheney, 2005). This is because they obtain most of their funds from philanthropic sources. They therefore pay little attention to adopting approaches that could lead them to controlling costs.
- iii. **Public-sector social entrepreneurship:** Social entrepreneurship in the public sector has been encouraged by the public sector and managers and workers looking for new ways of delivering welfare services (Leadbeater, 1997). Social entrepreneurs in the public sector face challenges in the likes of a difficulty to adapt to change due to constitutional, executive and legislative considerations (Roper & Cheney, 2005). Public sector social entrepreneurs focus on delivering welfare services mainly to alleviate the suffering of others.

Irrespective of the type of social entrepreneurship adopted, the bottom-line remains that social entrepreneurs discover social problems and uniquely approach them with renewed approach and social capital. In many countries, especially, low income nations, insecurity is a major concern. The problems continue to degenerate due to weak institutions and poor governance which are associated with the public sector.

## **ISSUES ON SECURITY**

The concept of security can be viewed from two different perspectives: national and individual perspectives. From the national perspective, security is the requirement to maintain the survival of the state through the use of economic, diplomatic, and political powers in order to maintain internal cohesion and corporate existence of the state and its ability to maintain its vital institutions for the promotion of its core values, socio-political and economic objectives (Imobigue, 2003 as cited in Efe, 2014). Effective national security ensures that crime rate, anti social vices resulting from high rate of unemployment and gross restiveness are arrested through job creation and acquisition of the right skills (Efe, 2014). Where national security framework could not provide basic requirements for maintaining social order, insecurity ensues.

From the individual perspective, security refers to issues relating to job security, social security, food security, and security against natural and manmade disasters (Atoyebi, 2001, cited in Efe, 2014). Where individuals could not meet these essential elements of security they tend to feel unsecured. Generally, from the national and individual perspectives, security has to do with protection, preservation and safeguard of human life, health, justice and liberty. This means that security is a protection against criminal activities such as terrorism, kidnapping, stealing, robbery, killings, and riots, among others. Today, an average Nigeria is faced with increasing incidences of insecurity making the living condition of people unpleasant and volatile. Insecurity in Nigeria is more prevalence in the north east due to senseless activities of Boko-Haram sect.

This notwithstanding, there are many factors responsible for insecurity in Nigeria. Some of these causes, according to Efe (2014), include but not limited to: unemployment, poverty, corruption, lack of basic infrastructure and lack of education. Also, Ajufo (2013) identifies unavailability of job opportunities among youth as major factor responsible for youth restiveness and other social vices such as armed robbery, destitution and political thuggery. Unemployment causes poverty and poverty, in turns deprives people of access to quality education, good health care systems, food and nutrition. Stewart (2005) confirms that most conflicts in Africa are mainly propelled by the impulse of the deprived group to resist the perceived injustice and oppressive tendencies of the dominant group or the ruling elite.

Terrorism is the major security challenge in Nigeria. Therefore a proper understanding of the root-cause of increasing terrorism in Nigeria must include both economic and socio-psychological dimensions. In Nigeria, unemployment and poverty seem to have less influence on terrorism than religions and cultural ideological believe (Ogundiya, 2009). This assertion could be valid in the case of Boko-Haram terror activities in many parts of Northern Nigeria. A number of studies have related the increased violence in Nigeria to government apathy, inaction and general economic mismanagement. Ali (2002) observes that limited government control on the proliferation of religious sects that instigate violence caused increased religious violence in Nigeria. Similarly, Zanye, et al (2013) insisted that economic deprivation, marginalisation created by poor governance fuel terrorism in contemporary Nigeria. The authors drew their conclusion using prevalence of corrupt practices to explain the menace of violence in Niger-delta and Boko-Haram terror activities. However, they made no attempt to show either causation or correlation using any scientific measure.

Krueger and Maleckova (2003), however, found that there is no causal link between poverty, education, and terrorism. This finding has been corroborated by Stern (2011) which found that limited knowledge of religion, group dynamics and influence couple with economic factors motivate terror activities. Similarly, Mehmoud (2013) found no evidence that poverty related conditions led to terrorism. This is because terrorists tend to receive higher education (and income) than an average. It is therefore more practical to conclude that terrorist activities flourish in radicalised societies that tend to lend some degree of apathy, sympathy or support. Nigeria is increasingly becoming a safe-haven for domestic terrorist activities even though there is still no clear indication that the country is a breeding ground for international terrorism (Ogundiya, 2010).

The local and international dimensions of insecurity call for proactive approaches for managing preventive and recovery efforts. Governments and organisations are expected to develop and maintain programmes for prevention and protection of the public. This requires the development of emergency plan, facilities, equipment staffing and building capacity to anticipate and effectively respond to any potential or actual threat to the community (McLoughlin, 1985). The perception of risk of the community can also be influenced by supportive social network, increased resources and household preparedness (Patterson et al, 2010). In the same vein, the United States Department of Homeland Security (2007) maintained that in order to effectively implement policies towards preventing, protecting against and responding to and recovery from terror, there is the need for proper planning, organisation and leadership, personnel, training and exercises, evaluation and corrective measures. In general, terrorism as a major security concern in Nigeria and beyond has multiple causes. Addressing these causes, however, requires a holistic and collaborative approach as governments can only do so much.

## **SUSTAINABLE SOCIAL ENTREPRENEURSHIP**

Today, social organisations are set up to find innovative solutions to complex social problems. The insecurity problem faced by Nigeria is currently addressed through various social networks and arrangements. The conventional wisdom in Nigeria is that the prevailing insecurity is attributable to poverty, unemployment, lack of education and injustices committed by political leaders over the years. Thus, social organisations are set up to mitigate injustices if the problem is injustice; they feed the hungry if the problem is hunger; they educate the illiterate if the problem is education and so on (London and Morfopoulos, 2010). These organisations are not satisfied with the status quo and are always trying to create social change (Leadbeater, 1997; Mair and Marti, 2006; Zahra et al 2008). There are various organisations in Nigeria that attempt to help towards regaining peace and security. Specifically, we examined three important players that have created unique approaches to promoting peace and security.

### **Peace Initiative Network**

Peace Initiative Network is a voluntary nongovernmental, non profit, non partisan in politics and religion, charitable organization (based in Kano, Nigeria) dedicated to the promotion of peace, unity and harmony in Nigeria, Africa and among the nations and regions of the world. It was established in 2004. The organization functions as a catalyst for public policy input. The main mission of the organization is to prevent, manage violent conflict through public enlightenment and sensitization in Nigeria and globally. PIT aims to promote peace, conflict resolution and harmony through research, charitable disbursements and the support of voluntary humanitarian services. The Initiative focuses on three areas: Peace Building, Democracy/Good Governance, and Development. It is set to advance the promotion of peace, democracy and socio-economic development in Nigeria.

Since its inception, PIT has committed itself to conflict mitigation and development in Nigeria and beyond through participatory research, capacity development i.e. experiential workshop and seminars, advocacy, sensitization/awareness campaigns, networking and coalition building among stakeholders such as relevant research institutes, civil society organizations and media outreach.

The Initiative is working to realize the value, principles and goals contained in the United Nations' Millennium Summit Declaration: peace, security, development, poverty eradication, human right, democracy, governance, protecting the vulnerable and meeting the special needs of developing countries especially Africa. The organization's strategy is reaching people in the community to promote goodwill and coexistence through organizing and hosting periodic seminars, workshops and public enlightenment campaigns. It adopts partnership/participatory approach in all its interventions and activities. Its major partners are the British Council, Institute for Democracy in South Africa (IDASA, Nigeria), Generations for Peace, Jordan, Alliance for Peace Building and Veil Breakers Initiative. PIN's main funding/revenue source include donations from individuals and institutions, funds from donor/development agencies and consultancy services – research and training.

The organization has achieved a lot in the area of creating awareness on the use of non violent strategies as a proactive tool and response to conflict through peace education and sports programs. These programs are designed for young people in schools and youth in communities to promote peaceful and harmonious coexistence in northern Nigeria. The Initiative also set up a 'Peace Club' which inculcates the values of mutual respect, fairness, teamwork, discipline and tolerance in the minds of youth from different

backgrounds. Currently, the Club has more than 8000 members in 60 schools and colleges in four states in Nigeria (Kano, Gombe, Plateau and Kaduna). They have been able to promote peace, unity and harmonious coexistence among diverse ethnic groups of youth in the region. The major factor militating against the organisation is lack of funding. They were unable to broaden their funding drive and this limits their activities from reaching other communities.

### **Inter-faith Mediation Centre**

Interfaith Mediation Centre (IMC) is a non-governmental, non-partisan, not for profit making, faith-based organization that was established in 1995. It is dedicated to promoting peace and good governance through capacity building, conflict resolution and mediation etc. using faith based approach. It is an NGO that is committed to ending the security challenges in Northern Nigeria. It provides tools and resources that support effective and responsive government including consulting, facilitation, mediation and training. IMC help public entities, including state agencies, development partners with integrated conflict management systems, in order to improve their ability to deal with conflict. It creates a peaceful society through non-violent and strategic engagements in Nigeria and beyond. They use the holy Books - Quran and the Bible – as the common bound the human family.

The organization has worked with more than 50 communities in Kaduna, Plateau, Kano and Bauchi and reached over 4 million people directly with conflict and peace prevention programmes. It uses multimedia mediums like radio/TV broadcasts, documentary films of the Kaduna crisis (entitled the Imam and a Pastor) shown as entry points to show religious harmony, peaceful coexistence and reconciliation. This approach has served the purpose of providing open-democratic spaces for aggrieved parties to share their grievances openly and honestly and proffer local solutions to issues without having solutions imposed on them from ‘outsiders’. This has accorded the IMC an international recognition as a result of which where they were invited to the University of Birmingham, Maryland University etc. and other international conference on interfaith dialogue in Cairo-Egypt, Berlin-Germany, United Kingdom, USA, Switzerland, etc. to share lessons on the success of their approach.

The Centre has made a landmark achievement by facilitating the Kaduna Peace Declaration of religious leaders, signed by 22 senior Christian and Muslims religious in August 2002 after the Sharia crisis in 2000 and the Miss World Riots in 2002. Kaduna enjoyed nearly a decade of peace after such declaration. They also facilitated the Yelwan Shendam Peace Affirmation in August 2005 in Plateau state to bridge the divisions and foster commitment to peaceful coexistence in the region. One of the organization’s challenges is that it depends so much on its founders for funding and support and does not have the capacity to transfer its skills to like-minded organizations. Similarly, there is the need to develop the capacity of the stakeholders in fund raising and management.

### **Civilian Joint Task Force (Civilian JTF)**

The hardship caused by the declaration of state of emergency in Borno state by the Nigerian federal government due to the worsening security situation, coupled with the alleged brutality being perpetrated by the Joint Task Force troops, prompted youth to set up the Civilian JTF. It is believed that hundreds of innocent youths have been detained in connection with the insurgency. The Group is a nongovernmental one but is committed to ending the insurgency that has wreaked a lot of havoc to the people in their respective communities.

It started in Hausari area of Maiduguri where, with increased pressure from security operatives and merciless attacks by Boko Haram, the youth mobilized themselves and decided to thenceforth apprehend any insurgent who crosses the area for robbery or the usual drive - by bombings or shootings. Within few days of its set-up, hundreds of youths in and around Maiduguri volunteered to join the group to assist Nigerian troops to end the insurgency. The activities of the Civilian JTF were not motivated by any financial gains or benefits but by the desire to solve the security problem that engulfed the area.

The Civilian JTF is comprised of as many as five hundred young Muslims from Borno state. They joined the group to avenge the deaths of their family members at the hands of Boko Haram, stop the atrocities of Boko Haram, and save their economy from being further destroyed. The group is being seen as an effective campaign against the menace of Boko haram. They have been able to significantly lessen the activities of Boko Haram members particularly in Maiduguri. The advantage the members of the Civilian JTF have is that they speak the local language (Hausa, Kanuri and Shuwa Arabic) and also understand the local culture, religion and geography. This enables them to easily identify the dreaded Sect members for arrest by security operatives. However, the major challenge of the Civilian JTF is that they are not well organized because they did not receive any special training to be able to face the Boko Haram members. In addition, they do not have the capacity and exposure to relevant methods of engagement; rather they use crude local methods and arms in confronting the insurgents. This greatly impedes the success of their campaign against Boko Haram Sect.

## **CONCLUSION**

It is apparent that insecurity is a manifestation of unemployment, poverty, illiteracy and perceived injustice arising from corruption and weak governance that is prevalent in Nigeria. So, the most effective approach to overcoming insurgency in Nigeria is to holistically address development issues and improve governance. In complementing these efforts, innovative social/community interventions are critical. We found that even with the poor organisation, lack of funding and limited capacity to initiate and execute high impact innovative social interventions, the activities of NGOs have raised people's hope and improved the quality of life in localities that are most hit by the menace of insurgency. With increased scholarly works on the subject of social entrepreneurship and deliberate efforts to raise the capacity of stakeholders, NGOs will be better positioned to employ innovative methods in solving or drastically reducing the problem of insecurity bedevilling the north. In this respect, the Nigerian government should create a mechanism for integrating relevant social groups that demonstrated genuine and creative solutions in its wider efforts to address the menace of insurgency in Nigeria. Similarly, community leaders and religious organisations are expected to partner with local social groups in order to ensure effective harmonisation of community efforts in bringing the insurgency to an end. Lastly, the success stories and activities of NGOs and other social groups should be publicized and recognised so as to encourage other individuals to follow suit.

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# **ANAK TAK SAH TARAF: SIAPA YANG SEPATUTNYA MEMBERI NAFKAH?**

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## **ABSTRAK**

Kelahiran anak tak sah taraf dalam negara kita semakin bertambah dari semasa ke semasa. Senario ini amat membimbangkan masyarakat hari ini. Kelahiran mereka menimbulkan persoalan mengenai siapakah yang perlu bertanggungjawab untuk menguruskan kehidupan mereka terutamanya dari aspek nafkah; adakah tanggungjawab itu semata-mata dibebankan ke atas ibu yang melahirkannya? Jika ibu tersebut tidak berkemampuan untuk memberi nafkah, siapakah yang harus memikul tanggungjawab tersebut demi memastikan kebaikan dan pengurusan hidup anak tak sah taraf tidak terabai? Terdapat bukti-bukti bahawa kebaikan anak tak sah taraf diabaikan di Malaysia. Objektif penulisan ini dilakukan adalah untuk mengenalpasti pihak manakah yang bertanggungjawab untuk memberi nafkah kepada anak tak sah taraf berdasarkan Hukum Syarak dan peruntukan undang-undang sedia ada. Kaedah penulisan ini berbentuk kualitatif sosial dan undang-undang berdasarkan data primer dan sekunder berkaitan dengan anak tak sah taraf. Kaedah kepustakaan adalah asas utama dalam penulisan ini yang menganalisa secara induktif dan deduktif merujuk dalil-dalil usul fiqh Islam dan undang-undang sehingga mencapai satu kesimpulan yang kukuh dalam mengenal pasti pihak yang wajib memberi nafkah kepada anak tak sah taraf. Hasil penulisan ini mendapati bahawa ibu merupakan orang yang bertanggungjawab memberi nafkah kepada anak tak sah taraf. Sekiranya ibu tidak berupaya akibat kemiskinan atau tidak mempunyai pendapatan maka tanggungjawab nafkah diturunkan kepada waris ibu dan sekiranya tiada, tanggungjawab ini dibebankan ke atas bahu pihak pemerintah. Namun begitu, tiada pula peruntukan Hukum Syarak dan undang-undang yang mewajibkan bapa biologi yang menjadi penyebab kelahiran memberi nafkah kepada anak tak sah taraf.

**Kata kunci:** Anak Tak Sah Taraf, Nafkah Dan Kebajikan Anak Tak Sah Taraf, Hukum Syarak, Undang-Undang Keluarga Islam, Pihak Yang Bertanggungjawab Memberi Nafkah Dan Melaksanakan Kebajikan

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## PENDAHULUAN

Di Malaysia, isu anak tak sah taraf sudah menjadi isu besar yang sangat membimbangkan masyarakat hari ini. Kisah-kisah tentang pembunuhan dan pembuangan bayi sentiasa didedahkan oleh media arus perdana manakala jumlah wanita hamil luar nikah yang ditempatkan di pusat-pusat pemulihan semakin meningkat dari semasa ke semasa. Kebanyakan mereka terdiri daripada orang Melayu beragama Islam. Pelbagai pendekatan dan kaedah pelaksanaan serta penguatkuasaan diperkenalkan oleh pihak berkuasa untuk mengurangkan isu kelahiran anak tak sah taraf tetapi tidak membawa hasil.

Berdasarkan statistik yang dilaporkan oleh Jabatan Pendaftaran Negara di mana sejak tahun 2008 hingga 2012, terdapat lebih 167,073 bayi yang direkodkan kelahirannya tanpa bapa telah didaftarkan di Jabatan Pendaftaran Negara. Ini bermakna, secara purata 33,415 orang bayi dilahirkan dalam tempoh setahun, 2,784 orang bayi dilahirkan dalam tempoh sebulan, 93 orang bayi dilahirkan dalam tempoh sehari dan 4 orang bayi dilahirkan dalam tempoh sejam (Abdul Majid Omar, 2013).

Menurut YB Datuk Dr. Wan Junaidi Tuanku Jaafar, Timbalan Menteri Dalam Negeri dalam persidangan Parlimen Malaysia bertarikh 18 & 19 Mac 2014 mengenai kelahiran anak luar nikah oleh gadis bawah umur (16 tahun ke bawah) dalam Tahun 2012 – 2013 menyatakan jumlah anak luar nikah oleh gadis bawah umur (perangkaan dari Jabatan Pendaftaran Negara) yang melibatkan bangsa Melayu ialah 1,490 orang manakala bukan Melayu ialah 1,836 orang. Bagi kes rogol gadis bawah umur yang dilaporkan kepada polis yang melibatkan bangsa Melayu ialah 2390 orang manakala bukan Melayu ialah 584 orang. Bagi kes rogol gadis bawah umur yang tidak dilaporkan kepada polis hanya melibatkan bangsa bukan Melayu sahaja iaitu 1,252 orang (Kementerian Dalam Negeri, 2014).

Kelahiran anak tak sah taraf telah menimbulkan implikasi tertentu dalam keluarga dan masyarakat antaranya daripada aspek nafkah. Siapakah yang perlu bertanggungjawab menjaga kebajikan mereka seperti makan-minum, pakaian, pendidikan dan belaian kasih sayang di samping pengurusan hidup mereka seperti berada di tempat tinggal yang selamat, penjagaan yang sempurna dan mendapat perlindungan dari segala perkara yang boleh membahayakan diri mereka? Kita perlu menyedari bahawa anak tak sah taraf bukanlah seorang insan yang tidak bermaruah yang tidak mempunyai harga diri seperti yang dianggap oleh sesetengah pihak. Kedudukan mereka sama seperti kanak-kanak yang lain yang sah tarafnya berhak memperoleh keistimewaan, manfaat, kebajikan, pendidikan, perlindungan dan bebas melakukan aktiviti-aktiviti harian.

Penulisan ini akan membincangkan isu nafkah anak tak sah taraf seperti mana yang telah diperuntukkan di bawah undang-undang keluarga Islam di Malaysia. Oleh kerana terdapat peruntukan-peruntukan yang hampir sama di bawah Enakmen negeri-negeri maka penulisan ini hanya merujuk Enakmen Undang-Undang Keluarga Islam (Negeri Kedah) 2008 sebagai mewakili peruntukan di negeri-negeri lain. Justeru itu, penulisan ini akan mengenalpasti tanggungjawab siapakah memberi nafkah kepada anak tak sah taraf berdasarkan Hukum Syarak dan peruntukan undang-undang sedia ada selain merujuk data primer dan sekunder yang menyentuh isu anak tak sah taraf.

## KONSEP ANAK TAK SAH TARAF

Anak tak sah taraf ialah disebut *walad al-zina* menurut istilah Bahasa Arab yang bermaksud anak zina atau anak luar nikah. Para *Fuqaha'* bersepakat bahawa anak zina ialah anak yang tidak boleh disabitkan nasabnya kepada penzina melainkan persetubuhan itu disandarkan kepada pernikahan yang sah atau *fasid* atau *syubhab*

atau dari hamba yang dimiliki atau *syubhah* hamba yang dimiliki, maka boleh dinasabkan kepada penzina dan kedua-duanya boleh diwarisi dan mewarisi di antara satu sama lain. Al-Dawish (2002) pula menjelaskan sekiranya berlaku perzinaan dan melahirkan anak maka anak yang lahir daripada perzinaan itu tidak boleh disandarkan atau disabitkan nasab kepadanya dan anak itu tidak boleh mewarisi hartanya.

Berdasarkan Mesyuarat Jawatankuasa Fatwa Negeri Kedah yang bersidang pada 26 September 2010 telah mentafsirkan anak tak sah taraf mengikut Hukum Syarak ialah :

- a) Anak yang dilahirkan di luar nikah sama ada akibat zina, rogol dan dia bukan daripada persetubuhan syubhah atau bukan daripada anak perhambaan.
- b) Anak dilahirkan kurang dari 6 bulan 2 *lahzah* (saat) qamariah dari waktu "*imkam ad-dukhul*".
- c) Anak yang dilahirkan lebih dari 6 bulan 2 *lahzah* (saat) dari waktu "*imkam ad-dukhul*" selepas akad yang sah dan ada bukti dari segi syarak bahawa anak tersebut ialah anak luar nikah melalui *iqrar* (pengakuan) mereka yang berkenaan (suami dan isteri tersebut atau salah seorang daripadanya).
- d) Anak tidak sah taraf tidak boleh dinasabkan kepada lelaki sama ada lelaki yang menyebabkan kelahirannya atau yang mengaku menjadi bapa kepada anak tersebut. Oleh itu, mereka tidak boleh mewarisi antara satu sama lain, tidak boleh menjadi mahram dan bapa tersebut tidak boleh menjadi wali kepada anak tersebut.
- e) Jika lelaki tersebut berkahwin dengan ibu kepada anak tidak sah taraf itu, dan sabit persetubuhan maka hubungan anak tersebut dengan lelaki tersebut adalah seperti anak dengan bapa tiri dan mereka adalah mahram.

Menurut Seksyen 2 Enakmen Undang-Undang Keluarga Islam (Negeri Kedah) 2008 mentafsirkan anak tak sah taraf :

*"tidak sahtaratf, berhubungan dengan seseorang anak, ertinya dilahirkan di luar nikah dan bukan anak dari persetubuhan syubhah"*

Di Malaysia, anak tak sah taraf mempunyai dua definisi ; Pertama : dari sudut fiqh iaitu anak yang lahir di luar pernikahan yang Syarie (anak zina), anak *li'an*, anak *laqit* (pungut atau terdampar), anak mangsa rogol dan anak sumbang mahram. Kedua: dari sudut pentadbiran JPN iaitu anak yang tidak mempunyai dokumen kelahiran akibat perkahwinan ibu bapanya tidak didaftarkan di Mahkamah Syariah (Irwan Mohd Subri, Zulkifli Hassan, Lukman Abdul Mutalib & Mohd Khairul Nizam Zainan Nazri, 2013).

## TANGGUNGJAWAB NAFKAH

Umumnya, ibu bapa berkewajipan menjaga kebajikan anak-anak seperti makan-minum, pakaian, pendidikan dan belaian kasih sayang yang merupakan keperluan harian mereka. Di dalam Islam, menyediakan keperluan harian ini dikenali sebagai nafkah. Namun begitu, bagi anak tak sah taraf terdapat tiga pihak yang dipertanggungjawabkan memberi nafkah kepada mereka sama ada ibu atau waris ibu atau pemerintah.

### Ibu

Perkataan nafkah ialah kalimah Arab yang berasal daripada *infaq* iaitu mengeluarkan. Dari sudut bahasa bermakna apa yang dikeluarkan oleh manusia terhadap anak-anaknya. Daripada istilah *Syarak* bermakna memberi perbelanjaan yang secukupnya daripada makanan, pakaian dan tempat tinggal (Wahbah al-Zuhaili, 2001).

Firman Allah SWT:

*"Dan kewajipan bapa pula ialah memberi makan dan pakaian kepada ibu itu menurut cara yang sepatutnya. Tidaklah diberatkan seseorang melainkan menurut kemampuannya"* (Al-Baqarah, 2 : 233).

Di dalam riwayat daripada Saidatina Aisyah r.a bahawa Hindun binti 'Utbah telah berjumpa dengan Rasulallah SAW dan berkata: "Ya Rasulullah, sesungguhnya Abu Suffian (suaminya) adalah seorang yang kedekut. Dia tidak memberi belanja yang cukup untuk saya dan anak-anak kami kecuali jika saya ambil dengan tidak diketahuinya."

Rasulullah SAW bersabda:

*"Ambillah sekadar yang cukup untuk keperluan kamu dan anak-anak kamu dengan cara yang baik"* (Sahih Bukhari, Kitab An-Nafaqaat).

Berdasarkan kedua-dua nas di atas adalah jelas bahawa seseorang bapa berkewajipan memberi nafkah kepada anak-anaknya. Kewajipan tersebut berasaskan tiga faktor iaitu perkahwinan, keturunan dan pemilikan. Walau bagaimanapun, dalam konteks anak tak sah taraf, tanggungjawab memberi nafkah dan saraan hidup yang lain terletak kepada ibunya mengikut Hukum *Syarak*. Ini disebabkan anak tak sah taraf hanya dinasabkan kepada ibunya sahaja dan tidak dinasabkan kepada bapa yang menyebabinya ibunya.

Kewajipan ibu memberi nafkah kepada anaknya telah dinyatakan di dalam al-Quran :

*"Janganlah menjadikan seseorang ibu menderita kerana anaknya"* (Al-Baqarah, 2 : 233).

Tanggungjawab ibu memberi nafkah kepada anak tak sah taraf diperuntukan dalam Seksyen 81 (1) Enakmen Undang-Undang Keluarga Islam (Negeri Kedah) 2008 iaitu :

*"Jika seseorang perempuan cuai atau enggan menanggung nafkah seseorang anaknya yang tak sah taraf yang tidak berupaya menanggung nafkah dirinya, melainkan seorang anak yang dilahirkan akibat rogol, Mahkamah boleh, apabila hal itu dibuktikan dengan sewajarnya, memerintahkan perempuan itu memberi apa-apa elaun bulanan yang difikirkan munasabah oleh Mahkamah".*

Menurut Nora Abdul Hak (2004), terdapat syarat-syarat tertentu dalam menyara keperluan nafkah anak tak sah taraf di mana seorang ibu berkewajipan memberi nafkah kepada anaknya disebabkan pertalian darah (*nasab*) antara mereka iaitu :-

- a) Anak tersebut tidak mampu berdikari. Bagi anak perempuan sehingga ia berkahwin atau sehingga mempunyai pekerjaan.
- b) Anak tersebut miskin tidak mempunyai harta sendiri untuk menyara dirinya.

- c) Anak tersebut cacat anggota. Jika anak tersebut sudah besar atau baligh dan mampu berdikari maka ibu tidak lagi wajib memberi nafkah kepadanya.
- d) Anak tersebut masih menuntut ilmu.
- e) Ibu tersebut mampu memberi nafkah. Jika ibu tidak mampu memberi nafkah maka kewajipan tersebut berpindah kepada waris mengikut Hukum Syarak.

### **Waris ibu**

Waris ibu merupakan pihak kedua yang dipertanggungjawabkan oleh Hukum Syarak untuk menyara nafkah anak tak sah taraf sekiranya ibu tidak berupaya untuk melaksanakan tanggungjawab tersebut. Ini disebabkan beberapa faktor tertentu antaranya kemiskinan, tidak mempunyai pekerjaan, mlarikan diri daripada keluarga akibat malu dengan perbuatan terkutuk dan takut menerima risiko jika dihadapkan ke mahkamah.

Kefardhuan waris ibu membiayai nafkah anak tak sah taraf dinyatakan dalam al-Quran ;

*“dan waris juga menanggung kewajipan yang tersebut (jika bapa tiada)”(Al-Baqarah, 2 : 233)*

Dr Wahbah al-Zuhaily (1989) menyatakan bahawa waris ibu yang bertanggungjawab memberi nafkah anak tersebut ialah ;

*“Ibu adalah waris, jadi wajib ke atasnya membiayai nafkah dengan jelas daripada nas al-Quran. Jika anak kecil itu ada nenek dan saudara lelaki maka ke atas nenek satu per enam dan yang selebihnya ditanggung oleh saudara lelaki. Dengan ini jadilah susunan pembiayaan nafkah mengikut susunan pewarisan. Maka sebagaimana nenek di sini mendapat habuan pusaka satu per enam, ia wajib membiayai nafkah juga satu per enam dan sebagaimana habuan pusaka yang selebihnya bagi saudara lelaki maka begitu pula ia wajib membiayai nafkah yang selebihnya setelah nenek membiayai satu per enam. Jika berhimpun ibu bapa di sebelah ibu (nenek dan datuk di sebelah ibu) maka pembiayaan nafkah wajib ke atas emak ibu (nenek) kerana ia adalah ahli waris”*

Oleh itu, jelaslah waris ibu yang utama berhak memberi nafkah terdiri daripada nenek (emak ibu) dan saudara lelaki seibu sama ada abang atau adik kepada anak tak sah taraf. Kadar saraan nafkah adalah mengikut bahagian yang diterima oleh waris-waris tersebut dalam harta pusaka.

### **Pemerintah**

Dr Yusuf al-Qardhawi (1995) menjelaskan adalah menjadi kewajipan pihak pemerintah untuk memastikan kebijakan anak tak sah taraf khususnya dalam memelihara aqidah Islam jika ibu yang melahirkannya beragama Islam. Begitu juga, kebijakan mereka untuk mendapat nafkah dan perlindungan di samping menguruskan kehidupan mereka sama seperti kanak-kanak yang lain. Pandangan beliau adalah berdasarkan fatwa yang telah difatwakkannya iaitu :

*“Adalah suatu yang ditetapkan oleh Syarak bahawa seseorang anak apabila kedua ibu bapanya menganut agama yang berbeza, maka dia*

*akan mengikut agama ibu bapanya yang terbaik. Ini bagi mereka yang ayahnya diketahui. Maka apatah lagi dengan yang tidak diketahui ayahnya? Dia adalah seorang muslim tanpa ragu-ragu lagi. Masyarakat muslim bertanggungjawab menjaga dan menanggung nafkah kehidupannya serta mengelokkan tarbiahnya. Janganlah mengharapkan semata-mata kepada ibu malang yang ditimpa bala. Di dalam Islam, kerajaan bertanggungjawab terhadap penjagaan anak ini dengan perantaraan kementerian atau institusi tertentu”.*

Dalam hadis sahih yang disepakati Rasulallah (S.A.W) telah bersabda :

*Maksudnya :*

*“Dari Abdullah Bin Umar RA berkata : Sesungguhnya aku telah mendengar Rasulallah SAW bersabda : Setiap kamu adalah penjaga dan kamu semua bertanggungjawab terhadap apa yang kamu jaga”(Sahih Bukhari, Kitab al-‘Itqu).*

Oleh itu, jelaslah bahawa kewajipan pemerintah melindungi dan menyara kehidupan anak tak sah taraf apabila mendapat ibu dan waris ibu tidak mampu membiayai saraan nafkah ke atas anak tersebut.

Terdapat agensi-agensi kerajaan yang terlibat secara langsung dalam melaksanakan fungsi-fungsi tertentu berkaitan wanita yang hamil luar nikah dan anak tak sah taraf (Kementerian Pembangunan Wanita Keluarga dan Masyarakat, 2012) antaranya :

- a) Kementerian Pembangunan Wanita Keluarga dan Masyarakat (KPWKM) melalui Dasar Kanak-Kanak Negara (DKN), Dasar Perlindungan Kanak-Kanak Negara (DPKN), Dasar Kebajikan Masyarakat Negara (DKMN) dan Dasar Sosial Negara (DSN).
- b) Jabatan Kebajikan Masyarakat (JKM) melalui Rumah Kanak-Kanak, Sekolah Tunas Bestari, Asrama Akhlak, Taman Seri Puteri, Kompleks Penyayang Bakti, Pusat Jagaan Sinar Kasih di Batu Gajah, Perak dan di Sungai Buloh, Selangor.
- c) Jabatan Pembangunan Wanita (JPW) melalui program ibu tunggal seperti Inkubator Kemahiran ibu Tunggal (I-KIT), Jejari Bestari dan Inkubator Keusahawanan Wanita (I-KeuNITA) dengan kerjasama Amanah Ikhtiar Malaysia (AIM).
- d) NGO melalui Pusat Jagaan Rumah Perlindungan Nurul Hana (PJRPNH) dikelolakan oleh Lembaga Kebajikan Perempuan Islam Negeri Kedah dan Baby Hatcy yang dikendalikan oleh OrphanCARE di Petaling Jaya, Selangor.

## **PERBINCANGAN DAN CADANGAN**

Fokus penulisan ini adalah berkisar tentang tanggungjawab memberi nafkah kepada anak tak sah taraf yang melibatkan tiga pihak iaitu ibu, waris ibu dan pemerintah. Terdapat beberapa perkara yang perlu diberi perhatian demi memastikan kebijakan dan pengurusan anak tak sah taraf terlaksana dengan sempurna terutamanya permasalahan yang dihadapi oleh pihak-pihak yang berkaitan.

Berdasarkan penulisan di atas, terdapat dua keadaan pada diri ibu yang diwajibkan ke atasnya memberi nafkah kepada anak tak sah taraf iaitu :-

- a) Apabila ibu tersebut enggan memelihara anak tersebut dengan meninggalkan anak tersebut dipelihara oleh waris ibu. Dalam masa yang sama, jika waris ibu tidak mampu memberi nafkah, maka menjadi kewajipan kerajaan untuk mengambil tanggungjawab memberi perlindungan dan menyara keperluan nafkah mereka.
- b) Apabila ibu tersebut sanggup memelihara anak tersebut tetapi berada dalam kemiskinan dan tidak mempunyai pekerjaan untuk menyara nafkah anak tersebut.

Menyentuh isu pertama, sekiranya ibu tersebut menghilangkan diri dari keluarga dan menyerahkan kepada warisnya untuk memelihara dan menyara nafkah anak tersebut maka terdapat dua situasi yang dapat dilihat iaitu jika keluarga ibu (nenek) tersebut terdiri di kalangan orang berada dan berharta maka isu kemampuan memberi nafkah anak tersebut tidak berbangkit sama sekali. Sekiranya keluarga ibu (nenek) terdiri di kalangan orang miskin, mempunyai anak-anak yang lain yang masih kecil dan bersekolah serta suaminya (datuk) tidak mempunyai pendapatan tetap di mana pendapatan yang ada sekadar cukup untuk keperluan hidup mereka. Pada ketika itu, jika waris ibu masih mampu untuk memelihara anak tersebut tetapi tidak mampu untuk memberi nafkah maka dicadangkan Baitulmal dipertanggungjawabkan membiayai keperluan nafkah anak tak sah taraf. Baitulmal wajar mengadakan satu peruntukan nafkah anak tak sah taraf. Untuk tujuan tersebut, pindaan undang-undang hendaklah dibuat supaya Mahkamah Syariah boleh mengeluarkan satu perintah nafkah anak tak sah taraf ke atas Baitulmal jika waris ibu menuntut hak nafkah di Mahkamah Syariah.

Setakat ini Baitulmal hanya memberi bantuan khidmat guaman syarie kepada pihak-pihak yang terlibat dalam kes di Mahkamah Syariah yang tidak mampu menggunakan khidmat Peguam Syarie terutamanya di Wilayah Persekutuan. Program ini berjalan sejak tahun 2009 dengan kerjasama Persatuan Peguam Syarie Malaysia (PGSM) dengan Bahagian Baitulmal, Majlis Agama Islam Wilayah Persekutuan (MAWIP). Pihak yang layak memohon bantuan guaman syarie adalah terdiri daripada 8 asnaf yang layak menerima zakat dengan pendapatan bulanan bawah RM 1500.00 sebulan.

Selain itu, institusi zakat di seluruh negeri wajar memberi bantuan bulanan kepada waris ibu yang memelihara anak tak sah taraf setelah aduan dikemukakan kepada institusi zakat atau terdapat laporan daripada mana-mana agensi kerajaan mengenainya.

Menyentuh isu kedua di atas iaitu apabila ibu sanggup memelihara anak tersebut tetapi berada dalam kemiskinan dan tidak mempunyai pekerjaan untuk menyara nafkah anak tersebut, penulisan ini mencadangkan agar kerajaan melalui agensinya seperti Amanah Ikhtiar Malaysia (AIM), Tekun Nasional (TEKUN) dan apa-apa skim yang berkaitan keusahawanan dapat memberi bantuan modal kewangan atau barang secara bulanan kepada ibu tersebut untuk memulakan perniagaan. Satu bentuk keistimewaan dan pengecualian apa-apa bayaran perlu diberikan sebagai galakan kepada mereka untuk membina hidup baru dengan melupakan kisah silam apabila terdapat agensi kerajaan yang prihatin dengan nasib mereka.

Selain itu, dicadangkan agar Jabatan Kebajikan Masyarakat (JKM) mengeluarkan kad khas seperti kad OKU kepada ibu tersebut untuk memudahkan urusannya dengan mana-mana pihak yang boleh memberi bantuan kewangan/modal perniagaan.

Di samping itu juga, Jabatan Pendaftaran Negara (JPN) yang mempunyai rekod kelahiran dan maklumat keluarga ibu anak tak sah taraf boleh memanjangkan apa-apa bentuk bantuan kewangan kepada Baitulmal dan institusi zakat di setiap negeri apabila

menerima permohonan pendaftaran kelahiran anak tak sah taraf. Tindakan ini bukanlah satu galakan untuk menambahkan kelahiran anak tak sah taraf tetapi sekurang-kurangnya dapat mengurangkan beban ibu tersebut dalam memelihara dan memberi nafkah kepada anak tersebut. Baitulmal boleh membuat peruntukan khusus dalam bajet tahunan untuk menyalurkan bantuan wang setiap bulan kepada anak tak sah taraf atau bantuan modal kepada ibu untuk memulakan perniagaan selepas ibu tersebut menghadiri apa-apa kursus kemahiran yang disediakan oleh Baitulmal atau agensi-agensi berkaitan agar mereka boleh berdikari, keluar daripada kesempitan hidup dan bukan lagi bergantung kepada Baitulmal dan institusi zakat semata-mata.

Dalam maksud yang sama, kerajaan dicadangkan agar mewujudkan Dana Khas berbentuk bantuan segera kepada anak tak sah taraf sekiranya kesesahteraan anak selesai diputuskan oleh Mahkamah Syariah. Isu nafkah anak ini boleh dilihat apabila Jabatan Kehakiman Syariah Malaysia (JKSM) mewujudkan Bahagian Sokongan Keluarga (BSK) bertujuan untuk menyalurkan bantuan sara hidup sementara kepada isteri atau isteri dan anak-anak yang menghadapi masalah mendapatkan nafkah dari pihak yang wajib membayar nafkah.

Bagi membendung kelahiran anak tak sah taraf dan mengelakan kecuaian memberi nafkah kepada mereka, penulisan ini turut mencadangkan agar diwujudkan satu peraturan khas untuk mengikat 'bapa' memberi nafkah dan menjaga kebaikan anak tak sah taraf demi mengelakkan 'bapa' bersikap lepas tangan. Peraturan khas tersebut boleh diwujudkan untuk kebaikan anak tersebut atas dasar tanggungjawab sosial dan bukan disabitkan atas nama agama. Ini disebabkan Hukum Syarak tidak mengiktiraf hubungan anak tersebut dengan 'bapa'nya sebaliknya mengiktiraf ibu dan meletakkan tanggungjawab ke atas ibu sahaja memberi nafkah kepada anak tak sah taraf.

## KESIMPULAN

Kelahiran anak tak sah taraf akibat perbuatan zina tidak boleh dipersalahkan kerana mereka tidak berdosa, tidak menanggung dosa kedua ibu bapanya bahkan mereka tetap mempunyai hak yang serupa untuk menikmati kesempurnaan hidup sama seperti anak yang sah taraf. Perlakuan sumbang antara ibu dengan pasangannya tidak memutuskan hubungan *nasab* anak tersebut dengan ibu. Tujuannya adalah untuk memastikan nafkah dan keperluan lain anak tersebut tidak diabaikan.

Hukum Syarak dan enakmen undang-undang keluarga Islam di seluruh negeri di Malaysia mempunyai peruntukan yang mewajibkan setiap wanita yang melahirkan anak tak sah taraf memberi nafkah mengikut kemampuannya. Sekiranya ibu tidak mampu menyara nafkah tersebut, kewajipan tersebut akan berpindah kepada waris ibu dan seterusnya akan terpikul di bahu pemerintah jika waris ibu juga berhalangan dalam memberi nafkah. Meskipun terdapat beberapa kelemahan dari aspek pelaksanaan, peruntukan undang-undang jelas mengiktiraf, memelihara dan melindungi hak anak tak sah taraf. Dengan itu mereka mampu menjadi insan yang soleh dan berguna serta dapat berbakti kepada agama, bangsa dan negara apabila mereka berjaya dalam hidup nanti.

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# **KEBAJIKAN ANAK TAK SAH TARAF ORANG ISLAM MENURUT PERSPEKTIF HUKUM SYARAK DAN UNDANG-UNDANG DI MALAYSIA: SUATU ANALISA**

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## **ABSTRAK**

Kebajikan merupakan aspek terpenting dalam mengurus kehidupan anak tak sah taraf. Hukum Syarak telah meletakkan garis panduan tentang keperluan menjaga kebijakan anak tak sah taraf orang Islam setanding dengan anak yang sah taraf. Begitu juga dalam undang-undang di negara kita khasnya undang-undang keluarga Islam turut diperuntukan fasal-fasal kebijakan demi menjamin aspek kebijakan tidak diabaikan oleh individu yang dikaitkan dengan anak tak sah taraf mahupun pihak berkuasa. Ternyata pelaksanaan kebijakan anak tak sah taraf orang Islam masih kurang memuaskan meskipun Hukum Syarak dan undang-undang telah memperuntukan dengan jelas. Objektif penulisan ini adalah untuk mengetahui sejauhmanakah aspek kebijakan anak tak sah taraf orang Islam dilaksanakan menurut perspektif Hukum Syarak dan peruntukan undang-undang di Malaysia. Kaedah penulisan ini berbentuk kualitatif sosial dan undang-undang berdasarkan data primer dan sekunder berkaitan kebijakan anak tak sah taraf orang Islam. Kaedah kepustakaan adalah asas utama dalam penulisan ini yang menganalisa secara perbandingan merujuk dalil-dalil usul fiqh Islam dan undang-undang sehingga mencapai satu kesimpulan yang kukuh dalam mengenalpasti pelaksanaan kebijakan terhadap anak tak sah taraf. Hasil penulisan ini mendapati bahawa pihak berkuasa terutamanya Kementerian Pembangunan Wanita Keluarga dan Masyarakat (KPWKM), Jabatan Kebajikan Masyarakat (JKM) dan NGO memainkan peranan penting dalam menjaga kebijakan anak tak sah taraf. Meskipun ibu dan waris ibu merupakan pihak utama yang bertanggungjawab menguruskan kebijakan terhadap anak tak sah taraf orang Islam tetapi ramai di kalangan mereka yang menyerahkan tanggungjawab tersebut kepada pihak berkuasa dengan alasan terdapat peruntukan kewangan yang cukup dan prasarana yang selesa.

**Kata kunci:** Anak Tak Sah Taraf Orang Islam, Kebajikan Anak Tak Sah Taraf Orang Islam, Hukum Syarak, Undang-Undang di Malaysia, Pihak Yang Bertanggungjawab Melaksanakan Kebajikan

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## **PENDAHULUAN**

Islam menjamin hak anak-anak untuk mendapat kebajikan dalam kehidupan sehari-hari di mana setiap ibu bapa difardhukan memberi nafkah dan hadhanah kepada anak-anak. Kewajipan memberi nafkah adalah seperti menyediakan keperluan makan-minum, pakaian, pendidikan dan belaian kasih sayang manakala kewajipan hadhanah pula ialah menyediakan tempat perlindungan yang selamat dan penjagaan yang sempurna.

Seluruh negeri di Malaysia dan Wilayah Persekutuan mempunyai peruntukan undang-undang tentang nafkah dan hadhanah demi menjamin dan memastikan hak-hak tersebut terpelihara. Bagi anak tak sah taraf, ibu dan waris ibu merupakan pihak utama yang bertanggungjawab menjaga kebajikan mereka. Kewajipan ini menyamai tugas seorang bapa yang bertanggungjawab sepenuhnya ke atas anak-anaknya apabila perkahwinan mereka sah di sisi Hukum Syarak dan diiktiraf oleh undang-undang.

Soal perkahwinan dan kelahiran anak-anak adalah perkara penting yang perlu melalui proses pemahaman ke arah pembentukan sistem kekeluargaan yang mempunyai perancangan tersendiri. Perancangan tersebut tidak boleh lari daripada kepentingan duniawi dan ukhrawi antara ibu bapa dan anak-anak. Tanpa proses tersebut akan wujud organisasi sistem kekeluargaan yang pincang iaitu lahirnya anak-anak yang terbuang, tercirir dan terhina yang membawa bencana bukan sahaja kepada kedua-dua ibu bapanya bahkan kepada masyarakat serta anak-anak zina yang menjadi barah kepada masyarakat (Muhammad Bakir Yaakob & Khatijah Othman, 2012 : 136).

Walau bagaimanapun, terdapat segelintir ibu dan waris ibu yang sanggup memelihara anak tak sah taraf tetapi mempunyai kesukaran untuk menyara nafkah dan hadhanah disebabkan faktor kemiskinan atau tidak mempunyai sebarang pekerjaan. Dalam hal ini, fungsi dan tugas pihak berkuasa seharusnya berperanan untuk membantu meringankan beban golongan tersebut agar kebajikan dan pengurusan anak mereka dilaksanakan dengan baik dan sempurna.

Penulisan ini akan membincangkan isu kebajikan anak tak sah taraf seperti mana yang telah diperuntukan dalam Perlembagaan Persekutuan, Akta Kanak-Kanak 2001 dan Undang-Undang Keluarga Islam di Malaysia. Justeru itu, penulisan ini akan mengenalpasti sejauhmanakah aspek kebajikan anak tak sah taraf orang Islam dilaksanakan menurut perspektif Hukum Syarak dan peruntukan undang-undang di Malaysia.

## **DEFINISI KEBAJIKAN**

Menurut Kamus Dewan (2007 : 110) kebajikan ialah sesuatu yang membawa kebaikan atau perbuatan baik atau kebaikan. Kebajikan berasal daripada perkataan bajik bererti buat baik, sesuatu yang murni. Ia melibatkan amal jariah ; niat dalam pertuturan dan perbuatan. Ia mempunyai konsep global, tentang duniawi dan ukhrawi.

Kebajikan masa kini memerlukan penonjolan untuk mendidik, membimbing dan menyedarkan masyarakat dalam slogan dan hasrat : "kebajikan tanggungjawab bersama" sebagai satu halacara bersepada penglibatan semua dan untuk kebajikan semua. Kebajikan tidak hanya tertumpu kepada kerajaan semata-mata sebaliknya memerlukan pengembelingan tenaga semua pihak dalam membangunkan masyarakat dinamis yang berdaya maju (Wan Azmi Ramli, 1990 : 22).

Ahmad Shukri Abdul Hamid (2012 : 9) menjelaskan kebijakan kanak-kanak boleh didefinisikan sebagai satu kerangka minda atau pemikiran (fahaman) dan tindakan yang menjurus kepada penghasilan kebaikan atau kesejahteraan khusus kepada golongan kanak-kanak. Kebijakan kanak-kanak boleh dianggap sebagai suatu elemen struktur sosial yang lahir daripada interaksi keluarga dan berbentuk fizikal (bantuan kewangan dan keperluan asas) atau bukan fizikal (sokongan emosi, empati, ilmu, kemahiran dan sebagainya).

### **KONSEP KEBAJIKAN ANAK TAK SAH TARAF**

Umumnya, ibu bapa berkewajipan menjaga kebijakan anak-anak seperti makan-minum, pakaian, pendidikan dan belaian kasih sayang dan menyediakan tempat tinggal yang baik dan sempurna yang menjadi nadi kehidupan mereka. Namun begitu, bagi anak tak sah taraf, tanggungjawab tersebut tidak terpikul ke atas ‘bapa’ yang menjadi punca kelahiran mereka sebaliknya kewajipan tersebut dipertanggungjawabkan kepada ibu atau waris ibu atau pihak berkuasa.

Terdapat beberapa senario tentang penjagaan anak tak sah taraf di kalangan ibu dan waris ibu. Ada di kalangan mereka yang bermingat untuk menjaga anak tak sah taraf sama ada mereka terdiri di kalangan orang kaya atau orang miskin. Bagi keluarga kaya, urusan menyara keperluan hidup dan tempat tinggal tidak menjadi masalah kepada mereka. Bagi keluarga miskin, mereka berusaha membesarangkan anak tersebut dengan kadar kemampuan ekonomi mereka dan jika ada bantuan daripada institusi kerajaan seperti Bantuan Kanak-Kanak (BKK) di bawah JKM, Baitulmal, Jabatan Zakat dan sebagainya, ini akan dapat meringankan bebanan mereka.

Sebaliknya, terdapat ibu atau waris ibu tidak sanggup memelihara anak tak sah taraf disebabkan rasa malu dengan masyarakat di sekeliling sama ada mereka terdiri di kalangan kaya atau miskin. Sebagai langkah terakhir, mereka menyerahkan anak tersebut kepada JKM untuk dipelihara atau diserahkan kepada keluarga angkat. Contohnya, Aini (bukan nama sebenar) berusia 16 tahun berasal dari Bandar Baharu, Kedah sedang mengandungkan anak luar nikah. Ibu bapanya menyedari Aini telah mengandung pada Februari 2014 lalu membawanya ke Pusat Jagaan Rumah Perlindungan Nurul Hana (PJRPNH) di Lot 1889, Jalan Kompleks Pendidikan, Jalan Stadium, Alor Setar, Kedah. Ibu bapanya tidak mahu memelihara anak tersebut sebaliknya akan diserahkan kepada keluarga angkat. Ibu bapanya mahu Aini meneruskan pengajiannya di Tingkatan Empat, SMK Sultan Ahmad Tajuddin, Bandar Baharu, Kedah. Pasangannya bercadang untuk mengahwininya tetapi dilarang oleh kedua ibu bapa Aini (Temubual, 2014, 06 Mei).

Di seluruh Malaysia, sebanyak 3831 kes kanak-kanak yang memerlukan pemeliharaan dan perlindungan dari JKM. Daripada jumlah tersebut, seramai 1287 orang kanak-kanak lelaki dan 2544 orang kanak-kanak perempuan yang memerlukan pemeliharaan dan perlindungan dari JKM. Di negeri Kedah, seramai 105 kanak-kanak lelaki dan seramai 308 orang kanak-kanak perempuan daripada jumlah keseluruhannya iaitu 413 orang yang memohon pemeliharaan dan perlindungan kepada JKM (Laporan Statistik JKM Malaysia, 2012 : 98).

Terdapat tiga pusat jagaan kanak-kanak iaitu Rumah Kanak-Kanak (RKK), Rumah Budak Laki-Laki (RB) dan Rumah Tunas Harapan (RTH) yang disediakan oleh JKM. Ketiga-tiga institusi tersebut melaksanakan program jagaan dan perlindungan,

bimbingan dan kaunseling, pelajaran, latihan vokasional, didikan agama dan moral, riadah dan perubatan serta kesihatan. Sebilangan besar kanak-kanak yang mendiami di ketiga-tiga institusi tersebut berasa sangat selamat, sangat suka tinggal di situ dan sangat rapat serta berpuashati dengan petugas di institusi tersebut yang berperanan sebagai ibu bapa 'ganti' kepada mereka (Salma Ishak, Jusmawati Fauzaman, Noor Azizah Ahmad & Fauziah Shaffie, 2012 : 22).

Rumah perlindungan JKM dikawalselia oleh Pegawai Kebajikan dan dibantu oleh pekerja kebajikan di setiap daerah. Terdapat tiga isu penting di rumah perlindungan kanak-kanak JKM iaitu etnik yang berbeza, umur kanak-kanak yang sesuai untuk dijadikan anak angkat dan hubungan kanak-kanak dengan ibu bapa kandung.

Penempatan etnik kanak-kanak yang berbeza ialah suatu tindakan yang murni tetapi tidak praktikal. Ini disebabkan sosiobudaya di kalangan bangsa Melayu, Cina dan India jauh berbeza dengan masyarakat majmuk di Barat. Ia akan menjadi isu besar apabila melibatkan persoalan agama. Dari aspek umur kanak-kanak yang sesuai untuk dijadikan anak angkat, didapati semakin meningkat usia kanak-kanak semakin sukar kanak-kanak untuk dijadikan anak angkat. Kanak-kanak yang sudah meningkat usia agak sukar menyesuaikan diri dengan keluarga angkat. Oleh itu, penempatan di institusi lebih sesuai didiami berbanding tinggal bersama keluarga angkat.

Dari aspek hubungan kanak-kanak dengan ibu bapa kandung, didapati pertemuan semula antara kanak-kanak yang tinggal dengan keluarga angkat dengan ibu bapa kandung patut digalakkan. Ia juga dapat mengeratkan silaturrahim antara mereka bahawa ikatan persaudaraan tidak akan terputus antara anak dan ibu bapa kandung walaupun mereka dipelihara oleh keluarga angkat. Bagi orang Islam, batasan agama menghalang anak angkat dibin atau dibintikkan kepada bapa angkat kerana ia akan menjelaskan hubungan mahram dan perwalian (Chan Cheong Chong, Azlin Hilma Hillaluddin & Iran Herman, 2012 : 43).

Selain itu, terdapat pertubuhan bukan kerajaan (NGO) iaitu OrphanCARE yang beroperasi di Petaling Jaya, Selangor telah menujuhkan '*Baby Hatch*'. Baby Hatch merupakan tempat yang diwujudkan untuk menempatkan bayi-bayi yang tidak diingini atau bayi terbuang sebagai alternatif untuk menyelamatkan mereka daripada dibunuhi. Bayi yang ditempatkan di '*Baby Hatch*' boleh diserahkan kepada mana-mana pihak yang ingin menjadikannya sebagai anak angkat setelah memenuhi pra-syarat yang ditetapkan oleh pihak pengurusan OrphanCARE. Setakat ini, OrphanCARE telah menerima 40 kes anak tidak diingini iaitu sebanyak 32 kes bayi dan 8 kes kanak-kanak sejak dilancarkan pada 29 Mei 2010 lalu. Daripada jumlah itu, 32 orang adalah berbangsa Melayu dan bakinya dari kaum Cina dan India. Terdapat 2 kes bayi yang diletakkan dalam '*Baby Hatch*' yang disediakan (Mohd Mahyeddin Mohd Salleh & Nisar Mohammad Ahmad, 2011 : 7).

## **KEBAJIKAN ANAK TAK SAH TARAF ORANG ISLAM MENURUT HUKUM SYARAK DAN UNDANG-UNDANG**

### **Hukum Syarak**

Kebajikan anak tak sah taraf menurut perspektif Hukum Syarak dapat dilihat dalam dua aspek iaitu nafkah dan hadhanah (penjagaan).

Nafkah ialah kalimah Arab yang berasal daripada *infaq* iaitu mengeluarkan. Dari sudut bahasa bermakna apa yang dikeluarkan oleh manusia terhadap anak-anaknya. Daripada istilah Syarak bermakna memberi perbelanjaan yang secukupnya daripada makanan, pakaian dan tempat tinggal (Dr Wahbah al-Zuhaily, 1989 : 786).

Hukum Syarak telah meletakan kewajipan ibu memberi nafkah dan saraan hidup yang lain kepada anak tak sah taraf. Ini disebabkan anak tak sah taraf hanya dinasabkan kepada ibunya sahaja dan tidak dinasabkan kepada bapa yang menyebutuhi ibunya.

Kewajipan ibu memberi nafkah kepada anaknya telah dinyatakan di dalam al-Quran :

*"Janganlah menjadikan seseorang ibu menderita kerana anaknya"* (Al-Baqarah, 2 : 233).

Menurut fuqaha', hadhanah bererti menjaga dan mendidik kanak-kanak yang masih kecil oleh seseorang yang dipertanggungjawab ke atasnya. Penjagaan tersebut meliputi semua perkara yang menyentuh kehidupannya seperti mendidik, memimpin, mengawasi dan mengatur segala hal ehwal kanak-kanak sehingga umur tertentu (Al-Khatib, 1997 : 592).

Hukum Syarak telah meletakkan kewajipan menjaga anak tak sah taraf ialah kepada ibunya. Ini adalah berdasarkan sabda Rasulullah S.A.W :

*"Anak adalah hak pemilik hamparan (al-firasy) sedangkan orang yang berzina (al-'ahir) haknya adalah batu."* (Riwayat Abu Hurairah r.a : 72).

Hadis di atas telah dibincangkan melalui fatwa yang menjelaskan tentang kedudukan anak yang lahir daripada perzinaan tidak boleh dinasabkan kepada penzina lelaki meskipun penzina lelaki mengahwini penzina perempuan. Adalah diharuskan sekiranya penzina lelaki mengahwini penzina perempuan selepas selesai eddah dan melakukan taubat nasuha (Al-Dawish, 2002 : 388).

### **Undang-Undang**

Perlembagaan Persekutuan merupakan undang-undang tertinggi dalam negara telah meletakkan asas yang kukuh mengenai pembahagian bidangkuasa antara Kerajaan Persekutuan dan Kerajaan Negeri tentang kebajikan anak tak sah taraf. Fasal 74 telah memperuntukan bidangkuasa antara Kerajaan Persekutuan dan Kerajaan Negeri seperti yang terkandung dalam Senarai Pertama, Senarai Kedua dan Senarai Ketiga Jadual Kesembilan.

Dalam Senarai Pertama (Senarai Persekutuan) telah diperuntukan dalam Perkara 4 (e) (i) iaitu hal-hal yang berkaitan perceraian dan taraf anak. Dalam Senarai Kedua (Senarai

Negeri) telah diperuntukan dalam Perkara 1 berkaitan pengambilan anak angkat, taraf anak dan penjagaan anak. Dalam Senarai Ketiga pula (Senarai Bersama) telah diperuntukan dalam Perkara 1 iaitu hal-hal yang menyentuh kebajikan masyarakat ; perkhidmatan masyarakat tertakluk kepada Senarai Pertama dan Kedua ; perlindungan bagi perempuan, kanak-kanak dan orang-orang muda.

Oleh itu, jelaslah bahawa Kerajaan Persekutuan mempunyai kuasa dan bidangkuasa dalam Senarai Pertama iaitu menentukan status kesahtarafan anak di Wilayah-Wilayah Persekutuan sahaja (Kuala Lumpur, Labuan dan Putrajaya) yang termaktub di dalam Akta Undang-Undang Keluarga Islam Wilayah Persekutuan, 1984 (Akta 303).

Kerajaan Negeri pula mempunyai kuasa dan bidangkuasa dalam Senarai Kedua iaitu menentukan status kesahtarafan anak dan hadhanah (penjagaan anak). Ini disebabkan setiap negeri di Malaysia mempunyai enakmen undang-undang keluarga Islam yang tersendiri yang berkuasa membuat peruntukan-peruntukan tertentu berkaitan isu kesahtarafan anak.

Kerajaan Persekutuan dan Kerajaan Negeri mempunyai kuasa dan bidangkuasa bersama dalam menguruskan kebajikan anak tak sah taraf seperti yang terkandung dalam Senarai Ketiga (Senarai Bersama). Penubuhan Kementerian Pembangunan Wanita, Keluarga dan Masyarakat (KPWKM) di peringkat Kerajaan Persekutuan adalah untuk merealisasikan fungsi kebajikan seperti yang termaktub dalam Senarai Bersama tersebut.

Kewajipan menjaga kebajikan anak tak sah taraf terletak dalam Senarai Bersama di mana Kerajaan Persekutuan menggunakan Akta Kanak-Kanak 2001 (Akta 611) sama ada kanak-kanak tersebut di kalangan orang Islam atau bukan Islam. Kuasa Kerajaan Negeri pula menggunakan Enakmen Undang-Undang Keluarga Islam negeri masing-masing atau Akta Undang-Undang Keluarga Islam Wilayah Persekutuan, 1984 (Akta 303). Tertakluk kepada permohonan mana-mana pihak sama ada ibu atau waris ibu kepada anak tak sah taraf orang Islam, Mahkamah Syariah boleh memerintahkan seseorang kanak-kanak dijaga oleh mana-mana pihak lain atau ditempatkan di mana-mana persatuan. Contohnya, Seksyen 87 (1) Enakmen Undang-Undang Keluarga Islam Kedah, 2008 telah memperuntukan iaitu :-

"Walau apa pun peruntukan seksyen 83, Mahkamah boleh pada bila-bila masa dengan perintah memilih untuk meletakkan seseorang kanak-kanak dalam jagaan salah seorang daripada orang-orang yang tersebut di dalam seksyen itu atau, jika ada hal yang luar biasa yang menyebabkan tidak diingini bagi kanak-kanak itu diamanahkan kepada salah seorang daripada orang-orang itu, Mahkamah boleh dengan perintah meletakkan kanak-kanak itu dalam jagaan mana-mana orang lain atau mana-mana persatuan yang tujuannya adalah termasuk kebajikan kanak-kanak"

Di bawah KPWKM, diwujudkan pula JKM iaitu jabatan yang bertanggungjawab sepenuhnya melaksanakan polisi dan dasar bersama antara Kerajaan Persekutuan dan Kerajaan Negeri berkaitan kebajikan terhadap wanita dan kanak-kanak antaranya termasuklah anak tak sah taraf. Oleh itu, semua negeri di Malaysia mempunyai JKM masing-masing bahkan wujud skim gunasama pegawai dan kakitangan JKM yang ditempatkan oleh KPWKM di seluruh negeri dengan tujuan pelaksanaan program kebajikan adalah selari dengan keputusan yang dibuat secara bersama. Terdapat akta-

akta tertentu yang digunakan oleh KPWKM berkaitan pengurusan dan kebijakan anak tak sah taraf antaranya Akta Kaunselor 1998, Akta Kanak-Kanak 2001 (Akta 611), Akta Pusat Jagaan 1993 (Akta 506) dan Akta Pengangkatan 1952 (Akta 257).

Dalam konteks anak tak sah taraf di kalangan orang Islam, Seksyen 80 (1) Akta Undang-Undang Keluarga Islam Wilayah Persekutuan, 1984 (Akta 303) dan Seksyen 81 (1) Enakmen Undang-Undang Keluarga Islam Kedah, 2008 telah memperuntukan tentang kebijakan mereka dari aspek saraan nafkah iaitu :

*"Jika seseorang perempuan cuai atau enggan menanggung nafkah seseorang anaknya yang tak sah taraf yang tidak berupaya menanggung nafkah dirinya, melainkan seorang anak yang dilahirkan akibat rogol, Mahkamah boleh, apabila hal itu dibuktikan dengan sewajarnya, memerintahkan perempuan itu memberi apa-apa elaun bulanan yang difikirkan munasabah oleh Mahkamah".*

Begitu juga, Seksyen 85 Akta Undang-Undang Keluarga Islam Wilayah Persekutuan, 1984 (Akta 303) dan Seksyen 86 Enakmen Undang-Undang Keluarga Islam Kedah, 2008 telah memperuntukan tentang kebijakan mereka dari aspek hadhanah (penjagaan) kepada ibu atau waris ibu iaitu :

*"Penjagaan kanak-kanak tak sah taraf adalah semata-mata pada ibu dan saudara mara ibu".*

Sekiranya ibu atau waris ibu berhalangan untuk menjaga anak tak sah taraf, Mahkamah boleh memerintahkan JKM atau NGO yang berdaftar dengan JKM memberi perlindungan dan penjagaan kepada seseorang anak tak sah taraf sama ada Islam atau bukan Islam jika permohonan tersebut dibuat oleh Pelindung (pegawai yang diwartakan secara undang-undang mengikut Seksyen 8, Akta Kanak-Kanak 2001(Akta 611). Tafsiran anak tak sah taraf turut diperuntukan dalam Seksyen 17 (1) (d) (e) Akta Kanak-Kanak 2001 (Akta 611) dan Peraturan-Peraturan iaitu :

(1) (d) : "Seseorang kanak-kanak memerlukan pemeliharaan dan perlindungan jika- ibu atau bapa atau penjaga kanak-kanak itu telah abai atau keberatan untuk mengadakan pemeliharaan, makanan, pakaian dan tempat berteduh yang mencukupi untuk kanak-kanak itu ;

(1) (e) : kanak-kanak itu – (i) tidak mempunyai ibu atau bapa atau penjaga ; atau (ii) telah dibuang oleh ibu atau bapa atau penjaganya dan selepas siasatan yang munasabah ibu atau bapa atau penjaga itu tidak dapat ditemui,

dan tiada orang lain yang sesuai sanggup dan berupaya memelihara kanak-kanak itu".

## **ANALISIS DAN PERBINCANGAN**

Isu kebijakan merupakan aspek terpenting dalam kehidupan anak tak sah taraf orang Islam di negara kita. JKM sebagai institusi kebijakan yang bertanggungjawab melaksanakan dasar dan polisi kerajaan melalui KPWKM berkaitan anak tak sah taraf dilihat masih kurang memuaskan. Terdapat lima isu penting yang dikenalpasti mempunyai beberapa kelemahan yang perlu diatasi segera dan dibuat penambahbaikan iaitu :-

- a) Dari aspek pusat jagaan, Laporan Statistik Jabatan Kebajikan Masyarakat Malaysia (2012) menyebut sebanyak 3831 kes kanak-kanak yang memerlukan pemeliharaan dan perlindungan dari JKM di seluruh Malaysia. Terdapat tiga pusat jagaan kanak-kanak iaitu Rumah Kanak-Kanak (RKK), Rumah Budak Laki-Laki (RB) dan Rumah Tunas Harapan (RTH) yang disediakan oleh JKM di Semenanjung Malaysia. Menurut Haslinda Abdul Samad, Penolong Pengarah Unit Kanak-Kanak di JKM Negeri Kedah menyatakan setakat ini belum wujud pusat jagaan anak-anak tak sah taraf orang Islam di negeri Kedah (Temubual, 2014, 13 Januari). Oleh itu, kerajaan dicadangkan agar mewujudkan pusat jagaan anak tak sah taraf di setiap negeri ataupun sekurang-kurangnya di setiap wilayah utara, selatan, timur dan barat di Semenanjung Malaysia selain di Sabah dan Sarawak.
- b) Dari aspek pendidikan dan masa depan, anak tak sah taraf yang tinggal di pusat jagaan kanak-kanak di bawah JKM hendaklah didedahkan dengan konsep pendidikan yang sempurna dan berteraskan agama barulah kehidupan mereka tidak mudah terancam dengan suasana yang sentiasa berubah. Kebimbangan ini makin dirasai apabila sosiobudaya masyarakat dunia global pada hari ini berubah dengan pantas ekoran muncul teknologi canggih dan komunikasi di alam maya yang boleh menggugat keimanan mereka. Oleh itu, JKM disaran mengutamakan pendidikan yang baik dan berteraskan agama berbanding pendidikan sosial atau latihan vokasional agar masa depan mereka terjamin selain memberi impak modal insan yang berguna kepada masyarakat dan negara.
- c) Dari aspek program dan pengisian ilmu di pusat jagaan, mekanisme pengurusan anak tak sah taraf yang ditempatkan di mana-mana institusi penjagaan atau perlindungan sama ada di bawah JKM atau NGO perlu dibuat penambahbaikan dari semasa ke semasa. Seksyen 30 (1) (b) Akta Kanak-Kanak 2001 (Akta 611) memberi kuasa kepada mahkamah untuk memerintahkan JKM atau NGO yang berdaftar dengan JKM memelihara dan memberi perlindungan kepada kanak-kanak (termasuk anak tak sah taraf) dalam suatu tempoh tertentu. Nisbah penjaga yang bertugas untuk menjaga anak-anak tersebut seharusnya ditambah, diberi latihan atau kursus *parenting skill* agar mereka benar-benar dapat memberi tumpuan, perhatian, kasih sayang dan responsif serta diberi kaunseling agar mereka menjalani tugas mulia dengan menjaga anak-anak yang ketiadaan ibu bapa. Terdapat program tertentu yang disediakan oleh JKM di ketiga-tiga institusi tersebut iaitu jagaan dan perlindungan, bimbingan dan kaunseling, pelajaran, latihan vokasional, didikan agama dan moral, riadah dan perubatan serta kesihatan. Namun begitu, terdapat masalah salah laku dan disiplin di kalangan kanak-kanak yang mendiami di ketiga-tiga institusi tersebut terutamanya yang sedang meningkat remaja sama ada masalah peribadi dengan kanak-kanak lain di institusi tersebut, dengan rakan di sekolah ataupun dengan guru. Walau bagaimanapun, masalah tersebut dapat diatasi melalui sokongan dan bimbingan daripada petugas di institusi tersebut.
- d) Dari aspek pusat perlindungan wanita hamil luar nikah, semua penempatan wanita hamil luar nikah yang berdaftar dengan JKM akan ditempatkan di Pusat Jagaan Sinar Kasih di Batu Gajah, Perak dan Pusat Jagaan Sinar Kasih di Kompleks Penyayang di Sungai Buloh, Selangor. Ini disebabkan JKM hanya mempunyai dua pusat jagaan tersebut sahaja di Semenanjung

Malaysia. Selain itu, terdapat NGO iaitu OrphanCARE yang beroperasi di Petaling Jaya, Selangor telah menubuhkan ‘*Baby Hatch*’. Menurut Haslinda Abdul Samad, Penolong Pengarah Unit Kanak-Kanak di JKM Negeri Kedah, hanya sebuah NGO yang berdaftar dengan JKM Negeri Kedah untuk mewujudkan pusat perlindungan kepada remaja wanita yang mengandungkan anak tak sah taraf iaitu Pusat Jagaan Rumah Perlindungan Nurul Hana di bawah seliaan Lembaga Kebajikan Perempuan Islam Kedah yang dipengerusikan Dato Hjh Daharah Binti Ismail (Temubual, 2014, 13 Januari).

Oleh itu, kerajaan disaran agar menubuhkan lebih banyak rumah perlindungan wanita hamil luar nikah di seluruh negeri kerana berlaku peningkatan wanita hamil luar nikah dari semasa ke semasa. Kerajaan tidak sepatutnya menyerahkan peranan tersebut kepada NGO semata-mata kerana bidangkuasa Kerajaan Persekutuan dan Kerajaan Negeri telah diperuntukan dalam Fasal 74, Perlembagaan Persekutuan yang termaktub dalam Senarai Bersama seperti yang dibincangkan di atas. Fungsi NGO hanya sekadar membantu JKM sahaja bukan merupakan tugas hakiki NGO itu sendiri.

- e) Dari aspek bantuan kewangan, Apabila JKM menerima permohonan berkaitan bantuan kewangan atau penempatan di pusat jagaan, JKM hendaklah memberi perhatian tentang permohonan tersebut melalui penyiasatan segera. Langkah segera tersebut adalah penting supaya tidak berlaku kecuaian dalam memberi perlindungan dan saraan nafkah kepada anak tak sah taraf agar mereka tidak diabaikan atau dianiayai.

Sekiranya peruntukan bantuan kewangan terhad, JKM boleh memanjangkan permohonan tersebut kepada Baitulmal dan Jabatan Zakat di mana selepas penyiasatan dilakukan, kedua-dua intitusi tersebut dengan seberapa segera setelah berpuashati mengeluarkan bantuan kewangan kepada ibu atau waris ibu yang sanggup memelihara anak tak sah taraf tetapi tidak mempunyai sumber pendapatan. Kelambatan dalam memproses sesuatu permohonan atau meluluskan bantuan kewangan di institusi berkenaan boleh mencetuskan kejadian buruk kepada anak tak sah taraf itu sendiri.

Dalam satu kes yang boleh dijadikan contoh iaitu Ida (bukan nama sebenar), ibu kepada anak tak sah taraf bernama Nur (bukan nama sebenar) yang kini berusia 7 tahun dipelihara oleh ibunya dengan bantuan datuknya, Ali (bukan nama sebenar) yang bertanggungjawab sepenuhnya dari segi membiayai segala keperluan makan minum, pakaian dan persekolahannya. Ini disebabkan Ida tidak lagi bekerja dan kini tinggal bersama kedua ibu bapanya di kampong. Nur tidak mendapat apa-apa bantuan daripada Jabatan Kebajikan Masyarakat, Baitulmal dan Jabatan Zakat meskipun Ida telah membuat aduan dan permohonan kepada ketiga-tiga institusi tersebut tetapi tiada maklumbalas (Temubual, 2014, 6 Mei).

## KESIMPULAN

Kebajikan anak tak sah taraf merupakan agenda penting yang harus diutamakan oleh pihak berkuasa. Ketidakupayaan ibu dan waris ibu untuk menjaga kebajikan anak tak sah taraf perlulah diberi perhatian sama ada memperuntukan bantuan kewangan atau menyediakan perlindungan dan pemeliharaan yang sempurna di pusat-pusat jagaan di

bawah JKM atau NGO. Setiap pengisian program yang disediakan haruslah meletakkan agenda keagamaan agar dapat membentuk jati diri mereka sebagai Muslim yang baik. Kegagalan menguruskan kebajikan anak tak sah taraf mungkin mengakibatkan prestasi kehidupan mereka akan terganggu dan masa depan mereka menjadi gelap.

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# PENERAPAN PRINSIP PARTISIPATIF DALAM PENGADAAN TANAH UNTUK PEMBANGUNAN JALAN TOL MOJOKERTO-KERTOSONO (MOKER)

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## ABSTRAK

Pembangunan adalah upaya mewujudkan masyarakat adil dan makmur yang merupakan amanat konstitusi. Dalam pelaksanaan pembangunan dibutuhkan tanah termasuk tanah milik rakyat yang dilakukan antara lain melalui mekanisme pengadaan tanah. Tulisan ini merupakan hasil penelitian yuridis empiris pengadaan tanah untuk pembangunan jalan Tol MOKER. Hasil penelitian terungkap bahwa Pelaksanaan pengadaan tanah untuk pembangunan jalan Tol MOKER belum sepenuhnya memenuhi prinsip minimal dari partisipasi, yaitu partisipasi interaktif menurut Azis Turendra; atau minimal berada pada tangga keenam (tangga kemitraan) menurut Sherly Arnstein; serta Partisipasi demokratis menurut Verba.

Development is an effort to realize a just and prosperous society which is mandated by the constitution. In the implementation of the required land development including land belongs to the people who made, among others, through the mechanism of land acquisition. This paper is the result of empirical research juridical land acquisition for toll road construction MOKER. The results of the study revealed that the implementation of land acquisition for toll road construction MOKER not yet fully meet the minimum principles of participation, namely interactive participation by Aziz Turendra, or at least be on the sixth (ladder partnership) by Sally Arnstein, as well as democratic participation by Verba.

**Keywords:** Participation, land acquisition, public interest

## PENDAHULUAN

Dalam rangka mewujudkan tujuan negara Indonsia sebagaimana amanat pembukaan Undang-Undang Dasar (UUD) 1945 khususnya alinea keempat yaitu antara lain untuk memajukan kesejahteraan umum berdasarkan Pancasila, maka diperlukan kegiatan pembangunan di segala bidang, meliputi pembangunan politik, ekonomi, sosial, sosial, budaya, pertahanan dan keamanan (poleksosbudhankam).

Dalam pembangunan di bidang ekonomi, Indonesia menganut sistem ekonomi Pancasila atau demokrasi ekonomi, yang mendekati konsep *welfare state*.<sup>2</sup> Dalam *welfare state* Negara mempunyai peran yang aktif dan responsif dalam mengelola dan mengorganisasikan perekonomian. Negara dituntut mampu menjalankan tanggung jawabnya untuk mewujudkan kesejahteraan rakyat<sup>3</sup>, sebagaimana amanat UUD 1945 Pasal 33 UUD 1945.

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<sup>2</sup> Rizal Ramli, dkk, 1997, Agenda Aksi Liberalisasi Ekonomi dan Politik di Indonesia, Pusat Pengembangan Manajemen (PPM) FE-UII bekerja sama dengan PT. Tiara Wacana Yogyakarta: Yogyakarta, hlm 247.

<sup>3</sup> Jimly Asshiddiqie, 2006, **Hukum Tata Negara dan Pilar-Pilar Demokrasi**, Penerbit Konstitusi Pers: Jakarta, hlm 148-149.

Salah satu wujud pembangunan yang diselenggarakan oleh Pemerintah adalah pembangunan untuk kepentingan umum, yang dalam pelaksanaannya membutuhkan tanah. Tanah merupakan bagian dari bumi yaitu bagian permukaan atau kulit bumi. Berdasarkan ketentuan Pasal 33 ayat (3) UUD 1945, maka “Bumi, air dan kekayaan alam yang terkandung didalamnya dikuasai oleh negara dan dipergunakan untuk sebesar-besarnya kemakmuran rakyat.” Pasal ini dikenal dengan Prinsip Hak Menguasai Negara (HMN) atas sumber daya alam termasuk tanah.

Berdasarkan prinsip HMN tersebut, negara mempunyai wewenang:

Mengatur dan menyelenggarakan peruntukan, penggunaan, persediaan dan pemeliharaan bumi, air dan ruang angkasa;

Menentukan dan mengatur hubungan-hubungan hukum antara orang-orang dengan bumi, air dan ruang angkasa;

Menentukan dan mengatur hubungan-hubungan hukum antara orang-orang-orang dan perbuatan-perbuatan hukum yang mengenai bumi, air dan ruang angkasa;<sup>4</sup>

Adapun wewenang Negara sebagai pemegang HMN menurut Mahkamah Konstitusi mencakup: Negara merumuskan kebijakan (*beleid*), termasuk melakukan pengaturan (*regelen daad*), melakukan pengurusan (*bestuurdaad*), melakukan pengelolaan (*beheer daad*) dan melakukan pengawasan (*toezicht houden daad*) untuk tujuan sebesar-besarnya kemakmuran rakyat.<sup>5</sup>

Dalam upaya melaksanakan pembangunan, termasuk pembangunan untuk kepentingan umum, dan sebagai realisasi kewenangan Negara yang pertama, dan kewenangan melakukan pengelolaan (*beheer daad*) tersebut, negara berwenang untuk memberikan tanah kepada pelaksana pembangunan. Tanah yang diberikan oleh negara dapat berasal dari tanah negara yang bebas atau tanah yang dikuasai langsung oleh negara, dan/atau dapat juga tanah Negara yang tidak bebas. Tanah Negara yang tidak bebas ini adalah tanah yang telah dipunyai oleh masyarakat, baik individu, kelompok orang, badan hukum ataupun masyarakat hukum adat.

Disisi lain, tanah merupakan kebutuhan dasar manusia dan mempunyai peran penting bagi manusia. Sejak lahir manusia membutuhkan tanah untuk tempat hidupnya bahkan sampai meninggal dunia pun manusia membutuhkan tanah untuk tempat peristirahatan yang terakhir. Secara kosmologis, tanah merupakan suatu tempat dimana mereka tinggal, tempat dari mana mereka berasal dan akan kemana pula mereka pergi. Tanah merupakan salah satu sumber daya alam yang memiliki nilai ekonomis serta memiliki nilai kultural, sosial, politik dan pertahanan keamanan.

Hubungan antara manusia dengan tanah merupakan suatu hubungan relatif yang bersifat abadi, karena tidak mungkin akan terjadi bahwa tidak ada hubungan antara manusia dengan tanah.<sup>6</sup> Begitu pentingnya tanah bagi manusia, maka kepemilikan tanah adalah merupakan sebuah Hak Asasi Manusia (HAM).

<sup>4</sup> Lihat dalam UU nomor 5 tahun 1960 tentang UUPA Pasal 2 ayat 2.

<sup>5</sup> <http://www.hukumonline.com/berita/baca/hol18835/mk-hapus-frase-di-muka-sekaligus->; diakses tanggal 25-05-2011; dan <http://arfpgmi.blogspot.com/2009/01/penafsiran-konsep-penguasaan-negara.html>, diakses tanggal 25-05-2011.

<sup>6</sup> Iman Soetikno, 1987, Proses Terjadinya UUPA, Gadjah Mada University Press: Yogyakarta: hlm 13.

Hak Milik termasuk hak milik atas tanah sebagai HAM dilindungi oleh hukum Internasional maupun hukum nasional. Dalam hukum Internasional, hak milik ini diatur dalam Deklarasi Umum Hak Asasi Manusia (DUHAM), khususnya Pasal 17.1, yang berisi tentang hak untuk memiliki harta benda; Pasal 17.2 tentang perlindungan harta bendanya dirampas secara sewenang-wenang; Pasal 30: tentang perlindungan dari tindakan yang bertujuan untuk menghancurkan hak dan kebebasan-kebebasan apapun. Di Indonesia perlindungan hak milik tanah ini diatur dalam UUD 1945 Pasal 28 H ayat (4), dan Undang-undang (UU) Nomor 39 Tahun 1999 tentang Hak Asasi Manusia (HAM). Pasal 28 H ayat (4) UUD 1945, menyatakan bahwa "Setiap orang berhak mempunyai hak milik pribadi dan hak milik tersebut tidak boleh diambil alih secara sewenang-wenang oleh siapapun."

Hak atas tanah selain diakui sebagai hak asasi manusia, juga mempunyai fungsi sosial<sup>7</sup>, sehingga hak atas tanah tersebut dapat dicabut oleh Negara untuk kepentingan umum dengan memberikan ganti kerugian yang layak kepada pemiliknya (lihat Pasal 18 UUPA).

Terkait dengan peran negara untuk mewujudkan kesejahteraan rakyat, pengakuan kepemilikan hak atas tanah sebagai HAM sekaligus fungsi sosial dari hak atas tanah tersebut, khususnya dalam hal pelaksanaan pembangunan untuk kepentingan umum di atas tanah Negara yang tidak bebas, dapat dilakukan melalui tiga mekanisme, yaitu mekanisme privat (seperti jual beli, tukar-menukar, hibah, atau bentuk kesepakatan yang lain); mekanisme pencabutan hak atas tanah; dan mekanisme pengadaan tanah.

Yang dimaksud dengan pengadaan tanah adalah setiap kegiatan untuk mendapatkan tanah dengan cara memberikan ganti rugi kepada yang melepaskan atau menyerahkan tanah, bangunan, tanaman, dan benda-benda yang berkaitan dengan tanah. Dasar dari pengadaan tanah adalah pelepasan hak secara sukarela dari pemiliknya, sehingga menjadi tanah negara yang bebas, sebagaimana diatur dalam Pasal 27, Pasal 34, dan Pasal 40 Undang Undang Nomor 5 tahun 1960 tentang Ketentuan-Ketentuan Pokok Agraria, yang lebih dikenal dengan Undang-Undang Pokok Agraria (UUPA).

Dalam faktanya, pengadaan tanah adalah merupakan mekanisme yang paling banyak menimbulkan masalah baik secara normatif maupun empiris karena dianggap tidak memberikan rasa keadilan dan perbaikan kehidupan ekonomi bagi pemilik, bahkan seringkali menempatkan pemilik tanah yang telah merelakan tanahnya malah menjadi korban dari pembangunan itu sendiri, baik korban materiil, fisik, maupun nyawa.

Pelaksanaan pengadaan tanah untuk pembangunan kepentingan umum ini seharusnya<sup>8</sup> mengedepankan prinsip yang terkandung di dalam Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 dan hukum tanah nasional, antara lain prinsip kemanusiaan, keadilan, kemanfaatan, kepastian, keterbukaan, kesepakatan, keikutsertaan, kesejahteraan, keberlanjutan, dan keselarasan sesuai dengan nilai-nilai berbangsa dan bernegara.

Keikutsertaan atau partisipasi masyarakat, khususnya pemilik tanah, yang didukung dengan pemberian informasi yang lengkap dan menyeluruh, mudah dipahami dan tepat

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<sup>7</sup> Pasal 6 undang-undang nomor 5 tahun 1960 yang disebut juga dengan undang-undang pokok agraria menyatakan bahwa "semua hak atas tanah mempunyai fungsi social".

<sup>8</sup> Lihat ketentuan Penjelasan UU Nomor 2 Tahun 2012 angka I tentang Umum alenia 1.

waktu mempunyai peranan yang strategis dalam pengadaan tanah.<sup>9</sup> Partisipasi masyarakat tersebut antara lain bermanfaat untuk menimbulkan dukungan dan penerimaan dari rencana pembangunan kepentingan umum, Mengeliminir perasaan terasing, untuk menciptakan masyarakat yang lebih bertanggung jawab. Keputusan dari hasil peran serta mencerminkan kebutuhan dan keinginan masyarakat; Menjadi sumber dari informasi yang berguna; dan Merupakan komitmen sistem demokrasi.<sup>10</sup>

Tulisan ini membahas tentang bagaimana penerapan prinsip partisipatif dalam pengadaan tanah untuk pembangunan kepentingan umum, khususnya pembangunan jalan tol trans Jawa sector Mojokerto-Kertosono (MOKER).

## KAJIAN LITERATUR

### Pengadaan Tanah Untuk Pembangunan Kepentingan Umum

Pembangunan merupakan suatu conditio sine qua non bagi negara.<sup>11</sup> Semua negara pasti menyelenggarakan pembangunan, tidak ada satu negara pun yang tidak menyelenggarakan pembangunan, termasuk negara Indonesia. Pembangunan nasional Indonesia bertujuan untuk mewujudkan kemakmuran seluruh rakyat atau masyarakat Indonesia yang adil dan makmur baik materiil maupun spirituul.

Istilah pembangunan diartikan berbeda oleh satu orang dengan orang lain, daerah yang satu dengan daerah lainnya, Negara satu dengan Negara lain. Begitu juga mengenai pengertian pembangunan, para ahli memberikan definisi yang bermacam-macam.

Perumusan pembangunan untuk kepentingan umum ini diatur dalam berbagai peraturan perundang-undangan, antara lain dalam: UUPA, UU Nomor 20 tahun 1961 tentang Pencabutan hak atas tanah dan benda-benda di atasnya , Instruksi Presiden R.I. Nomor 9 tahun 1973 tentang Pelaksanaan Pencabutan Hak-hak Atas Tanah dan Benda-benda yang ada di atasnya, PMDN Nomor 15 tahun 1975 tentang Pembebasan Tanah, Kepres Nomor 55 tahun 1993 tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum, Perpres Nomor 36 tahun 2005 tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum dan Perpres Nomor 65 tahun 2006 tentang Perubahan Perpres Nomor 36 tahun 2005 tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum.

Berdasarkan berbagai peraturan perundang-undangan tersebut, dapat dirinci cirri-ciri dari pembangunan untuk kepentingan umum adalah sebagai berikut:

- a. pembangunan mempunyai sifat kepentingan umum, jika kegiatan tersebut menyangkut: Kepentingan Bangsa dan Negara, dan/atau; Kepentingan masyarakat luas, dan/atau; Kepentingan rakyat banyak/bersama, dan/atau; Kepentingan pembangunan.
- b. Syarat kegiatan pembangunan mempunyai sifat kepentingan umum jika proyek tersebut sudah termasuk dalam Rencana Pembangunan, Rencana Induk Pembangunan dari daerah yang bersangkutan dan yang telah mendapat persetujuan DPRD setempat yang bersifat terbuka untuk umum.<sup>12</sup> sesuai dengan dan berdasar pada Rencana Umum Tata Ruang (RUTR) atau perencanaan ruang wilayah atau kota yang telah ditetapkan terlebih dahulu

<sup>9</sup> Koesnadi Hardjasoemantri, 1996, **Hukum Tata Lingkungan**, Gadjah Mada University Press: Yogyakarta, hlm 130-133.

<sup>10</sup> Arimbi Heroepoetri dan Mas Achmad Santosa, *loc. Cit.*

<sup>11</sup> Lieke Lianadevi Tukgali, 2010, **Fungsi Sosial Hak Atas Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum**, (Disertasi Program Doktor Ilmu Hukum Universitas Indonesia: Jakarta, hlm 3.

<sup>12</sup> Lampiran UU Nomor 20 Tahun 1961 Pasal 2.

- c. dilakukan dan selanjutnya dimiliki Pemerintah
- d. Dibatasi pada bidang-bidang penting atau strategis tertentu.

Terdapat dua konsep yang mempunyai makna sama dengan beda istilah, yaitu istilah pengadaan tanah atau pembebasan tanah yang ditinjau dari yang membutuhkan tanah, dan digunakan istilah pelepasan hak jika ditinjau dari perspektif pemilik tanah.

Yang dimaksud dengan Pengadaan tanah adalah setiap kegiatan untuk mendapatkan tanah dengan cara memberikan ganti rugi kepada yang melepaskan atau menyerahkan tanah, bangunan, tanaman, dan benda-benda yang berkaitan dengan tanah.

Dasar yuridis pengadaan tanah, mengalami perkembangan dari setiap rejim pemerintahan, dari rejim pemerintahan orde lama yang dengan memakai UU Nomor 20 tahun 1961, Rejim Orde baru dengan menggunakan instrumen hukum Peraturan Menteri Dalam Negeri (PMDN) Nomor 15 tahun 1975 tentang Pembebasan Tanah dan kemudian diganti dengan Keputusan Presiden (Kepres) Nomor 55 tahun 1993 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum, serta pada rejim reformasi diatur dalam Peraturan Presiden (Perpres) nomor 36 tahun 2005 tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum, yang kemudian diubah dengan Perpres Nomor 65 tahun 2006 tentang Perubahan Atas Perpres nomor 36 tahun 2005 tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum, serta terakhir adalah Undang-Undang Nomor 2 tahun 2012 tentang Pengadaan Tanah Untuk Pembangunan Kepentingan Umum.

### **Konsep Partisipasi Masyarakat Dalam Pembangunan**

Pembahasan mengenai partisipasi masyarakat dipengaruhi oleh struktur sosial, politik suatu masyarakat dan derajat pemahaman masyarakat terhadap partisipasi. Di Indonesia, belum ada platform yang jelas terhadap makna partisipasi masyarakat. Dalam fakta di lapangan, pejabat negara sebagai pengembang amanat rakyat seringkali memaknai partisipasi dalam bentuk mengundang dengar pendapat, mengadakan seminar atau sekedar mengundang rapat mengenai sesuatu hal, tanpa jaminan kepastian tindak lanjut atas pertemuan-pertemuan tersebut. Sehingga pertemuan tersebut seolah-olah hanya sebagai syarat formalitas untuk memenuhi ketentuan peraturan perundang-undangan saja, termasuk dalam pengadaan tanah. Bahkan Pejabat negara seringkali mengabaikan pemberian informasi yang lengkap dan terus-menerus dari masalah yang dibicarakan, padahal informasi tersebut merupakan syarat utama yang melandasi adanya partisipasi, walaupun informasi tersebut merupakan salah satu hak asasi manusia yang diatur dalam konstitusi yaitu di Pasal 28F UUD 1945.<sup>13</sup> Untuk itulah diperlukan pemahaman konsep dari partisipasi masyarakat tersebut.

Dari sudut terminologi, menurut Goulet dalam Arimbi Heroepoetri dan Mas Achmad Santosa, partisipasi masyarakat dapat diartikan sebagai suatu cara melakukan interaksi antara dua kelompok; Kelompok yang selama ini tidak diikutsertakan dalam proses pengambilan keputusan (non-elite) dan kelompok yang selama ini melakukan pengambilan keputusan (elite). Lebih khusus lagi, peran serta masyarakat

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<sup>13</sup> Pasal 28F UUD 1945 menyatakan bahwa "Setiap orang berhak untuk berkomunikasi dan memperoleh informasi untuk mengembangkan pribadi dan lingkungan sosialnya, serta berhak untuk mencari, memperoleh, memiliki, menyimpan, mengolah, dan menyampaikan informasi dengan menggunakan jenis saluran yang tersedia". Hak ini diperjelas dalam Pasal 2 ayat (1) UU nomor 14 tahun 2008 tentang Keterbukaan Informasi Publik yang pada asasnya menyatakan bahwa setiap informasi publik bersifat terbuka dan dapat diakses oleh setiap pengguna informasi publik.

sesungguhnya merupakan suatu cara untuk membahas insentif material yang mereka butuhkan. Dengan perkataan lain, peran serta masyarakat merupakan insentif moral sebagai "paspor" mereka untuk mempengaruhi lingkup-makro yang lebih tinggi, tempat dibuatnya suatu keputusan-keputusan yang sangat menetukan kesejahteraan mereka.<sup>14</sup> Partisipasi masyarakat menurut Hetifah Sj. Soemarto dalam Azis Turindra adalah proses ketika warga sebagai individu maupun kelompok sosial dan organisasi, mengambil peran serta ikut mempengaruhi proses perencanaan, pelaksanaan, dan pemantauan kebijakan kebijakan yang langsung mempengaruhi kehidupan mereka.<sup>15</sup>

Menurut Azis Turindra, partisipasi masyarakat mempunyai beberapa macam tipologi, yaitu: Partisipasi Pasif / manipulatif dengan karakteristik masyarakat diberitahu apa yang sedang atau telah terjadi, pengumuman sepihak oleh pelaksana proyek tanpa memperhatikan tanggapan masyarakat dan informasi yang diperlukan terbatas pada kalangan profesional di luar kelompok sasaran; Partisipasi Informatif memiliki karakteristik dimana masyarakat menjawab pertanyaan-pertanyaan penelitian, masyarakat tidak diberi kesempatan untuk terlibat dan mempengaruhi proses penelitian dan akuarasi hasil penelitian tidak dibahas bersama masyarakat; Partisipasi konsultatif dengan karakteristik masyarakat berpartisipasi dengan cara berkonsultasi, tidak ada peluang pembuatan keputusan bersama, dan para profesional tidak berkewajiban untuk mengajukan pandangan masyarakat (sebagai masukan) atau tindak lanjut; Partisipasi intensif memiliki karakteristik masyarakat memberikan korbanan atau jasanya untuk memperoleh imbalan berupa intensif/upah. Masyarakat tidak dilibatkan dalam proses pembelajaran atau eksperimen-eksperimen yang dilakukan dan masyarakat tidak memiliki andil untuk melanjutkan kegiatan-kegiatan setelah intensif dihentikan; Partisipasi Fungsional memiliki karakteristik masyarakat membentuk kelompok untuk mencapai tujuan proyek, pembentukan kelompok biasanya setelah ada keputusan-keputusan utama yang disepakati, pada tahap awal masyarakat tergantung terhadap pihak luar namun secara bertahap menunjukkan kemandiriannya; Partisipasi interaktif memiliki ciri dimana masyarakat berperan dalam analisis untuk perencanaan kegiatan dan pembentukan penguatan kelembagaan dan cenderung melibatkan metoda interdisipliner yang mencari keragaman perspektif dalam proses belajar mengajar yang terstruktur dan sistematis. Masyarakat memiliki peran untuk mengontrol atas (pelaksanaan) keputusan-keputusan, sehingga memiliki andil dalam keseluruhan proses kegiatan; dan Self mobilization (mandiri) memiliki karakter masyarakat mengambil inisiatif sendiri secara bebas (tidak dipengaruhi oleh pihak luar) untuk mengubah sistem atau nilai-nilai yang mereka miliki. Masyarakat mengambangkan kontak dengan lembaga-lembaga lain untuk mendapatkan bantuan-bantuan teknis dan sumberdaya yang diperlukan. Masyarakat memegang kendali atas pemanfaatan sumberdaya yang ada dan atau digunakan.<sup>16</sup>

Verba membedakan sifat partisipasi masyarakat menjadi dua, yaitu partisipasi masyarakat yang bersifat *pseudo influence* atau *parsial* dan yang bersifat demokratis. Dalam partisipasi masyarakat yang bersifat *pseudo influence*, partisipasi masyarakat hanya sekedar mobilisasi rakyat untuk mendukung program-program yang telah ditetapkan oleh *power holder* secara sepihak. Sedangkan partisipasi masyarakat yang bersifat demokratis memberikan peluang kepada masyarakat untuk mempengaruhi pengambilan keputusan yang menyangkut hajat hidup masyarakat tersebut.<sup>17</sup>

<sup>14</sup> Arimbi Heroepoetri dan Mas Achmad Santosa, **Peran Serta Masyarakat Dalam Pengelolaan Lingkungan**, dalam <http://www.silaban.net/2005/10/16/partisipasi/>, diakses tanggal 25 Mei 2011.

<sup>15</sup> Azis Turindra, **Pengertian Partisipasi**, dalam <http://turindraatp.blogspot.com/2009/06/pengertian-partisipasi.html>, diakses tanggal 25 Mei 2011.

<sup>16</sup> *Ibid.*

<sup>17</sup> Mas Achmad Santosa, 2001, **Good Governance Hukum Lingkungan**, ICEL: Jakarta, hlm 138.

Menurut Arnstein dalam Mas Achmad Santosa, mengklasifikasikan partisipasi masyarakat berdasarkan kehakikiannya ke dalam tiga tingkatan, yaitu tingkat nonpartisipasi (*nonparticipation*), tingkat tokenisme (*tokenism*), dan tingkat kekuasaan masyarakat (*citizen power*). Tingkat nonpartisipasi adalah tingkat dimana tujuan dari partisipasi masyarakat adalah mendidik dan mengobati masyarakat yang berperan serta. Pada tingkat tokenisme, masyarakat didengar dan diperkenankan berpendapat, tetapi mereka tidak memiliki kemampuan dan mendapatkan jaminan bahwa pandangan mereka akan dipertimbangkan secara sungguh-sungguh oleh penentu kebijakan.<sup>18</sup> Adapun pada tingkat kekuasaan masyarakat, masyarakat memiliki pengaruh dalam proses pengambilan keputusan.<sup>19</sup> Dimana terjadi pembagian kekuatan (*power*) yang memungkinkan masyarakat yang tidak berpunya (*the have-not citizens*) yang sekarang dikucilkan dari proses politik dan ekonomi untuk terlibat. Sehingga masyarakat dapat terlibat dalam perubahan sosial yang memungkinkan mereka mendapatkan bagian keuntungan dari kelompok yang berpengaruh dengan cara ikut serta aktif menentukan suatu produk/keputusan akhir.

Masing-masing tingkatan partisipasi menurut Arnstein tersebut kemudian dirinci lagi menjadi delapan tangga (*Eight Rungs on the Ladder of Citizen Participation*), sebagaimana tabel 4 berikut:

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<sup>18</sup> *Ibid*, hlm 138.

<sup>19</sup> *Ibid*, hlm 138-139.

**Grafik:**  
**Delapan Tangga Peran Serta Masyarakat**



Sumber: <http://www.silaban.net/2005/10/16/partisipasi/>

Berdasarkan tabel 4 tersebut, maka tangga pertama yaitu manipulasi dan kedua yaitu terapi termasuk dalam tingkat non partisipasi. Tangga ketiga yaitu menyampaikan informasi (*informing*), keempat yaitu konsultasi dan kelima yaitu peredaman kemarahan (*placation*) dikategorikan sebagai tingkat Tokenisme. Dan tangga keenam yaitu kemitraan (*partnership*) dimana masyarakat memiliki kemampuan tawar-menawar bersama-sama pengusaha atau pada tingkatan yang lebih tinggi, tangga ketujuh yaitu pendeklegasian kekuasaan (*delegated power*) dan tangga kedelapan yaitu pengawasan masyarakat (*citizen control*) diklasifikasikan sebagai tingkat kekuasaan masyarakat. Pada tangga ketujuh dan kedelapan, masyarakat (*non elite*) memiliki mayoritas suara dalam proses pengambilan keputusan bahkan sangat mungkin memiliki kewenangan penuh mengelola suatu obyek kebijaksanaan tertentu.<sup>20</sup>

Cormick dalam tulisan Arimbi Heroepoetri dan Mas Achmad Santosa, membedakan peran serta masyarakat dalam proses pengambilan keputusan berdasarkan sifatnya, yaitu yang bersifat konsultatif dan bersifat kemitraan. Dalam peran serta masyarakat dengan pola hubungan konsultatif antara pihak pejabat pengambil keputusan dengan kelompok masyarakat yang berkepentingan, anggota-anggota masyarakatnya mempunyai hak untuk didengar pendapatnya dan untuk diberi tahu, dimana keputusan terakhir tetap berada di tangan pejabat pembuat keputusan tersebut. Sedang dalam konteks peran serta masyarakat yang bersifat kemitraan, pejabat pembuat keputusan dan anggota-anggota masyarakat merupakan mitra yang relatif sejajar kedudukannya. Mereka bersama-sama membahas masalah, mencari alternatif pemecahan masalah dan membahas keputusan.<sup>21</sup>

Menurut Mas Achmad Santosa, kegunaan peran serta masyarakat adalah: Menuju masyarakat yang lebih bertanggung jawab; Meningkatkan proses belajar; Mengeliminir perasaan terasing; Menimbulkan dukungan dan penerimaan dari rencana pemerintah; Menciptakan kesadaran politik; Keputusan dari hasil peran serta mencerminkan

<sup>20</sup> <http://www.silaban.net/2005/10/16/partisipasi/>, diakses tanggal 25 Mei 2011.

<sup>21</sup> <http://www.elaw-ino.org/Peran%20serta.htm>, diakses tanggal 25 Mei 2011.

kebutuhan dan keinginan masyarakat; Menjadi sumber dari informasi yang berguna; dan Merupakan komitmen sistem demokrasi.<sup>22</sup>

Menurut Hardjasoemantri, agar partisipasi masyarakat menjadi efektif dan berdaya guna perlu dipenuhinya syarat-syarat berikut (1) Pemastian penerimaan informasi dengan mewajibkan pemrakarsa kegiatan mengumumkan rencana kegiatannya. (2) Informasi Lintas-batas (*transfortier information*); (3) Informasi tepat waktu (*timely information*); suatu proses peran serta masyarakat yang efektif memerlukan informasi yang sedini dan seteliti mungkin, sebelum keputusan terakhir diambil. Sehingga, masih ada kesempatan untuk mempertimbangkan dan mengusulkan alternatif-alternatif pilihan; (4) Informasi yang lengkap dan menyeluruh (*comprehensive information*); walau isi dari suatu informasi akan berbeda tergantung keperluan bentuk kegiatan yang direncanakan, tetapi pada intinya informasi itu haruslah menjabarkan rencana kigitana secara rinci termasuk alternatif-alternatif lain yang dapat diambil (5) Informasi yang dapat dipahami (*comprehensive information*); Metode yang sering digunakan adalah kewajiban untuk membuat uraian singkat atas kegiatan yang dilakukan.<sup>23</sup>

Menurut Mas Achmad Santosa, syarat lain yang dapat ditambahkan selain yang telah diuraikan diatas, adalah keharusan adanya kepastian dan upaya terus-menerus untuk memasok informasi agar penerima informasi dapat menghasilkan informasi yang berguna bagi pemberi informasi.<sup>24</sup>

## METODE PENELITIAN

### Hasil Penelitian dan Pembahasan

#### Pengadaan Tanah Untuk Pembangunan Jalan Tol Trans Jawa Sektor MOKER.

Jalan Tol Trans Jawa akan membentang di empat provinsi dan dibagi dalam 15 ruas tol. Proyek itu akan menyatu dengan ruas-ruas tol yang telah beroperasi saat ini, yaitu Jakarta-Anyer, Tol Dalam Kota Jakarta, Jakarta Outer Ring Road, Jakarta-Cikampek, Cirebon-Kanci, Semarang Ring Road, dan Surabaya-Gempol.

Fungsi utama Jalan Tol Trans Jawa adalah untuk pelayanan publik khususnya transportasi darat sebagai upaya mempercepat pertumbuhan ekonomi. Pemerintah yakin, bila proyek ini selesai, pertumbuhan ekonomi yang saat ini berkisar 6 persen akan tumbuh fantastis hingga mendekati double digit. (lihat dalam anonim, <http://www.indonesiaindonesia.com/f/12699-mencermati-jalan-tol-trans-jawa/>, diakses tanggal 13 Nopember 2010).

Tol Mojokerto – Kertosono dibangun mempunyai maksud dan tujuan untuk meningkatkan aksesibilitas dan kapasitas jaringan jalan dalam melayani lalu lintas di koridor Trans Jawa; meningkatkan produktifitas melalui pengurangan biaya distribusi dan menyediakan akses ke pasar regional maupun internasional; merupakan salah satu koridor target MP3EI dengan penyelesaian sampai dengan 2014; menyediakan jaringan jalan yang efisien di Pulau Jawa.

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<sup>22</sup> Arimbi Heroepoetri dan Mas Achmad Santosa, *loc. Cit.*

<sup>23</sup> Koesnadi Hardjasoemantri, 1996, **Hukum Tata Lingkungan**, Gadjah Mada University Press: Yogyakarta, hlm 130-133.

<sup>24</sup> Mas Achmad Santosa, *Loc. Cit.*

Secara khusus, rencana pembangunan jalan tol Mojokerto-Kertosono merupakan program pemerintah untuk mengatasi pertumbuhan lalu lintas di Kabupaten Mojokerto dan Kabupaten Jombang. Jalan tol MOKER ini akan terhubung dengan jalan tol Surabaya – Mojokerto (SUMO).

Landasan yuridis yang digunakan dalam pengadaan tanah untuk pembangunan jalan Tol Trans Jawa Sektor MOKER ini adalah Perpres nomor 36 tahun 2005 tentang Pengadaan Tanah Bagi Pelaksanaan Pembangunan Untuk Kepentingan Umum Jo Perpres Nomor 65 tahun 2006 tentang Perubahan Atas Peraturan Presiden nomor 36 tahun 2005 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum jo Peraturan Kepala Badan Pertanahan Nasional Republik Indonesia (Perka BPN) Nomor 3 Tahun 2007 tentang Ketentuan Pelaksanaan Peraturan Presiden nomor 36 tahun 2005 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum Sebagaimana Telah Diubah Dengan Peraturan Presiden Nomor 65 tahun 2006 tentang Perubahan Atas Peraturan Presiden nomor 36 tahun 2005 tentang Pengadaan Tanah Bagi Pembangunan Untuk Kepentingan Umum.

Tanah yang dibutuhkan untuk pembangunan jalan Tol MOKER tersebut berasal dari tanah warga, Tanah Kas Desa (TKD), Jalan Desa, tanah PT. KAI dan tanah wakaf. dengan total seluas 3.018.474 M<sup>2</sup> yang terdiri dari 4.463 bidang. Adapun panjang jalan tol ini adalah 40,6 Km. (sumber: data diolah dari dokumen pengadaan tanah untuk pembangunan jalan TOL MOKER). Adapun jaringan jalan TOL MOKER tersebut adalah sebagaimana dalam gambar peta berikut:

Gambar 1:  
Peta Rencana Jalan Tol MojokertoKertosono



Sumber: dokumen Panitia Pengadaan Tanah

Investor jalan tol MOKER adalah PT. Marga Hanurata Intrinsic selanjutnya disebut PT. MHI, dengan dasar hukum Perjanjian Pengusahaan Jalan Tol antara Badan Pengusahaan Jalan Tol (BPJT) Kementerian Pekerjaan Umum dengan PT. MHI Nomor 224/PPJT/VI/Mn/2006 tanggal 30 Juni 2006. Menurut Penulis, jalan TOL ini adalah merupakan proyek investasi yang dibutuhkan oleh masyarakat luas, atau berdasarkan ketentuan Pasal 33 termasuk jenis kegiatan yang menguasai hajat hidup orang banyak.

Di sini terdapat dua sisi yang berbenturan kepentingan, Di satu sisi sebagai sebuah investasi yang tujuannya untuk mencari keuntungan, sedangkan di sisi lain karena kegiatan tersebut menguasai hajat hidup orang banyak, sehingga mestinya menjadi kewajiban Negara untuk memenuhinya.

## **PARTISIPASI MASYARAKAT DALAM PENGADAAN TANAH UNTUK PEMBANGUNAN JALAN TOL MOKER**

Partisipasi masyarakat dalam pengadaan tanah, dapat dilihat dari proses pelaksanaan pengadaan tanahnya. Proses pengadaan tanah dibagi dalam 4 (empat) tahapan, yaitu tahap perencanaan, tahap persiapan, tahap pelaksanaan dan tahap pasca pengadaan tanah. Adapun rincian bentuk dan tingkat partisipasi masyarakat tersebut adalah sebagai berikut:

- a. Partisipasi Masyarakat pada Tahap Perencanaan Pengadaan Tanah untuk pembangunan jalan Tol MOKER.

Kegiatan dalam tahap Perencanaan pengadaan tanah adalah dalam bentuk pembuatan Dokumen Perencanaan Pengadaan Tanah oleh instansi yang memerlukan tanah dan Penetapan Lokasi Pembangunan.<sup>25</sup>

Pembuatan dokumen perencanaan pembangunan jalan TOL MOKER dilakukan oleh Pemrakarsa, yaitu Kementerian Pekerjaan Umum, yang secara teknis dilakukan oleh Direktorat Jalan Bebas Hambatan dan Jalan Kota Direktorat Jenderal Bina Marga Departemen Pekerjaan Umum.

Berdasarkan ketentuan Pasal 2 Inpres No. 9 Tahun 1973; jo Pasal 4 Perpres No. 36 Tahun 2005; Jo Perka BPN Nomor 3 tahun 2007 Pasal 5 ayat (1), maka Dokumen Perencanaan Pengadaan Tanah untuk pembangunan jalan TOL MOKER telah sesuai dengan Rencana Tindak Pembangunan Jangka Menengah 2010-2014 Kementerian Pekerjaan Umum yang terdapat dalam lampiran Peraturan Presiden Republik Indonesia nomor 5 tahun 2010 tentang Rencana Pembangunan Jangka Menengah Nasional 2010-2014, yaitu meningkatnya kapasitas pembangunan Jalan TOL sepanjang 120,35 Km yang dibangun oleh swasta.

Dalam Perpres Nomor 36 tahun 2005, Perpres Nomor 65 tahun 2006, Perka BPN Nomor 3 tahun 2007 tidak mengatur tentang akses informasi dan peran serta Pihak yang Berhak dalam pembuatan Dokumen Perencanaan Pengadaan Tanah dan penetapan lokasi untuk pembangunan kepentingan umum. Adapun implementasinya, pembuatan Dokumen Perencanaan dan penetapan lokasi Pengadaan Tanah untuk pembangunan jalan Tol MOKER tersebut tidak ada pemberian informasi serta pelibatan masyarakat, khususnya pemilik tanah dan/atau Kepala Desa.

Tetapi rencana pembangunan jalan TOL MOKER ini tidak sesuai dengan Peraturan Daerah (Perda) Rencana Tata Ruang Wilayah Kabupaten Jombang yang termuat dalam Perda Kabupaten Jombang nomor 9 tahun 2000 tentang Rencana Tata Ruang Wilayah (RTRW) Kabupaten Jombang Tahun 2000-2010 dan Rencana Tata Ruang Wilayah Kabupaten Mojokerto yang termuat dalam Perda Kabupaten Daerah Tingkat II Mojokerto nomor 1 tahun 1993 tentang

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<sup>25</sup> Lihat dalam Inpres No. 9 Tahun 1973 Pasal 3; jo Pasal 2 ayat (1) Perpres No. 36 Tahun 2005; Jo Perpres Nomor 65 tahun 2006 Pasal 2; Jo Perka BPN Nomor 3 tahun 2007 Pasal 2 ayat (1).

Rencana Umum Tata Ruang Kabupaten Daerah Tingkat II Mojokerto Tahun 1990/1991-2013/2014, (Lembaran Daerah Kabupaten Daerah Tingkat II Mojokerto Tahun 1994 Nomor 1 Seri C).

Penetapan Lokasi pembangunan jalan Tol MOKER dilakukan dengan melalui mekanisme permohonan Penetapan Lokasi untuk pembangunan jalan tol MOKER oleh Direktorat Jalan Bebas Hambatan dan Jalan Kota Direktorat Jenderal Bina Marga Departemen Pekerjaan Umum mengajukan kepada Gubernur Jawa Timur, di lengkapi dengan keterangan mengenai : Lokasi tanah yang diperlukan; Luas dan gambar kasar tanah yang diperlukan; Penggunaan tanah pada saat permohonan diajukan; dan Uraian rencana proyek yang akan dibangun, disertai keterangan mengenai aspek pembiayaan, lamanya pelaksanaan pembangunan. Kemudian dilanjutkan dengan penerbitan Keputusan Gubernur Jawa Timur Nomor 188/21/KPTS/013/2007 tanggal 24 Januari 2007 tentang Persetujuan Penetapan Lokasi Pembangunan Jalan Tol Bebas Hambatan (TOL) Mojokerto-Kertosono. Keputusan Gubernur Jawa Timur Nomor 188/21/KPTS/013/2007 tersebut telah dicabut dan dinyatakan tidak berlaku lagi berdasarkan Keputusan Gubernur Jawa Timur Nomor 188/138/KPTS/013/2008 tertanggal 18 Maret 2008 tentang Persetujuan Penetapan Lokasi Pembangunan Jalan Tol Bebas Hambatan (TOL) Mojokerto-Kertosono.

Pelaksanaan proses atau mekanisme Penetapan lokasi pembangunan jalan Tol MOKER tersebut sudah sesuai dengan ketentuan dalam Perpres Nomor 36 Tahun 2005 Pasal 4 ayat (3) dan Perka BPN Nomor 3 Tahun 2007 Pasal 4 dan Pasal 5. Dalam penetapan lokasi pembangunan jalan Tol MOKER, secara yuridis tidak diatur tentang peran serta masyarakat. Begitu juga dalam implementasinya tidak ada pelibatan masyarakat.

Berdasarkan uraian tersebut, maka dalam tahap Perencanaan Pengadaan Tanah untuk pembangunan jalan Tol MOKER tidak ada pemberian informasi dan pelibatan atau partisipasi dari masyarakat termasuk Pemilik tanah baik secara langsung maupun tidak langsung. Jika ditelaah berdasarkan teori "*Eight Rungs on the Ladder of Citizen Participation*" dari Sherly Arnstein (1969) dalam Robin W.S. Brooks dan Glenn R. Harris<sup>26</sup> (2008:141), tingkat partisipasi dalam pembuatan dokumen tersebut berada pada tangga terendah yaitu tangga Non Partisipasi (*Nonparticipation*).

- b. Partisipasi Masyarakat pada Tahap Persiapan Pengadaan Tanah untuk pembangunan jalan Tol MOKER.

Pada tahap persiapan Pengadaan Tanah untuk pembangunan jalan Tol MOKER ini meliputi kegiatan: pengukuran dan pematokan tanah daerah milik jalan (Road of Way /ROW); penyuluhan atau sosialisasi Pengadaan Tanah; identifikasi dan inventarisasi mengenai subyek dan obyek; penilaian ganti rugi (GR); dan penetapan GR.

Pelaksanaan pengukuran dan pematokan ROW ini dilakukan oleh Pemrakarsa, tanpa melakukan pemberitahuan terlebih dahulu bahkan tanpa diketahui oleh

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<sup>26</sup> Brooks, Robin W.S., dan Glenn R. Harris, 2001, *Citizen Participation, NEPA, and Land-Use Planning in Northern New York, USA*, dalam *Environmental Practice* 10 (4) December 2008, doi:10.10170S1466046608080356, hal. 141.

pemilik tanah dan/atau Kepala Desa. Akibatnya, banyak pemilik tanah yang merasa keberatan dan tersinggung yang kemudian mencabut patok-patok yang sudah dipasang tersebut. (wawancara dengan Bapak Asuh dan Ibu Dani tanggal 23 Agustus 2010)

Menurut Penulis, tindakan yang dilakukan oleh Pemrakarsa tersebut menunjukkan adanya arogansi dan pengabaian penghormatan hak kepemilikan yang merupakan hak asasi manusia dari pemilik tanah, dan tindakan tersebut dapat dikategorikan sebagai tindak pidana yaitu memasuki tanah milik orang lain bahkan menaruh benda di atas tanah tersebut tanpa seijin pemiliknya yang sah. Jika dilihat dari perspektif hukum adat (Jawa) tindakan tersebut tidak etis dan tidak pantas dilakukan karena dapat menyinggung harga diri seseorang sebagaimana adagium orang Jawa “*sadumuk bathuk sanyari bumi*”.

Sosialisasi atau penyuluhan rencana pembangunan jalan TOL MOKER dilakukan pada bulan Mei 2007 di masing-masing kantor Desa yang dilalui oleh jalan tol dengan dihadiri oleh pemilik tanah yang terkena ruas jalan Tol, Kepala Desa dan Perangkat Desa, Badan Perwakilan Desa, Musyawarah Pimpinan Kecamatan (MUSPIKA), Panitia Pengadaan Tanah bersama dengan Tim Pengadaan Tanah (TPT) yang mewakili Departemen Pekerjaan Umum dan investor yaitu PT. Marga Hanurata Intrinsic.

Materi sosialisasi meliputi latar belakang atau dasar pemikiran pembangunan jalan TOL MOKER, yang meliputi posisi Kabupaten Mojokerto dan Jombang dalam mendukung pembangunan Jawa Timur, fungsi jalan TOL MOKER terkait dengan Tol Trans Jawa dalam pembangunan nasional, tujuan dan manfaat pembangunan jalan TOL MOKER, gambaran umum pembangunan jalan TOL MOKER, rencana panjang jalan dan wilayah Kecamatan dan Desa serta lokasi yang dilewati jalan TOL MOKER, data teknis jalan TOL MOKER, tahapan pelaksanaan kegiatan pembangunan, dasar yuridis, Penetapan lokasi untuk pembangunan jalan TOL MOKER, pengenalan Pemrakarsa kegiatan, Tim Pengadaan Tanah, Investor dan Panitia Pengadaan Tanah, serta proses pengadaan tanah yang akan dilakukan.

Berdasarkan hasil sosialisasi tersebut, pada prinsipnya masyarakat tidak keberatan terhadap rencana pembangunan jalan TOL tersebut asalkan tidak merugikan masyarakat. Tingkat partisipasi pada kegiatan sosialisasi pengadaan tanah bagi pembangunan jalan tol MOKER, termasuk tangga ketiga (*informng*) dari teori Sherly Arnstein atau Partisipasi informatif menurut Azis Turindra<sup>27</sup>

Identifikasi dan Inventarisasi dilakukan oleh PPT bersama-sama dengan satgas yang dibentuk oleh PPT, perangkat Desa dan Pemilik atau penggarap tanah. Kegiatan Identifikasi dan Inventarisasi ini meliputi: penunjukan batas; pengukuran bidang tanah dan/atau bangunan; pemetaan bidang tanah dan/atau bangunan dan keliling batas bidang tanah; penetapan batas-batas bidang tanah dan/atau bangunan; pendataan penggunaan dan pemanfaatan tanah; pendataan status tanah dan/atau bangunan; pendataan penguasaan dan pemilikan tanah dan/atau bangunan dan/atau tanaman; pendataan bukti-bukti penguasaan dan pemilikan tanah dan/atau bangunan dan/atau tanaman; dan lainnya yang dianggap perlu.

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<sup>27</sup> Aziz Turindra, *loc.cit.*

Hasil dari identifikasi dan inventarisasi ini adalah dalam bentuk peta bidang tanah dan daftar.

Peta dan gambar bidang tanah tersebut oleh PPT kemudian diumumkan di kantor Desa/Kelurahan selama 7 hari guna memberikan kesempatan bagi pihak yang berkepentingan untuk mengajukan keberatan. Berdasarkan ketentuan pasal 23 ayat (3) Perka BPN nomor 3 tahun 2007 cara pengumuman ini dibenarkan, tetapi pengumuman ini kurang tepat karena jangkauan tempat pengumuman kurang luas, sehingga ada kemungkinan pemilik tanah tidak berdomisili di wilayah Desa/Kelurahan setempat dan tidak semua masyarakat selalu datang ke kantor Desa/Kelurahan dalam tenggang waktu tertentu.

Pengumuman tersebut sebaiknya dilakukan dengan melalui beberapa cara sekaligus, yaitu melalui pertemuan secara langsung antara panitia dengan pemilik tanah, kemudian diumumkan di Kantor Desa/Kelurahan, dan media massa baik cetak maupun elektronik setempat, serta di tempat khusus strategis yang diperuntukkan mengumumkan segala informasi yang diberikan kepada masyarakat yang dibuat secara permanen. Untuk media cetak, sebaiknya seluruh pemilik tanah dikirim pengumuman tersebut karena mengingat tidak semua masyarakat/pemilik tanah berlangganan/membeli media cetak tersebut. Hal ini untuk memberikan jaminan penyampaian informasi secara tepat sasaran. Jangka waktu 7 hari tersebut terlalu singkat, sebaiknya minimal 1 bulan untuk memberi kesempatan kepada Pihak yang Berhak atau yang Berkepentingan mengajukan keberatan.

Penilaian harga tanah dan/atau bangunan dan/atau tanaman serta benda-benda yang berada di atasnya mempunyai posisi yang strategis dalam pengadaan tanah, karena hasil penilaian tersebut merupakan dasar utama dalam melaksanakan musyawarah penentuan bentuk dan besarnya ganti rugi.

Pelaksanaan Penilaian harga tanah untuk pembangunan jalan Tol MOKER dilakukan oleh lembaga Penilai Harga Tanah independen yang ditunjuk oleh Pihak Pemrakarsa yaitu Departemen Pekerjaan Umum yaitu PT. Daksana Intra Swadaya yang beralamat di Jalan RS. Fatmawati nomor 52 Cilandak Barat, Jakarta Selatan. Adapun Penilaian ganti kerugian untuk tanah di wilayah Kabupaten Mojokerto dilakukan pada tahun 2012 oleh *Appraisal* Toto Suharto & Rekan Business & Property Valuer yang beralamat di Jalan Hayamwuruk Nomor 1-RL Jakarta. Para *Appraisal* telah mempunyai lisensi dari Badan Pertanahan Nasional dan ditunjuk oleh Panitia Pengadaan Tanah sebagaimana ketentuan dalam Pasal 25 Perka BPN Nomor 3 Tahun 2007.

*Appraisal* melakukan penilaian melalui metode survey yang didapat dari berbagai sumber, yaitu: Pemilik tanah yang terkena rencana pembangunan jalan tol, Ketua Rukun Tetangga (RT), Ketua Rukun Warga (RW), Kantor Kelurahan, Kantor Pelayanan Pajak Pratama dan Broker/agen property serta masyarakat sekitar. (Sumber: dokumen Laporan Penilaian Ganti Rugi Tanah Ruas Jalan TOL Kertosono-Mojokerto)

Adapun penilaian harga bangunan dan/atau tanaman serta benda-benda yang berada di atasnya ditetapkan oleh Bupati/Walikota dalam bentuk produk hukum Peraturan Bupati. Penilaian harga bangunan dan/atau tanaman serta benda-benda yang berada di atasnya dilakukan berdasarkan pada Keputusan Bupati

Jombang Nomor: 188.4.45/61/415.10.10/2009 Tentang Standarisasi Harga Bangunan dan Tanaman Dalam Rangka Pembangunan Untuk Kepentingan Umum di Kabupaten Jombang Tahun Anggaran 2009, tanggal 17 Maret 2009 dan Peraturan Bupati Mojokerto Nomor 15 Tahun 2012 tentang Perubahan Ketiga Atas Peraturan Bupati Nomor 15 Tahun 2006 Tentang Pemberian Ganti Kerugian Tanaman, Berita Daerah Kabupaten Mojokerto Tahun 2012 Nomor 13. Peraturan dan Keputusan Bupati dibuat oleh Bupati sebagai Kepala Daerah yang materinya secara teknis dibuat oleh Dinas terkait tanpa pelibatan dari Dewan Perwakilan Rakyat Daerah (DPRD) yang secara politis mempresentasikan rakyat Daerah setempat, serta juga tidak ada kewajiban bagi Bupati untuk melibatkan masyarakat.

Tingkat partisipasi dalam tahap pelaksanaan pengadaan tanah ini beragam. Pada kegiatan pengukuran dan pematokan ROW dan penilaian ganti kerugian bangunan dan/atau tanaman, termasuk tangga pertama (terendah) dari teori Sherly Arnstein atau Partisipasi Pasif / manipulatif menurut Azis Turindra<sup>28</sup> dan partisipasi masyarakat yang bersifat *pseudo influence* atau *parsial* menurut Verba.<sup>29</sup>

Tingkat partisipasi pada kegiatan Identifikasi dan Inventarisasi serta penilaian ganti kerugian tanah oleh *appraisal* dalam pengadaan tanah bagi pembangunan jalan tol MOKER, termasuk tangga minimal ideal yaitu tangga keenam (kemitraan) dari teori Sherly Arnstein atau Partisipasi interaktif menurut Azis Turindra<sup>30</sup> dan partisipasi masyarakat yang bersifat demokratis menurut Verba.<sup>31</sup>

- c. Partisipasi Masyarakat pada Tahap Pelaksanaan Pengadaan Tanah untuk pembangunan jalan Tol MOKER.

Tahap pelaksanaan pengadaan tanah meliputi kegiatan musyawarah ganti kerugian; pemberian ganti kerugian; dan pelepasan hak atas tanah.

Musyawarah penentuan bentuk dan besarnya ganti kerugian, dilakukan dengan dua cara, yaitu:

- I. Musyawarah secara formal dilakukan dengan mekanisme berdasarkan Perka BPN No. 3 tahun 2007 untuk menentukan bentuk dan besarnya ganti kerugian tanah dan benda dan/atau bangunan dan/atau tanaman kepada semua Pemilik atau Pihak yang berhak.

Sebelum pelaksanaan musyawarah ganti kerugian, PPT menyampaikan undangan musyawarah dengan menetapkan tempat dan waktu musyawarah kepada pihak yang berhak dan instansi yang memerlukan tanah. Tanggal pembuatan undangan musyawarah yang mestinya paling lambat 3 hari sebelum musyawarah dilakukan, dalam prakteknya bervariasi dari mulai satu hari sebelum dilaksanakan musyawarah sampai paling lama empat hari sebelum dilaksanakan musyawarah. Tetapi yang paling banyak undangan dibuat satu hari sebelum pelaksanaan musyawarah

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<sup>28</sup> Aziz Turindra, *loc.cit.*

<sup>29</sup> Mas Achmad Santosa, 2001, **Good Governance Hukum Lingkungan**, ICEL: Jakarta, hlm 138.

<sup>30</sup> Aziz Turindra, *loc.cit.*

<sup>31</sup> Mas Achmad Santosa, 2001, **Good Governance Hukum Lingkungan**, ICEL: Jakarta, hlm 138.

Musyawarah biasanya dilakukan di Kantor Desa/Kelurahan setempat yang dihadiri oleh Panitia Pengadaan Tanah, Tim Pengadaan Tanah, Camat, Kepala Desa, Sekretaris Desa, Petugas (Kasi dan Kasubsi dan pegawai) dari Kantor Pertanahan, Dinas Pengairan, Dinas Prasarana Jalan, Dinas Pekerjaan Umum Cipta Karya, Muspika (Danramil, Kapolsek), Investor dan Pemilik tanah.

Dalam musyawarah tidak menunggu kesepakatan dari semua pemilik tanah. Dari musyawarah yang beberapa kali diikuti oleh Peneliti, pada dasarnya semua pemilik tanah tidak mempermasalahkan nilai ganti rugi bangunan dan/atau tanaman serta benda-benda yang ada di atas tanah tersebut. Musyawarah agak *alot* terjadi dalam penentuan harga ganti rugi tanah. Apabila ada pemilik tanah bersepakat dengan harga ganti rugi hasil taksiran *Appraisal*, maka hari berikutnya langsung diproses pemberian ganti rugi.

Pada pengadaan tanah untuk pembangunan jalan Tol MOKER, musyawarah dilakukan satu kali untuk masing-masing Desa. Musyawarah sebanyak dua kali hanya dilakukan di Desa Kayen Kecamatan Bandarkedungmulyo Kabupaten Jombang dan untuk wilayah Kabupaten Mojokerto dilakukan di Desa Gedeg, Desa Kemantren dan Desa Pagerluyung, yang ketiga Desa tersebut terletak di Kecamatan Gedeg dalam tenggang waktu 120 (seratus dua puluh) hari sejak undangan musyawarah yang pertama sebagaimana ketentuan dalam pasal 37 Perka BPN nomor 3 tahun 2007. Adapun Pada pengadaan tanah untuk pembangunan jalan Tol SUMO, musyawarah dilakukan minimal 2 (dua) kali dengan tenggang waktu lebih dari 120 (seratus dua puluh) hari. Bahkan untuk wilayah Kelurahan Karangpilang dilakukan penaksiran harga baru oleh Lembaga Penaksir.

Setelah acara selesai, kemudian dibuat Berita Acara Musyawarah kesepakatan harga (ganti rugi) yang berisi hasil musyawarah tanpa mempertimbangkan pemilik tanah yang tidak menyetujui tawaran tersebut, yaitu tentang bentuk ganti rugi tanah yang semua berbentuk uang, nilai ganti rugi masing-masing klasifikasi tanah per meter persegiannya, serta ketentuan bahwa ganti rugi bangunan dan tanaman atau benda-benda lain di atasnya ditetapkan oleh instansi terkait/berwenang. Berita acara ini dibuat pada hari, tanggal dan tempat dilangsungkannya musyawarah, yang hanya ditandatangani oleh semua Panitia Pengadaan Tanah, serta Ketua dan Sekretaris Tim Pengadaan Tanah tanpa tangan Pemilik Tanah. Padahal musyawarah tersebut dilakukan antara Pemilik tanah dengan Pemrakarsa yang dalam hal ini diwakili oleh Tim Pengadaan Tanah yang dimediasi oleh Panitia Pengadaan Tanah

Menurut Penulis, musyawarah tersebut terkesan bersifat formal dalam rangka memenuhi persyaratan peraturan, tidak dalam rangka benar-benar mendapatkan kesepakatan para pihak. Dalam musyawarah tidak dilakukan dialog secara seimbang yang saling memperhatikan kepentingan masing-masing Pihak, tetapi Panitia Pengadaan Tanah selaku Pimpinan musyawarah cenderung berada di Pihak Pemrakarsa. Sebagai contoh di Desa Pucangsimo, dari sekitar 70 pemilik tanah,

terdapat 60 orang yang tidak setuju dengan tawaran Panitia Pengadaan Tanah. Atau di Desa Tampingmojo Kecamatan Tembelang, ada sebanyak 94 pemilik tanah dari sekitar 170 Pemilik tanah yang tidak menyetujui tawaran tersebut.

- II. Musyawarah secara non formal untuk menentukan besarnya ganti kerugian tanah kepada beberapa Pemilik tanah yang menurut Investor berpotensi bersedia menerima.

Yang dimaksud dengan musyawarah secara informal di sini adalah musyawarah yang dilakukan antara masing-masing Pemilik secara individual dengan Investor selaku Pihak yang membutuhkan Tanah atau yang mewakilinya. Biasanya wakil Investor ini adalah pegawai dari Investor, atau tokoh informal masyarakat, atau anggota dari Muspika atau pihak lain yang dipercaya oleh investor dapat bernegosiasi dengan Pemilik.

Berdasarkan pada pelaksanaan musyawarah dan berbagai informasi, biasanya Investor ataupun Tim Pengadaan Tanah dapat mengidentifikasi masing-masing Pemilik yang punya potensi untuk dilakukan pendekatan secara pribadi serta siapa patron yang biasanya didengar dan dianut pendapatnya oleh Para Pemilik. Kemudian Investor melalui Pihak yang mereka percaya melakukan investigasi apa yang sebetulnya dikehendaki oleh para Pemilik tersebut. Selanjutnya mengunjungi rumah Patron untuk mengadakan negosiasi tentang tambahan harga atau nilai ganti kerugian serta fasilitas lain yang dikehendaki oleh Patron/Pemilik.

Patron kemudian menghubungi para Pemilik yang menurutnya dapat diajak negosiasi secara individu untuk diajak berdiskusi terkait dengan tawaran informal ganti kerugian tersebut. Dari hasil diskusi kemudian Para Pemilik mencoba meminta tambahan harga yang ditawarkan, karena ada kenaikan harga tanah di daerah sekitar rencana jalan Tol MOKER dan musyawarah sudah berlangsung lebih dari 3 (tiga) tahun, serta meminta supaya Investor membayarkan dulu tambahannya barulah mereka bersedia untuk menerima ganti kerugian yang formal dan melepaskan hak atas tanahnya.

Musyawarah informal ini lebih efektif dan secara materiil menguntungkan Pemilik karena dapat membeli tanah pengganti sampai 2x (dua kali) lipat dengan kualitas yang sama dari tanah yang dilepaskan. Masalahnya adalah tidak semua Pemilik mendapatkan kesempatan yang sama. Mekanisme ini juga menguntungkan Investor karena lebih cepat mereka dapat melakukan pembangunan konstruksinya.

Bagi pemilik tanah yang telah menyetujui hasil appraisal, kemudian segera dilakukan pembayaran ganti rugi. Adapun rangkaian kegiatan proses pembayaran ganti rugi adalah: Verifikasi berkas; Penyerahan dokumen hak atas tanah dari pemilik kepada PPT disaksikan oleh Camat dan Kepala Desa/Lurah setempat; Penandatanganan Berita Acara Pengadaan Tanah (BA-PT); dan pembayaran ganti rugi.

Peran serta Pihak yang Berhak dalam musyawarah ganti kerugian secara formal berada pada tangga ketiga yaitu menyampaikan informasi (*Informing*) yang merupakan bagian terendah dari kelompok Tokenisme (*Tokenism*) sebagaimana teori Partisipasi Masyarakat menurut Sherly Arnstein (1969) dalam Robin W.S. Brooks dan Glenn R. Harris<sup>32</sup> (2008:141) dan dalam Mas Achmad Santosa<sup>33</sup> (2001:138).

Adapun Tingkat partisipasi pada kegiatan pemberian ganti rugi dan pelepasan hak dalam pengadaan tanah bagi pembangunan jalan tol MOKER, termasuk tangga minimal ideal yaitu tangga keenam (kemitraan) dari teori Sherly Arnstein atau Partisipasi interaktif menurut Azis Turindra<sup>34</sup> dan partisipasi masyarakat yang bersifat demokratis menurut Verba.<sup>35</sup>

d. Partisipasi Masyarakat pada Tahap Pasca Pelaksanaan Pengadaan Tanah untuk pembangunan jalan Tol MOKER.

Pada tahap pasca pelaksanaan pengadaan tanah untuk pembangunan kepentingan umum meliputi kegiatan monitoring dan evaluasi terhadap pelaksanaan pengadaan tanah. Tetapi secara yuridis kegiatan tersebut tidak diatur juga tidak dilaksanakan.

Tingkat partisipasi masyarakat dalam Pasca Pelaksanaan Pengadaan Tanah berada pada tangga paling rendah yaitu pada tangga Pertama (manipulasi) yang masuk pada kelompok Non Partisipasi atau Partisipasi Pasif menurut Azis Turendra<sup>36</sup> dan partisipasi masyarakat yang bersifat *pseudo influence* atau *parsial* menurut Verba.<sup>37</sup>

## KESIMPULAN

Pelaksanaan pengadaan tanah untuk pembangunan jalan TOL belum sepenuhnya memenuhi prinsip minimal dari partisipasi, yaitu partisipasi interaktif menurut Azis Turendra; atau minimal berada pada tangga keenam (tangga kemitraan) menurut Sherly Arnstein; serta Partisipasi demokratis menurut Verba. Dengan partisipasi minimal ini, ada jaminan bahwa masyarakat diberi peluang untuk mempengaruhi pengambilan keputusan.

Kegiatan yang memenuhi prinsip minimal dari partisipasi hanya ada tiga kegiatan yang bersifat administrasi saja, yaitu kegiatan identifikasi dan inventarisasi obyek dan subyek pengadaan tanah, pemberian ganti rugi dan kegiatan pelepasan hak atas tanah.

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<sup>32</sup> Brooks, Robin W.S., dan Glenn R. Harris, 2001, *Citizen Participation, NEPA, and Land-Use Planning in Northern New York, USA*, dalam *Environmental Practice* 10 (4) December 2008, doi:10.10170S1466046608080356, hal. 141.

<sup>33</sup> Mas Machmad Santosa, 2001, *Op.Cit.*, hal. 138

<sup>34</sup> Aziz Turindra, *loc.cit.*

<sup>35</sup> Mas Achmad Santosa, 2001, **Good Governance Hukum Lingkungan**, ICEL: Jakarta, hlm 138.

<sup>36</sup> Brooks, Robin W.S., dan Glenn R. Harris, *loc.cit.*; dan Azis Turindra, *loc.cit.*

<sup>37</sup> Mas Achmad Santosa, 2001, **Good Governance Hukum Lingkungan**, ICEL: Jakarta, hlm 138.

Sementara untuk kegiatan substansial yang mempengaruhi kehidupan pemilik tanah, seperti penetapan lokasi pengadaan tanah dan musyawarah ganti rugi belum memenuhi prinsip minimal partisipasi.

## **SARAN**

Berdasarkan kajian tersebut, maka dalam rangka untuk lebih mengoptimalkan pelaksanaan pengadaan tanah bagi pembangunan untuk kepentingan umum termasuk pembangunan jalan Tol yang efektif dan efisien, perlu diatur dan diimplementasikan dengan baik tentang keterlibatan masyarakat terutama pemilik tanah minimal termasuk pada keenam (tangga kemitraan) menurut Sherly Arnstein; partisipasi interaktif menurut Azis Turendra; serta Partisipasi demokratis menurut Verba.

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# ASSESSMENT OF INDIGENOUS CAPACITY IN TELECOMMUNICATIONS TECHNOLOGY IN NIGERIA

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## ABSTRACT

Before the coming of the Global System of mobile Telecommunication (GSM) into Nigeria, to secure a telephone line from the national carrier the Nigerian Telecommunication Limited (NITEL) was not at all an easy task. The general objectives of the national Telecommunication Policy (NTP) are to achieve the modernization and rapid expansion of the Telecommunications Network and Services. This study reveals that the regulatory Commission has been able to make subsidiary legislations on most aspects of consumer protection issues except that of quality of service which is one of the most fundamental one. In addition also, it is better to give more powers of enforcement of telecomm consumer protection issues to the substantive consumer protection regulatory body, they may be in a better position to monitor and investigate the service providers to ensure that they are abiding by the code of practice of the Commission and all other relevant laws, as this is not the practice now.

**Keywords:** Telecommunication Policy, consumer protection, quality of service, to monitor and investigate relevant laws,

## INTRODUCTION

Before the coming of the Global System of mobile Telecommunication (GSM) into Nigeria, to secure a telephone line from the national carrier the Nigerian Telecommunication Limited (NITEL) was not at all an easy task. If one is able to obtain the line, maintaining it was another nightmare. Because the Company lacked any form of customer services. It seems as though it was not a right for a customer to have audience from NITEL'S employees but rather a privilege. Consequently, if a customer encounters any problem with his line or bill, his nightmare has just started. If he cannot persevere the up and downs he will face with NITEL staff before they rectify the problem, then that might be the end of the operation of that line, as sometimes it takes NITEL up to a year then, to fix a customer's phone problem.

However, with the coming of GSM service operators, that story has become history. Obtaining a phone line has become the easiest thing one can find around, except of cause in very remote areas where the GSM services have not yet reached. As such Nigerians trooped out buying phone lines unending.

When the euphoria of owning a mobile phone settled, the reality of maintaining the services sets in. Consumers start to encounter problems with quality of service; non flexible tariff plans; misleading advertisements and unreachable or unfriendly customer care services etc. In the same vein, the way and manner on how to resolve these

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problems is largely unknown to many customers or is too cumbersome to pursue for others.

As such, customers keep on moving from one service provider to the other, many resort to using multiple handsets, while others resigned to living with the problem. So the question now is, are there any legal tools put in place to regulate these kinds of problems?

It is against this background that this study seeks to examine the regulatory tools existing in the Nigerian Telecommunications industry with a view to establish, whether they are adequate to protect the interest of the telecom consumer. The general objectives of the national Telecommunication Policy (NTP) are to achieve the modernization and rapid expansion of the Telecommunications Network and Services. This will enhance national economic and social development and integrate Nigeria internally as well as into the global telecommunication services that should, accordingly, be efficient affordable, reliable and available to all, the main objective of the study is to develop and enhance indigenous capacity in Telecommunication technology in Nigeria.

### **CONSUMER INTEREST AND PROTECTION ISSUES IN THE TELECOMMUNICATIONS TECHNOLOGY**

Consumer Protection regulatory tools in the Telecommunications industry are basically, the Communications Act 2003 and its Subsidiary regulations. Nigeria has a Consumer Protection Council charged with the responsibility of protecting consumers of goods and services in various sectors of the economy including telecommunications. However the powers of the Consumer Council do not extend to Consumer protection provisions under the Communications Act 2003, only the Commission has powers of administering the provisions of the Act. In fact it is because of this, the Consumer Council and the Commission signed a memorandum of understanding to collaborate in the discharge of their functions in relations to Consumer protection in the telecoms sector.

The Scope of the rights given to the Consumer Council in the memorandum signed is very limited. It specifically relates to regulating sales promotions, registering of products and services, and providing information with regards to standards of quality of service and tariffs on telecommunications products, but not ensuring that good quality service is provided to the Consumers.

It is also because of this short coming, that the Consumer Protection Council embarks on arrangement to come up with an all-embracing regulatory frame work to check consumer abuses in the Telecomm sector

### **REVIEW OF EMPIRICAL STUDIES**

An empirical study of the major GSM operators in Nigeria on network accessibility reveals that 63 out of every 100 calls made on one of the networks, are only achieved after 3 or more attempts, while only 33 of such calls are setup with one or two attempts. On another network the study reveals that for every 100 calls attempt, there is probability of having 47 successful calls with first or second dials, while 51% of those successful calls only occurred with 3 or more numbers of attempts ( Popoola etal.,2009).

The response on the 'retain ability' question on the survey shows that the majority of subscribers experience call drop while conversation is still in progress' For 'every 100 successful call set-ups, only 36 of them will not drop before the parties complete their

conversation'. The value reveals the facts that service retains ability of the three major service providers in the country are very low. This is an indication that their services are unreliable and unsatisfied.

In another study conducted by Oyatoye and Okafor 2008 the result shows that the network providers has 'high incidence of failed calls'. In other words the telecommunication companies were not rendering good quality services to subscribers. A related study conducted by Kuboye and others, the same trend of result is also revealed.

Empirical study reveals that most Nigerian Consumers believed that the prices being charged by the services providers are unfair (Abayomi, 2011). Mobile Tariff was NGN<sup>2</sup>50<sup>3</sup> per minute and the charge was on per minute basis. The coming of Globacom into the market in 2003, charging on per second basis forced other providers to adopt the same too. By 2004 that changed the price to NGN45 per minute and it has since remained like that at peak periods, except for some exceptional promotional products of the service providers that offer lesser amount depending on compliance with the provision of the products features.

Most empirical studies and surveys carried out in Nigeria and on Africa in general, on consumer awareness of the existence of the Regulator reveals that majority of Nigerians do not even know of the existence of the Commission, let alone their education program.

This is simply because of high illiteracy level in the country. 'Nigeria is among the nine most illiterate countries in the world.'(Abubakar, 2010).Hence majority of consumers cannot make sense type of consumer education program embarked by the Commission. The Consumer parliament program is only covered by the Country's national television and aired once a month. It also conducted using only English Language. How then do you expect a consumer that can neither read nor write in English to appreciate what is going on? Or it is this same illiterate consumer than surf the internet and either lay a compliant or get information on his rights as a consumer?

And even for those that can understand the language, the epileptic power supply in Nigeria will not allow them view the program, if at all the national television in their locality is able to get signal from the main network station.

Another constrain of this program is that other forms media has not been used vigorously to disseminate it. Local radio stations, which most people listen to, and move around with, does not broadcast the program and not to talk of broadcasting it in any local language.

Similarly, the low level of internet penetration in the country and high cost of the internet services also impedes the proper dissemination of information to consumers. As internet services are only available in urban cities and the quality of the services is dismal and the prices prohibitive for an average consumer.

The consumer outreaches also suffers the same faith, while the town hall meetings is yet to take place, more than five years since the consumer parliament commence its activity.

## **FINDINGS**

This study reveals that the regulatory Commission has been able to make subsidiary legislations on most aspects of consumer protection issues except that of quality of service which is one of the most fundamental one. Though is now in the pipeline. The Sanctions and fines currently operating in the Enforcement Processes Regulation 2005 have become obsolete. In a similar vein, Nigeria has no Privacy Law or Data protection Law and also legislation on Unfair Contract terms.

Therefore there is the need to fill in the legislation lacunae by enacting those missing and by making amendments where necessary to the existing ones. It is equally noted, that the level of Competition in the telecommunications market is abysmal, problems of collusion and cartels have become order of the day. Misleading or false promotional advertisement is also common place.

The National assembly needs to stand up to its responsibility and speedy the passage of a general anti-competition Legislation that will properly curb the prevalent anti-competition conducts in the telecomm industry and elsewhere.

## **SUMMARY CONCLUSION AND RECOMMENDATIONS**

Therefore, there is the need to liaise with consumer representatives in disseminating the information and also using the local radio stations that is closest to the people like the FM Radio Stations and Pamphlets, and also using the people local languages. This is how the service operators get their deceitful promotions advertisements very fast to the customers.

Not the current practice where the consumer representatives only take part in one forum discussing Consumer issues once a month. The more empowered consumers feel, the better they will be able to make complaints and receive satisfaction Gross I. et.al.(2011) he Consumers on their part have to be proactive by organizing themselves properly to speak with one voice and by informing and putting pressure on the regulators to always protect their interest. The protest by Consumers on collusion by the service operators that took place on the 19<sup>th</sup> September 2003was a step in the right direction. Consumers need to exhibit they can stand up for their rights, so as to put the service operators on the edge of their sits.

In addition also, it is better to give more powers of enforcement of telecomm consumer protection issues to the substantive consumer protection regulatory body, they may be in a better position to monitor and investigate the service providers to ensure that they are abiding by the code of practice of the Commission and all other relevant laws, as this is not the practice now. The Consumer protection Council has limited power in enforcing the Laws on Consumer protection existing in the telecomm industry and they have no provisions within their own legal framework to help them in preventing any infringement on consumer's right that has to do with the telecomm industry. It is even because of this problem, that the two bodies had to sign a memorandum of understanding in 2005 to give the Consumer Council some powers to help protect consumers of telecommunications sector. But the powers relinquished to by the commission are very limited. They concerns only issues of registration and monitoring of sales promotions. Infact the consumer council worried with myriads of complaints it receives from consumers of telecommunications, plans to sponsor an all embracing legislation to give it powers of enforcing telecomm related consumer issues (Adedeji 2011).

The commission should collaborate more with the consumer council to better tackle consumer protection issues. The regulator should not seem to be favouring any

stakeholder not even the consumers, but aim only to correct market failures for the benefit of all.

Both the government and the Commission should not forget that the 'Telecom market is only in existence because of the consumer. The definitions of markets tend to focus on the firms that operate in them. If we think of markets in this way we miss the centrality of the consumer to understanding how the market functions. We also end up with regulatory solutions that favour businesses over consumers and aid collusion and abuse of competition.

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# **BOKO HARAM INSURGENCY AND THE CHALLENGES OF COUNTER-TERRORISM POLICY IN NIGERIA**

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## **ABSTRACT**

This study discussed the inherent weaknesses in the Government's counter offensive policy to the threat posed by the Boko Haram insurgents to the Nigerian state. Available evidence shows that the counter-terrorist policy of the government is defective. The study highlighted the measures the government should undertake to curb the menace of the insurgents such as policing its borders in the North Eastern region effectively, collaborating with countries that it shares borders with, equipping her security organizations and enlisting the support of her citizens in the fight against the insurgents, amongst others. Using library research and interview methods, the findings of the study indicated that:

- (i) Government should not follow the path of using the same methods it used to combat the Niger Delta militants to address the Boko Haram insurgents.
- (ii) Peace negotiation is most unlikely to succeed with insurgents like those of Boko Haram with vile ideologies, whose core demands undermine democracy and good governance. Rather, it is more likely to succeed with insurgent groups pursuing legitimate political or economic based grievances that are capable of deepening democracy and good governance, that is, if Government accepts their core demands.
- (iii) Peace negotiation is most unlikely to succeed with Boko Haram insurgents, since they do not have the capacity to lead a provincial government, after disavowing terrorism.

This study, therefore, strongly recommended that to checkmate the threat posed by Boko Haram insurgents, Government should treat them like terrorists rather than freedom fighters. The paper finally suggested that since the issue of bad governance has been identified as one of the factors responsible the emergence of Boko Haram in Northern Nigeria, the government (at the Federal, State and Local levels) should engage in people-oriented policies to create job opportunities for the youths.

**Keywords:** Boko Haram; Insurgency; Freedom fighters; Counter-terrorism policy

## **INTRODUCTION**

Though, Nigeria has faced series of security threatening challenges, the one caused by the activities of the Islamist sect, the Boko Haram remains quite unique in all ramifications. The fundamentalist Islamic group is the first insurgent organization in Nigeria to be classified as a terrorist organization by the United States of America and its allies. Since 2009, Nigerians have witnessed the vulnerability of the Nigerian state to terror, criminality and instability. The list of these disheartening phenomena includes, but

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is not limited to the bombing of several Churches, Mosques, Police Stations, Schools and Prisons in Bauchi, Bornu, Yobe and Adamawa states. Other parts of the country were not spared, as the sect-bombing activities were witnessed in the Federal capital territory, Abuja, Plateau, Kaduna and Kano states. The bombing of the United Nations office in Abuja is perhaps what the insurgents used to gain global recognition; as they are now listed amongst terrorist organizations by the United States and its allies, (for more details see *The Economist*, September 3, 2011).

Available statistics on the number of deaths and property lost to Boko Haram insurgency between 2002 and 2014 to say the least is highly controversial. Interviewee accounts claim that over 10,000 people (including women and children) have been killed and property worth over 100 million dollars have been destroyed during the period under discussion (culled from interview of victims of Boko Haram attacks in Abuja, North Central, North East and North West regions of the country). However, official reports put the death toll at 8,000 plus and property destroyed at 40 million dollars (culled from the interview of government officials in Abuja, Yobe, Kaduna, Plateau and Adamawa states). Government's response to the vicious attacks of Boko Haram has been a diverse mix of hope and trepidation.

Trepidation arises from the ability of the insurgents to regroup and strike even with the imposed state of emergency. The country's vulnerability to incessant attacks from armed insurgents poses a great security challenge.

According to the Minister of information, Labaran Maku, the country spends 27% of its budget on internal security alone. These are resources that could have been used to rehabilitate the country's deplorable infrastructure (Review of 2013 by Channels Television).

Following the declaration of state of emergency in Adamawa, Borno and Yobe states, government troops have launched sustained offensive against the insurgent group, but this has not yielded the desired results. That the insurgent group is able to launch attacks on military installations and other public institutions even when the state of emergency is still in place, raises questions about the effectiveness of the government's counter-offensive policy. This is what has instigated this investigation.

This study examines Government's counter-offensive policy to curb the threat posed by the Boko Haram insurgents, and why it has not yielded significant success. In doing so therefore, the study also illuminates the path the government should follow to checkmate the insurgency in a sustained manner.

## **THE ORIGIN OF BOKO HARAM**

Nigeria's militant Islamist group Boko Haram - which has caused havoc in Africa's most populous country through a wave of bombings, assassinations and now abductions - is fighting to overthrow the government and create an Islamic state.

Its followers are said to be influenced by the Koranic phrase which says: "Anyone who is not governed by what Allah has revealed is among the transgressors". Boko Haram promotes a version of Islam which makes it "haram", or forbidden, for Muslims to take part in any political or social activity associated with Western society. This includes voting in elections, wearing shirts and trousers or receiving a secular education. Boko Haram regards the Nigerian state as being run by non-believers, even when the country had a Muslim president.

The group's official name is Jama'atu Ahlis Sunna Lidda'awati wal-Jihad, which in Arabic means "People Committed to the Propagation of the Prophet's Teachings and Jihad". But residents in the North-Eastern city of Maiduguri, where the group had its headquarters, dubbed it Boko Haram. Loosely translated from the region's Hausa language, this means "Western education is forbidden". Boko originally meant fake but came to signify Western education, while haram means forbidden.

Since the Sokoto caliphate, which ruled parts of what is now northern Nigeria, Niger and southern Cameroon, fell under British control in 1903, there has been resistance among some of the area's Muslims to Western education. They still refuse to send their children to government-run "Western schools", a problem compounded by the ruling elite which does not see education as a priority.

Against this background, the charismatic Muslim cleric, Mohammed Yusuf, formed Boko Haram in Maiduguri in 2002. He set up a religious complex, which included a mosque and an Islamic school. Many poor Muslim families from across Nigeria, as well as neighbouring countries, enrolled their children at the school. But Boko Haram was not only interested in education. Its political goal was to create an Islamic state, and the school became a recruiting ground for jihadis.

In 2009, Boko Haram launched military operations to create Islamic state by carrying out series of attacks on police stations and other government buildings in Maiduguri. This led to shoot-outs on Maiduguri's streets. Hundreds of Boko Haram supporters were killed and thousands of residents fled the city. Nigeria's security forces eventually seized the group's headquarters, capturing its fighters and killing Mr Yusuf. His body was shown on state television and the security forces declared Boko Haram finished. But its fighters regrouped under a new leader, Abubakar Shekau, and have stepped up their insurgency.

In 2010, the US designated it a terrorist organisation, amid fears that it had developed links with other militant groups, such as al-Qaeda in the Islamic Maghreb, to wage a global jihad. The deployment of troops has driven many of the militants out of Maiduguri, their main urban base"

Boko Haram's trademark was originally the use of gunmen on motorbikes, killing police, politicians and anyone who criticises it, including clerics from other Muslim traditions and Christian preachers. The group has also staged more audacious attacks in northern and central Nigeria, including bombing churches, bus ranks, bars, military barracks and even the police and UN headquarters in the capital, Abuja.

Amid growing concern about the escalating violence, President Goodluck Jonathan declared a state of emergency in May 2013 in the three northern states where Boko Haram is the strongest - Borno, Yobe and Adamawa.

Boko Haram draws its fighters mainly from the Kanuri ethnic group, which is the largest in the three states. Most Kanuris have distinctive facial scars and when added to their heavy Hausa accents, they are easily identifiable to others Nigerians. As a result, the militants operate mainly in the north-east, where the terrain is also familiar to them. (Chothia 2014)

## **THEORETICAL UNDERPINNINGS OF THE BOKO HARAM INSURGENCY**

Using various variables, several scholars have tried to intellectualize what drives Boko Haram insurgents to carry out ferocious attacks against other people. Some have used

religion to explain their act of violence, by simply arguing that there is something in their religion that influences them to undertake violence on a large scale. However, this argument is weak, because there is no significant relationship between being a Muslim and being a terrorist. Apart from that, the group attacks both Muslims and Christian (for a detailed discussion on this issue, see Christopher, 2011; Faruk, 2012; Gambell, 2011). Some others have used political, sociological and psychological variables to explain their action (Herskovit, 2010). The key point is that terrorism is not a monocausal phenomenon. Rather, it is a multi-causal one. A multi-analytical approach provides powerful insights for understanding terrorism around the globe compared to the religion-focused theory that is monocausal in nature.

For this study, we are more inclined to the multi-layered analysis using political, sociological and psychological variables to explain the activities of Boko Haram insurgents. From our investigation, there are sufficient empirical data which suggest that Boko Haram insurgents are driven by a combination of factors such as poverty, unemployment, bad governance and politics of North-South divide. Other intervening variables such as political rivalry amongst politicians in the Northern states and religion fuel their insurgent activities. In fact, every potential member of the group or sympathizer, have one vex-issue or the other against the government (for details of these vex-issues see Christopher, 2011). These are what predispose them to violence. Our investigation also reveals that apart from the elements above drugs also plays a vital role in the atrocities committed by Boko Haram members.

One former member of the group informed us that before an operation, a particular kind of drug believed to be a pain killer is usually administered on everyone going for the operation. According to him, the drug prevents one from feeling pains even from bullets. Other kinds of drugs freely used by members include marijuana, cocaine and heroin. The Boko Haram convert seriously thinks that it is the drugs more than anything else that feeds their sadistic acts.

### **THE CAUSES AND EFFECTS OF BOKO HARAM INSURGENCY**

The appearance of the Boko Haram Islamist sect in Nigeria is not traceable to any single cause, rather is a result of the internal political, social, economic and to some extent, religious factors.

A careful study of the circumstances that led to the military hand-over in 1999 and the political terrain since then provides an idea, which makes one incline to suggest that the security threats in Nigeria today, including the one of Boko Haram Islamist sect are unconnected to the political happenings in Nigeria. The extent of the mal-administration of the Gen. Ibrahim Badamosi Babangida/SaniAbacha military dictatorship in Nigeria between 1985 and 1998 created zeal in the Nigerian masses for a democratic government. For instance, the taking of IMF loan and introduction of its harsh conditionalities, when every Nigerian rejected it, was the administration's first case of subverting popular will (Nwachukwu and Uzoigwe, 2004). The last was the annulment of MKO Abiola's presidential victory on June 12, 1993 due to what he described as "flagrant abuse of the electoral laws" (Mahmud, 1993). But the election has been adjudged by Nigerians as the freest and fairest in the political history of the country. Several other atrocities committed by Gen. Sani Abacha beginning with the overthrow of the Ernest Shonekon's Interim National Government and the imprisonment of MKO Abiola, dashed the hopes of the masses and worsened the already precarious society. Egwemi's (2010) observation about the issue tends to portray that, the period of Gen. Sani Abacha's rule to his death in 1998, was marked by political weakness in the country as political parties operated weakly, with visibly no serious intention because of his confused political

agenda. On May 29, 1999, Gen. Adbulsalam Abubakar, having assumed the mantle of leadership, after the death of Gen. Sani Abacha, handed power to Gen. Olusegun Obasanjo (rtd) as president of Nigeria. Giving the above circumstances, Chief Olusegun Obasanjo (as President, he preferred to be addressed as chief) was welcomed as a messiah, a situation that made him a central figure, a rallying point and a power absolutist.

Though qualified to be president of Nigeria, Obasanjo was an opportunist. He found easy access to the presidency due to the zoning arrangement adopted by PDP, to shift power to the south, somehow in compensation for the injury inflicted by the past military regime on the south, especially the south-west. After, his eight-year rule, the PDP in continuation of the power shift agreement or understanding zoned the presidency to the north and Chief Olusegun Obasanjo's choice was Alhaji Umaru Musa YarAdua, who the North rejected as too sick to rule, moreso that the man who had been lucky to transform from deputy Governor of Bayelsa State to Governor, Dr. Goodluck Jonathan was been placed closely in the name of vice-President to transform again to president. Truly, Alhaji Umaru Musa YarAdua died and Goodluck Jonathan became president promising to complete just his late boss' tenure. He never honoured his promise and under the argument that zoning was not a constitutional matter, but a gentleman's arrangement, he re-contested for what should have been the second term of a northern president. The dishonesty worries a top northern leader, Adamu Ciroma:

"I was one of the four people who founded PDP, and when I was talking about PDP policy of zoning, of changing the leadership from North to South, I knew what I was talking about...I didn't hide it, I told them in caucus, and I warned them that if they depart from that, it is going to have very serious consequences for the party. And it has happened, and they know this. That is why after the elections I have kept quiet because everything which is happening I have already indicated and warned against them" (Edafe, 2012)

People erroneously mix up military dictatorship with democracy and consequently have argued that the northerners have been ruling the country for a very long time. But the issue here is democracy and the pains of a play-off, which is been felt now by the northern elite. Additionally, one can count the years of democratic governance in Nigeria up to 2012, as amounting to about twenty two years and the North has ruled for slightly more than ten years, while the south that is still in power has ruled for slightly more than eleven years. The above analysis explains the confusion in the politics of Nigeria during the time under review and it presents a potent source of insecurity, whether Boko Haram or any other. This may well explain a security officer's suspicion of the circumstances surrounding the bombing of Force Headquarters in Abuja on June 16, 2011:

Before the April elections, some people promised to make Nigeria ungovernable. The threat was real. We are not ruling out the possibility that there is a political motive to this. Some politicians might have recruited some Boko Haram members to carry out their threat of making Nigeria ungovernable (Anonymous, 2011) Reacting to the bombing of media houses in Abuja and Kaduna on April 26, 2012, the former National Security Adviser, Late Gen. Owoeye Azazi blames Boko Haram insurgency on the Peoples Democratic Party. According to him, the PDP politics of fielding candidates against the wishes of its majority members contributes to the problem Nigerians are going through today (Osuni, 2012).

The issue of the play-off of northerners by Olusegun Obasanjo might well be a remote cause of the Boko Haram insurgency. What majority of Nigerians deemed responsible

for the situation is bad government. It is just one of the outcomes of incompetent administrations in Nigeria since the return to democracy in 1999. The governments have proved to be too corrupt; the citizens have become desperately and hopelessly poorer day after day. Available records indicate that Nigeria ranks sixth in world oil production, yet a greater population live below the poverty line of \$1 a day (Eregha, et-al, 2007). Statistically, poverty distribution in Nigeria shows that Northern Nigeria is worst hit: North-Central records 67%, North-West records 71.1% and North-East 72.2% (Danjibo, 2011). So, it is not out of fashion to suggest that poverty in Northern Nigeria arising from injustice, lack of fairness in the polity and imbalance in resource allocation is responsible for the insurrection. Unfortunately, this situation of poverty plays in the hands of a region that historically had a culture derived from well organised Islamic wars. As Is'haq Modibbo Kawu (2012) says:

“In Northern Nigeria, grievance and organisation of resistance to the state could only have been framed within the context of Islam given the history of the region. Here we have Borno’s over 1000 year history as a Muslim state and the radical tradition which came out of the Jihad of Sheikh Usman Dan Fodio. To compound the situation, the Northeast part of Nigeria also suffers the worst indices of under-development in our country. This was the combustible mix that conditioned the rise of the Boko Haram insurgency.”

This brings to mind the Arabs revolutionary up-rising in North Africa, which is caused by desperation in poverty resulting from bad governance. So the Boko Haram group takes a queue from others in Nigeria as MEND, MOSSOB, and OPC even though it is more violent. Its focus in the most recent time appears confusing as it kills innocent Nigerians instead of attacking the corrupt officials in government. But generally speaking, it is a resistance against bad government. For instance, when in September 11, 2001 an Al Qaeda terrorist gang stormed strategic locations in the USA, not the President was killed nor the vice President. But the American government knew it was a war against it, and with no acts of double standard, began to hunt for Al Qaeda leaders, killing their most prestigious one, Osama Bin Laden in 2011. In our case, the corrupt officials in government feel unconcerned because they have enough security apparatus that protects them.

The above analogy brings up another cause of the Boko Haram menace as government ineptitude and laxity in dealing with security challenges. The nation's borders are porous thereby making it easy for infiltration of mercenaries and arms proliferation into the country. The Nigeria Police Force is barren of the expected weaponry to combat such well armed insurrection like the Boko Haram. The state of the NPF is laughable and indeed people put such mockery questions as: do they have guns? do they have bullet-proof vests to confront armed robbers?. These basic things they don't have to confront armed robbers, not to talk of Boko Haram, so how can they discover bombs? Ganagana (2011).The inept and lax attitudes of government manifest in several others ways too. For instance, in November 2007, five Islamist militants with suspected links to Al-Qaeda were arrested by the State Security Service. Three of them were charged with receiving training in Algeria with the Salafist Group for preaching and combatant between 2005 and 2007. These men were held for some months, then freed on bail and their case was never heard again in court. Again, a terrorist suspected to belong to the Al-Qaeda network Ibrahim Haman Ahmed, accused of trying to recruit young Nigerian Muslims for the terrorist organisation was arrested in Nigeria and later extradited to the U. S for trial. In spite of all these signals, the lax administration failed to put up security measures that could check the rise of or infiltration of Boko Haram members into the country. The failure results from the fact that Nigerian governments are often not popularly elected,

which makes those in power, feel they owe the nation no obligation to protect the lives and properties of her citizenry.

The point of religion being another of the causes of Boko Haram cannot be ignored. The fact that the group comprised essentially Muslims puts forward the idea that it has religious connotation. The principle governing its emergence and activities relates to its rejection of Western education as evil, Islamising Nigeria and promoting Islamic ideologies in the country. To further illustrate the above point, it is necessary to reveal that even though the Northern leaders are talking about political and economic imbalance and looking forward to dialogue, the young boys do not appear to have any objective outside Islamising the country. This informs their decision to place a condition for accepting the president's call for dialogue; that he should first of all convert to Islam before they could talk with him (Edafe, 2012).

If one thinks deeply about the rejection of western education by this Islamist group, a sense will be deduced. Western education and Christianity were introduced forcefully in Nigeria through colonialism as instruments of economic exploitation and socio-cultural transformation. Since the exit of colonialism in Nigeria, we continue to suffer its legacies of economic exploitation and socio-cultural transformation through the existence of an indigenous exploiting class. This class continues to reproduce itself by means of birth and training. Today, they are the ones who constitute the political class that misgovern the country: they are seen laundering money, flying abroad, shopping in Dubai, and sending their children abroad to study in expensive Western schools. The resentment in Northern Nigeria against these corrupt elite who are products of western education became the foundation of Boko Haram. For other parts of Nigeria that embraced Christianity, this bitter situation going on is being accommodated with great pains, but for the non-Christian parts of Nigeria, precisely Northern Nigeria, Islamic culture continue to oppose the western capitalist values. Yet the situation would not have been what it is today if not for the extra-judicial killings carried out by government. Whilst Boko Haram started as a non-violent breakaway group, persecution and aggressive crack-downs from the security services brought about their violent response. Boko Haram was at first a small and controllable problem, but the issue escalated in 2009 after heavy crackdowns were ordered by President Yar'Adua. The crackdown was brutal and disproportionate; around 700 innocent people were killed, some of them publicly executed on suspicions that they were members of Boko Haram (Sani, 2012). The killing of their leader, Mohammed Yusuf actually made the group increase its rate of violent activities (Ajah, 2011). Following the killing of their leader the movement went underground but emerged a year later with renewed attacks. Even at this point the situation was controllable, yet the government response was again heavy-handed. Local people felt more intimidated by the soldiers deployed to fight Boko Haram than they did of Boko Haram. This sentiment was compounded by the violent and indiscriminate responses of the security forces, which frequently caused the destruction of property and the loss of innocent lives.

It may be very difficult to scale exactly the destructions; in terms of lives and properties lost to the marauding members of Boko Haram as whatever that is put down simply represents a tentative figure. The first target of their onslaught was Borno State, where series of sniper killings were being carried out. For instance, on January 28, 2008, Fannami Gubio, Goni Sheriff, the ANPP gubernatorial candidate and younger brother to Governor Sheriff of Borno State, and six others were killed by Boko Haram members just three months after the party's Chairman, Awana Ngala was murdered in his house (Ola, 2011). Borno State suffered the impact of Boko Haram murderous activities for quite some time, after which the sect extended its activities to other northern States and the Federal Capital Territory. The territorial scope of their destruction also keeps expanding and this time, it extends to the academic institutions as some Nigerian universities have

been bombed causing heavy destructions and loss of human lives. The first casualty was the Gombe State University, where Akhoragbon (2012) reports the bombing and destruction of the building housing the University Senate. Next was the turn of Bayero University Kano where Muslim worshippers in the University's old campus were bombed on April 29, 2012 by the Boko Haram Islamist sect, which resulted in the death of two professors and seventeen others (Adamu, 2012). The following day, a time bomb was discovered in its new campus (Adamu, 2012). The Nigerian media also got their share of the Boko Haram insurgency when the Abuja office of This Day newspaper was bombed simultaneously with its office in Kaduna alongside that of The Sun and Moments newspapers on April 26, 2012 killing eight persons and destroying several cars (Alliet-al, 2012).

It is really of no gain mentioning every bit of the destructions caused by Boko Haram, suffice to add the attack on the Taraba State Commissioner of Police, Mamman Sule by three suicide bombers on motorbikes on April 30, 2012 resulting in the death of eight members of his convey and the three bombers (Igidi, 2012). As the situation is presently, the likelihood is that more and more killings and destructions of properties will be done by the sect as government appears overtly helpless.

The deployment of troops has driven many of them out of Maiduguri, their main urban base and they have now retreated to the vast Sambisa forest, along the border with Cameroon.

From there, the group's fighters have launched mass attacks on villages, looting, killing and burning properties in what appeared to be a warning to rural people not to collaborate with the security forces, as residents of Maiduguri had done.

Boko Haram has also stepped up its campaign against Western education, which it believes corrupts the moral values of Muslims, especially girls, by attacking two boarding schools - in Yobe in March, 2014 and in Chibok in April, 2014, it abducted more than 200 schoolgirls during the Chibok raid, saying it would treat them as slaves and marry them off - a reference to an ancient Islamic belief that women captured in conflict are part of the "war booty". It made a similar threat in May 2013, when it released a video, saying it had taken women and children - including teenage girls - hostage in response to the arrest of its members' wives and children. There was later a prison swap, with both sides releasing the women and children.

At the same time, Boko Haram has continued with its urban bombing campaign, targeting the capital on 14th April, 2014 when at least seventy people were killed in an explosion near a car park and on 2nd May, 2014 when nineteen people died. This shows that not only does Boko Haram have a fighting force of thousands of men, but also cells that specialise in bombings.

Analysts say northern Nigeria has a history of spawning militant Islamist groups, but Boko Haram has outlived them and has proved to be far more lethal, with a global jihadi agenda. The threat will disappear only if Nigeria's government manages to reduce the region's chronic poverty and builds an education system which gains the support of local Muslims, the analysts say.

## **GOVERNMENT'S COUNTER-OFFENSIVE RESPONSE TO BOKO HARAM INSURGENCY**

There is a common consensus in the Nigerian public sphere that Government's response to Boko Haram insurgents has been reactionary rather than proactive. Those who share this sentiment argue that Government usually waits for the insurgents to launch attacks on Churches, Schools, Police Stations and other public institutions, before it reacts.

Between 2009 and 2013, the insurgents have killed more people than the Al Qaeda terrorist organization did in the World Trade Center in the United States of America in 2011, and are still killing, without the government being able to deflate them substantially. It is important to note that though it took the United States government more than ten years to locate and eliminate Osama Bin Laden, the alleged leader of the Al Qaeda terrorist group; it ensured that the group was unable to launch new attacks on its soil, while the hunt for Bin Laden lasted. In

Nigeria, in spite of the state of emergency imposed by the government, the insurgents are still attacking both security agents and innocent citizens. What this simply signifies is that the government's counter-offensive strategies are not yielding the right results.

Interestingly, no one other than President Goodluck Jonathan has been able to capture vividly Government's response to the threat posed by the insurgent group on the country. In his response to former President Olusegun Obasanjo's letter to him on the state of the nation titled, "Before it is too late" (2013), President Jonathan averred:

...At a stage, almost the entire North-East of Nigeria was under siege by insurgents. Bombings of churches and public buildings in the North and the federal capital became an almost weekly occurrence. Our entire national security apparatus seemed nonplussed and unable to come to grips with the new threat posed by the berthing of terrorism on our shores, but my administration has since brought that unacceptable situation under significant control. We have overhauled our entire national security architecture, improved intelligence gathering, training, funding, logistical support to our armed forces and security collaboration with friendly countries with very visible and positive results (Jonathan, 2013).

Other measures deduced from the President's letter include poverty alleviation programmes, economic development, education and social reforms. The details are the provision of modern basic education schools for the Almajiri and the establishment of nine new federal universities in several Northern states. The government is also aggressively addressing the challenges of poverty through its youth empowerment programme like YouWin, and investing massively in infrastructure to promote economic development. At the height of the insurgency, Government set up an administrative panel to discuss with the insurgents, but they bluntly refused to meet with the government team. The sum of the administrative framework within much of the anti-insurgency policy, which has been implemented, especially within the context of Boko Haram are as follows:

- Troops have been reinforced
- The leadership of the movement has been targeted
- The International Joint Task Force (JTF) has been put in place
- The army has taken over the provision of internal security (declaration of state of emergency)
- A Curfew has been imposed
- GSM services have been banned and restored

- Civilian JTFs have been established
- Road blocks have been set up, and many other measures which the security operatives interviewed in the course of this study refused to disclose, for security reasons.

Investigations reveal that the most visible and positive result the above measures have yielded, is a significant reduction in the scope, but not in the impact of the insurgents' operations. In terms of scope, the insurgents activities to a large extent, is now limited to the North- Eastern region of the country. However, the impact of its operations is still being felt across the country.

The reasons for this seeming failure of Government's counter-offensive measures as the findings of this study show are: first, the federal government is using the same methods (force, administrative panel and negotiation) it used in addressing the Niger Delta militancy to tackle the Boko Haram insurgency. This is a wrong approach because both insurgent groups follow different trajectories. The Niger Delta militants had visible leadership and were ever ready to engage the government to drive home their demands. Anyone interested in their struggle could encounter them in both print and electronic media. For instance, their demands were well articulated in the Ogoni Bill of Rights and the Kaima Declaration.

Their struggle became violent in reaction to Government's use of violence to suppress their legitimate demands for a clean environment and a fair share of the proceeds from oil resources found on their ancestral land (for a detail discussion on this issue see Suberu, 1996; Akpan, 2000; Ibeau, 2000). However, like most struggles for material benefits, criminals infiltrated their ranks and introduced oil theft, kidnappings and assassinations. In addition, politicians began to use them to achieve personal goals. They set them up against their political opponents.

Nevertheless, at least, we could separate the real militants from the criminals whenever the need arose. On the contrary, the Boko Haram sect has become ubiquitous group after the death of Mohammed Yusuf, their founder. Not even Abubakar Shekau, the newly acclaimed leader can claim effective control of the group.

According to John (2013), the group does not have a clear structure or evident chain of command and has been called "diffuse". Similarly, Walker (2013) describes the group as a "cell-like structure" facilitating factions and split.

According to the Al Jazeera cable news network, the group is divided into three factions, with Ansaru being the most known faction. In addition, its demands are not well articulated. What most analysts claim, are that the group's demands are at best unsubstantiated. For instance, the demand of Islamizing the country is not supported by empirical evidence, unlike the Taliban that establish provincial governments based on Islamic laws, whenever they take control of an area. This is reminiscent of the Afghanistan's Taliban.

What is more worrisome is the fact that the group refused to negotiate with the government when it was offered the opportunity. This means that the group is not ready to dialogue with the government. They are ready to fight until they get what they want. What is it they want? Even Shekau has not been able to state categorically what they want in his press and video releases. Renowned terrorist organizations like Al Qeada, Taliban and others always state their demands or motives in clear terms and never shy away from negotiation. Most of the times, It is government that refuses to negotiate with

them because their demands are not usually compatible with democratic tenets and good governance.

In the case of Boko Haram, they are the ones who refuse to negotiate with the government. This gives credence to the conspiracy theory that the group is being used by aggrieved Northern politicians who promised to make the country ungovernable for President Jonathan, following the 2011 elections for usurping the second term of late President Umaru Yar Adua which they believe is meant for Northerners. This is also in a bid to ensure that he does not win a second term if he decides to contest in 2015.

In Nigerian politics, personal interest overrides both party and national interests. From these theorists also comes the argument that the insurgents' attack on Churches and Schools was intended to spark reprisals by Christians against Muslims, in line with the argument of making the country ungovernable for the President. Several other theories abound for and against the motive behind the insurgency, but they are simply academic conjectures that need empirical substantiation.

The second finding of the study indicates that the government seems to be treating the insurgent group like freedom fighters with legitimate demands, rather than as a terrorist group. This explains why the government wants to negotiate with them. However, this approach has also failed to yield any significant result because as Niaz Murtaza (2013) rightly points out, historically, peace negotiations succeed more easily with militant groups pursuing legitimate identity-based grievances. It is easier for government to accept their core demand, which actually strengthens democracy and good governance. From every indication, the demands of the Boko Haram insurgent group are not legitimate and compatible with the country's constitution. This in part explains why they have refused to negotiate with the government. Therefore, Government should stop treating them like freedom fighters.

The third finding shows that there are individuals within and outside the government that are benefitting from the insurgency through contracts and supplies to government. These people encourage the government to treat the insurgents like freedom fighters rather than terrorists, so that they can continue to benefit from policies that prolong the insurgency rather than checkmate it. Closely following this, in the fight against the insurgents, is the role of top Military, Police and other security organizations. There is significant evidence in the data collected for this study which indicates the complicity of the Military, Police and other security agencies in the fight against the insurgents. Our findings on this issue collaborates the submission of military experts who commented on Channels television on the recent attacks on the Air force base in Maiduguri where several people were killed, and two helicopters and three out-of-service planes were destroyed. That the insurgents were able to launch attacks on military installations even when the state of emergency imposed by the government was still in place raises serious questions of complicity within the rank and file of the military and other security organizations.

In the light of the above, it can be argued that Boko Haram is not the kind of group Government should use administrative measures to tackle. It is also not the kind that should be granted amnesty like some people have suggested. Empirical evidence abound in other climes such as Afghanistan, Sri Lanka and Pakistan of terrorist group that uses similar tactics like the Boko Haram and how they are treated by their respective governments.

## **RECOMMENDATIONS**

The prognoses of action suggested by the findings of this study are as follows: First, government at all levels should begin to treat Boko Haram like a terrorist group rather than freedom fighters, especially after the rejection of the government's olive branch. Freedom fighters are insurgents whose core demands are capable of addressing social, political and economic injustices. In this case, if Government accepts their demands, democracy is enhanced and good governance is promoted.

Second, the federal government should undertake intensive policing of the country's border, especially the Nigeria-Chad and Nigeria-Cameroon borders in the North- Eastern region of the country. This measure will prevent the insurgents and their foreign supporters from entering or establishing camps within the country's borders.

Third, the saboteurs in the military and other security organizations should be identified and prosecuted. Thereafter, Government should ensure that the insurgents do not carry out more attacks on its shores by taking the fight to the insurgents, like the American government did with the Al Qaeda network. To achieve this, the government should enter into bilateral agreements with the governments of Chad and Cameroon on how to address the insurgency. The multi-national task force should be expanded and strengthened to cover the entire border areas between Nigeria, Niger, Chad and Cameroon.

Fourth, the federal government should enlist the support of citizens in the fight against the insurgents by compensating anyone who gives reasonable information to security organizations about the members of the group. Government should also ensure that such persons are protected against insurgent's reprisal attacks. The establishment of the 7 Division of the Nigerian army in Maiduguri is a welcome development.

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# CASHLESS POLICY AND THE QUEST FOR FINANCIAL INCLUSION IN NIGERIA

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## ABSTRACT

Increasing number of countries has adopted policies to accelerate the use of electronic channels and reduce the use of cash. The motivations for these policies vary: many are primarily concerned with reducing tax evasion, some with fighting crime, and others now explicitly linked to financial inclusion. Financial inclusion is the universal access to a broad range of financial services, at a reasonable cost, provided by a diversity of sound and sustainable institutions. The Central Bank of Nigeria (CBN) announced its Cashless policy in 2011 and commenced a pilot of the policy in Lagos State in April 2012. It was later rolled out to other cities that include Port Harcourt, Kano, Aba, and the Federal Capital Territory (Abuja). The policy, intended to reduce the use of cash, is in fact a package of measures with three key stated objectives, thus; to drive the development and modernization of the payment system in line with Vision 2020, to reduce the cost of banking services and drive financial inclusion by providing more efficient transaction options and greater reach and to improve the effectiveness of monetary policy in managing inflation and driving economic growth. In line with the aforementioned, the paper which is a literature-based seeks to examine the issues, benefits and challenges that need to be addressed for the policy to be effective in driving financial inclusion. It has been found out that changing the model of business service providers, provision of sound financial infrastructures, intensifying awareness campaign by all stakeholders, enhancing customer value proposition are key to the successful implementation of the policy to the end that financial inclusion is achieved. To this end, it is recommended that the government should intensify more effort in providing framework for successful takeoff of the policy in all states in the country. Similarly, other financial service providers should take more active role in awareness campaign, reinventing their business models, and enhancing customer value proposition.

**Key Words:** Cashless policy, Financial inclusion, Nigeria, Central Bank of Nigeria, Vision 2020:20

## INTRODUCTION

The Central Bank of Nigeria (CBN) announced its Cashless policy in 2011 and commenced a pilot of the policy in Lagos State in April 2012. It was later rolled out to other cities that include Port Harcourt, Kano, Aba, and the Federal Capital Territory (Abuja). The policy is expected to be implemented throughout the country by 1<sup>ST</sup> July, 2014. However, due to some reasons, it is now postponed until June, 2015.

The policy, intended to reduce the use of cash, is in fact a package of measures with three key stated objectives, thus; to drive the development and modernization of the payment system in line with Vision 2020, to reduce the cost of banking services and drive financial inclusion by providing more efficient transaction options and greater reach

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and to improve the effectiveness of monetary policy in managing inflation and driving economic growth.

As mentioned above, one of the cardinal objectives of the cashless policy is to actualize the Nigeria's Vision 20:20, which is an economic transformation blueprint which articulates "the long term intent to launch Nigeria onto a path of sustained social and economic progress and accelerate the emergence of a truly prosperous and United Nigeria" (Ovat, 2012:129).The blueprint expresses Nigeria's intent to improve the living standards of her citizens, taking cognizance of the enormous human and material resources and drive the economy to be among the top 20 economies in the world with a minimum GDP of \$900 billion and a per capita income of not less than \$4000 per annum (Nigeria Vision 20:20 20, 2009).

The economic blueprint intent is aptly captured in the vision statement that by 2020 Nigeria will have a strong diversified, sustainable and competitive economy that effectively harnesses the talents and energies of its people and responsibly exploits its natural endowments to guarantee a high standard of living and quality of life to its citizens (Nigeria vision 20: 20 20, 2009). To achieve the provisions of Nigeria Vision 20: 20 20, efficient and modern payment system is critical, which the cashless policy seeks to address.

In order to achieve the above stated objectives of the vision, the Central Bank which is the apex bank in Nigeria plays a major role towards the economic development process of the nation. The Bank came up with proactive measures as part of its mission statement to provide a stable framework for economic development through effective, efficient and transparent implementation of monetary and exchange rate policy and management of the financial system, has recently introduced a new policy tagged "Cashless policy".(Central Bank of Nigeria, 2011).

The essence of the policy is to shift Nigeria's economy from a cash-based economy to a cashless one. Thus, it is geared towards engendering an efficient payment system anchored on electronic-based transactions. The Electronic-based transaction seeks to drive the development and modernization of Nigeria's payment system in line with her vision 20:20 20 goal of being among the top 20 economies of the world by the year 2020 (Central Bank of Nigeria, 2011).

It is a truism that an efficient and modern payment is a key enabler and a sine qua non for driving growth and development of any nation. Therefore, the policy also aims at improving the effectiveness of monetary policy in managing inflation in the economy, reducing tax evasion, fighting crime, and now explicitly linked to financial inclusion, which is defined as "universal access to a broad range of financial services, at a reasonable cost, provided by a diversity of sound and sustainable institutions" (Porter, 2011., BFA, 2013).

## **STATEMENT OF PROBLEM**

Financial exclusion, which is the inability to access appropriate financial services, is a social problem attracting greater attention in recent times and which requires decisive measures from all stakeholders to manage its lasting effects. Low-income consumers are at greatest risk of financial exclusion. Being financially excluded, not only prevents people from free from poverty, but can also result in people falling deeper into the cycle of poverty.

Financial inclusion is a direct opposite of financial exclusion. So far, Nigeria ranks low in indicators of financial inclusion (World Bank, 2012., Demirguc-Kunt & Klapper, 2012).

That is why the Central Bank of Nigeria (CBN) and other financial system regulators across the globe have continued to aggressively initiate policies that would support financial inclusion. The most general recent definition is perhaps that proposed by CGAP (2011); financial inclusion is a state in which all working age adults have effective access to credit, savings, payments and insurance from formal service providers. Effective access involves convenient and responsible service delivery at a cost affordable to the customer and sustainable to the provider, with the result that financially excluded customers use formal financial services rather than existing informal service options.

The move to “cashless economy” however, has its own challenges which in Nigeria appear to be accentuated by the perennial problem of inadequate physical and social infrastructure. The introduction of the policy in Nigeria therefore brings up issues that touch on security, privacy, crime and computerization. Societal acceptance of the policy is therefore critical to its sustenance or the tendency to rebel against it by the common man on the street becomes imminent. However, as the financial institutions have implemented such things as debit cards, credit cards, internet banking it has slowly brought society into the acceptance zone whereby another step could be taken. Without society being able to understand the pros and cons of electronic cash, the full benefit of the cashless society may not be realised.

There are still fears that ATMs and POSs are yet to attain the desired efficiency to drive a cashless economy, maintain a working network and constant connectivity. There are several complaints from different quarters that sufficient facilities have not been provided to make the system smooth. The e-payment system is said by many who have tried to use it to be filled with hitches. Sometimes, one is charged for service not successfully rendered. There are, therefore, fears of possible loss of money through fraud.

While modern day business is all about electronic transactions, experts are of the view that cyber laws, as well as those governing e-payment, which will protect users of the technology in the cash-less policy, are needed. They argue that there is the need for controls and firmness of the laws on the industry and the electronic deals.

Even after the pilot scheme had taken off, most of the banks are yet to meet customers' demand on the new payment systems. For instance, there are reports of some banks being overwhelmed by demands for ATM cards. Lack of awareness and education, poor infrastructure, and insecurity in the cyberspace are issues that must be addressed to achieve penetration in the adoption of the cashless policy. The low level of awareness and education on the payment system are responsible for the pilot scheme being limited to Lagos and Kano, Aba, Port Harcourt and Abuja.

Therefore, this paper attempts to examine the issues, benefits and challenges that need to be addressed for the policy to be effective in driving financial inclusion find out how is the Cash-less policy relevant for financial inclusion in Nigeria. In other words, the study examines how Cash-less policy could lead to financial inclusion in Nigeria. Based on the foregoing issues at hand, the paper is designed to achieve the following objectives:

- i. Examine Cashless policy implementation in Nigeria.
- ii. Discuss the impact of the policy on financial inclusion
- iii. To examine the issues, benefits and challenges that need to be addressed for the policy to be effective in driving financial inclusion.

## LITERATURE REVIEW

### The Concept of Cashless Policy

The Central Bank of Nigeria (CBN) announced its Cash-less (meaning less cash) policy in 2011 and commenced a pilot of the policy in Lagos State in April 2012. The policy, intended to reduce the use of cash, is in fact a package of measures with three key stated objectives, thus; to drive the development and modernization of the payment system in line with Vision 2020, to reduce the cost of banking services and drive financial inclusion by providing more efficient transaction options and greater reach and to improve the effectiveness of monetary policy in managing inflation and driving economic growth.

According to Ovat (2012), Nigeria is a heavy cash oriented economy with retail and commercial payments primarily made in cash. Indeed, cash is a strong motivator in Nigeria's highly informal economy. Cash-based economy is not without cost to the banking system, government and individuals. High cash usage results in high cost of processing borne by every entity across the value chain i.e. from the CBN, to banks, to the operating entities and individuals as well. For example, the cost of printing new bank notes as a result of frequent handling of cash is said to cost the CBN a colossal amount annually.

It is also worthy of note that cash is an integral element that fuels several vices in Nigeria with negative consequences to individuals, corporate organizations and the government. These vices among others include corruption, revenue leakage out of government and corporate organizations' coffers, election rigging, armed robberies and other related crimes. In the light of the foregoing, the introduction of the cashless policy by the central bank of Nigeria (CBN) is applauded as a policy package with bountiful benefits as it seeks to encourage cashless payments, thereby arresting some of these cash related vices. The pilot project in Lagos State pegs daily cash transactions over the counter for individuals and corporate bodies at one hundred and fifty thousand naira (N150,000) and one million naira (N1,000,000) respectively. However, these amounts were later reviewed upward to five hundred thousand Naira (N500, 000) and three million (N3,000,000) for individuals and corporate organizations respectively. Any Over the Counter (OTC) cash transactions above the aforementioned amount for individuals and corporate organizations attract a charge.

The cashless policy applies to all accounts, including collection accounts and the cash limits apply to an account irrespective of channel (i.e. whether it is over the counter, ATM, third party cheques cashed over the counter etc). As far as cash is involved, any withdrawal or deposit that exceeds the limits attracts a service charge (Central Bank of Nigeria, 2011). The charge is borne by the account holder and is about N100 per every 1000 in bank charges (Ovat, 2012). The limit however does not prevent customers from withdrawing or depositing beyond the pegged limits but such customers should be prepared to pay the aforementioned penal fee for transacting in excess of N500,000 and N3,000,000 for individual and corporate organizations respectively.

Desirous of making the policy succeed, Ovat (2012) has noted that, the apex bank has introduced a number of financial services which among others include mobile money payment system, point of sale terminals, Alerts and Automated Teller Machines (ATM). Essentially, Mobile Payment System introduced at the dawn of January 1, 2012 allows users to make payments with their GSM phones. It is a saving device and transfer system that turns GSM phone into a saving account platform, allowing owners to save money in it and also make transfers. The Point of Sale (POS) terminals are installed by businesses and connected to the Nigeria Inter Bank Settlement System for purposes of making payments during business transactions.

As the financial agent of the Federal government, the CBN introduces the policy to minimize money laundering, curb terrorist financing and other economic and financial crimes in Nigeria (Central Bank of Nigeria, 2012). More importantly, the policy aims at reducing the amount of physical cash in circulation and encouraging more electronic-based transactions with a view to meeting the requirements of Nigeria's vision 20:20:20 transformation agenda (Ovat, 2012).

Cashless policy consists of a package of measures directed at achieving the objectives of the policy. One of the measures is to promote awareness through market education and sensitization. This is done directly by the CBN and by banks, separately and in conjunction, through high profile messaging in all forms of media. Nigeria's cashless awareness campaigns are core measure of the policy as these can help to overcome the potential market failure by disseminating public messages. With this, providers will find it easier to market electronic services to unbanked customers as well as to those banked customers who do not use their accounts and e-channels (Enhancing Financial Innovation &Access, 2013).

However, information and communication experts in Nigeria believed that prospective users of POS are not aware of the system. If there is awareness, the penetration of the system will be high (Ilesanmi, 2012). It can be deduced here, that the higher the awareness, the higher the diffusion of the POS and vice-versa (Abubakar & Ahmad, 2013). Reffat (2003) observed that lack of knowledge of how government carry out its function leads to citizen's non-involvement to benefit from government services.

Interestingly and specific to POS adoption in Nigeria, researchers and ICT experts attributed the slow adoption of POS to lack of awareness. For example, Yaqub, et al., 2013) believed that the reason for slow adoption of e-payment in Nigeria is lack of awareness of advantages of the system; hence there is need for awareness to aid the diffusion of POS in Nigeria (Ilesanmi, 2012). Also as stated in Chiemeka and Evwiekpaefe, (2011:1723), "The Economist Intelligence Unit, 2006 noted that the introduction of e-commerce services is hampered by a lack of public awareness on how to use the technologies". However, it should be noted that some of these researcher assertions were not empirically tested.

Mofleh, Wanous, & Strachan, (2008) defined awareness as citizen's knowledge about the existence and advantages of using the e-government. Similarly, a variable related to awareness is 'technology cognizance', which was studied in Nambisan, Agarwal, & Tanniru, (1999). Rogers, (1995) cited in Nambisan, Agarwal, & Tanmiru (1999: 372) defined it as "user's knowledge about the capabilities of a technology, its features, potential use, and cost and benefits, i.e., it relates to awareness-knowledge". Based on the definition of awareness and technology cognizance, the current study coined and operationalized the construct as 'cashless policy awareness' and defined it as the user's knowledge of the existence, features, costs, benefits and simplicity or otherwise of using cashless economy channels in their businesses.

## **THE LINK BETWEEN CASHLESS POLICY AND FINANCIAL INCLUSION**

There is clear correlation between proportion of electronic transactions in a society and the proportion of people banked: in cash lite societies like Canada, for example, almost everyone is banked: 96% of adults have an account at a formal financial institution, and even for the poorest quintiles of the population, this proportion drops only to 93% (World Bank, 2012).

According to EFInA (2012), there are four channels through which Cash-less policies might be expected to promote financial inclusion in Nigeria over time:

- a. Changing the business models of providers
- b. Making payment infrastructure more available and affordable
- c. Increasing awareness of electronic channels
- d. Enhancing the customer value proposition to use formal financial services.

### **Changing the Business Models of Providers and Taking Financial Services Closer to the Customer**

Financial inclusion will only advance at large scale if it can harness, not limit, the financial incentives of banks and other providers in the service value chain. In 2012, the Bankable Frontier Associates revealed that transactions conducted at a bank branch are expensive for banks: across a sample of large retail banks in developing countries (like Nigeria), the cost per branch transaction ranges from US\$1 to US\$3, compared with a cost per internet banking transfer which can be as low as US\$0.03 to US\$0.05.

Banks therefore have to pass on the cost of using these channels to customers, either by charging directly or by rationing access only to higher value customers. The only way in which banks will be able to serve low income customers sustainably will be through offering a range of electronic channels for customers to use.

In its submission, EFInA (2012) stated that Nigeria has begun to change business models

- a. Prevalence of ATM cards has increased nearly 9-fold between 2008 and 2012
- b. With its objective of reducing the cost of banking services, the Cash-less policy recognizes the importance of harnessing the financial incentives of banks as well as customers in the service value chain.
- c. Nigeria's Cash-less policy has so far forced deposit money banks to reconsider their strategies to deploy electronic channels to the extent that this enables banks to develop lower cost service offerings for transactions, in time this should also enable and encourage them to undertake more outreach to low income customers.
- d. The CBN introduced agent banking guidelines in February 2013, citing promoting and deepening financial inclusion, as the main objective.

### **Making Payment Infrastructure more Available and Affordable**

Modern national payments system infrastructure has relatively high fixed costs in deployment and maintenance. However with high volumes of transactions the marginal costs of usage are low. Hence, once the initial investment is made, higher volumes translate into lower cost per transaction. It will thus be possible to extend the system – increasingly also to traditionally financially excluded areas – requiring low marginal cost to cover the much bigger volume of transactions, thereby favouring a transition to ‘cash lite’ (EFInA (2012., CGAP, 2009).

According to EFInA (2012), Nigeria has gradually been improving its payment system

- a. With the Nigerian Cash-less policy and other initiatives, the CBN has already focused attention on the national payment infrastructure. For instance, Nigeria has recently consolidated and extended activities of the national payment switch, Nigeria Inter-bank Settlement System (NIBSS), through which all card and mobile payment providers are required to connect. This infrastructure has to be fine-tuned to reduce error and failed transaction rates as the result of dysfunctional systems, networks or interfaces: NIBSS reported errors for on average one in five of total attempted transactions – of these failures, 40% were due to customer error (e.g. exceeding withdrawal limits or insufficient funds available) while 51%

were due to the system or network (e.g. issuer or switch inoperative, system malfunction or interoperability errors (NIBSS, 2012). Provided that the infrastructure is robust and trusted by customers, it may be used more widely in future to extend banking outreach.

- b. In addition, improvements in infrastructure (including reliable and available mobile connectivity and electricity to power devices) are vital, yet are beyond the CBN's control. However, there are good reasons to believe that, over time, renewed investment in network infrastructure, such as is planned by major mobile phone companies, means that this will slowly improve, at least for urban hubs in Nigeria.

### **Increasing Awareness of Electronic Channels**

The process of raising awareness about the potential benefits of using electronic channels, as well as the safeguards necessary, has the qualities of a public good service. This means that it is likely to be under-supplied by banks and other providers who do not themselves capture all the benefits but have to incur the costs (EFInA, 2012., Chima, 2013).

As pointed out by EFInA (2012), Nigerians awareness of e-channels is increasing considering the following:

- a. Nigeria's Cash-less awareness campaigns are a core measure of the policy. These can help to overcome the potential market failure: By disseminating public messages and increasing awareness, providers should find it easier to market electronic services to unbanked customers as well as to those banked customers who do not use their accounts and e-channels.
- b. Already, around 63% of Lagos consumers interviewed were aware of the Cash-less policy, although they were typically vague about what it means. This included 39% of the unbanked, which may make it easier for providers to engage with unbanked consumers in future (Bankable Frontier Associates, 2013).

### **Enhancing the Customer Value Proposition**

As long as the main use of bank account is simply to receive at most one or two electronic payment each month which then converted into cash at an ATM or branch, that account will not be 'daily relevant' as part of daily life and may have a limited effect on financial inclusion beyond the percentage banked: the bank account then is at best simply a means of temporary storage of value, not of electronic payment or transactions. Moreover, the proposition to an unbanked person to take up an account may be limited, especially if it is inconvenient or expensive to get hold of their cash. However, if the value proposition extends to offering a range of simple, clear and affordable services which add genuine value, it is much more likely that unbanked customers will want to become banked. The types of electronic payment services which are clearly in demand in many places include, bill pay (Persons-to-Businesses) and remittances (Persons-to-Person). If e-payment options were extended to receive or make payments of certain types of common government transfers (e.g. social transfers or pensions), fees or taxes, this could further increase the benefits to customers, such as saving time and costs by not having to get to or queue at payment points.

According to EFInA (2012), Nigeria needs to enhance the customer value proposition considering the following:

- a. The data from the EFInA Access to Financial Services in Nigeria 2012 survey shows that bank accounts are typically a temporary cash repository: 68% of

- banked adults tend to perform cash withdrawals 0-2 times per month and 73% perform cash deposits 0-2 times per month with their main bank account to deposit cheques, pay bills, complete electronic bank transfers or repay loans at least once a month.
- b. Less than 1% of banked adults consider POS, mobile phone or internet to be the most important method of transacting with their banks, while 58% and 41% consider bank tellers and ATMs, respectively, to be their most important bank channels.

These pathways linking electronic delivery to financial inclusion have been demonstrated in different ways and to different extent in other markets. The benefits accrue as a result of:

- a. Access to a basic stored value account – to build lump sums for investment and self-insure against emergencies.
- b. Electronic payment channels connecting poor people with other people (especially family members) – to receive remittances or emergency payments.
- c. Electronic payments channels connecting poor people with businesses and public or private institutions, including government and utility companies in particular – to make payments for school fees, medical treatment or utilities and thereby reduce hurdles to accessing essential services or utilities; to receive social transfers or emergency payments from government programs
- d. Access to enhanced bespoke financial services – to have customized, available and relevant financial services such as savings or insurance due to reduced transactional costs and providers using payments data to profile and better understand their clients.

These pathways show how policies to promote electronic payments can support financial inclusion in developing countries like Nigeria. A nascent yet growing body of research goes beyond this link and documents how poor households may benefit from access to more electronic channels (Radcliffe and Voorhies, 2012). For instance:

- a. In Pakistan and Tanzania, branchless banking systems have brought considerably more transaction points to customers, though their ubiquity, reliability and availability across the cross countries has not necessarily reached the level of trust and ubiquity such as M-PESA's in Kenya.
- b. In Kenya, a study found that, four years after the launch of M-PESA, more than 70% of Kenya's poor and unbanked households have at least one M-PESA user (Jack and Suri, 2012).
- c. In Kenya, research has also shown how pervasive access to fast, safe remittances using mobile money help to cushion vulnerable families following shocks like health emergencies or disasters – since they are able to receive support from family quickly and cheaply.
- d. In Niger, a random control trial showed that women receiving food security benefits through mobile money reduced their travel from 4km to 0.9km by accessing their money from their phones through an agent.
- e. Similarly, a study of a government programme in Colombia that provides payments to poor households through bank account illustrated time savings of

recipients: once they began receiving electronic payments, they waited for up to five hours less to get their money compared to the time it took to receive cash payments (CGAP, 2012).

- f. In Haiti, beneficiaries of a recent pilot programme that provides welfare payments by mobile money transfer have the electronic payments to be safer than cash, in part because of the improved confidentiality (MacDonald, 2012).
- g. In India, an assessment of government-to-person payments estimated that linking every household to a digital payments system and automating the government payments could provide low-income households with government benefits, while saving the government up to \$22 billion per year (McKinsey & Co., 2010).

## **CONCLUSION AND POLICY IMPLICATIONS**

While still rather glimpses of impact and often quite confined to relatively small groups, the pathways and international examples provided above suggest that there is indeed reason to believe that the Cash-less policy in Nigeria can have a positive, reinforcing effect on financial inclusion in time. However, none of these linkages are automatic or guaranteed. It is possible, for example, that, if the Cash-less policy is introduced in a way which reduces consumer or merchant confidence in the use of electronic channels, then it could have the reverse effect: setting back the acceptance of electronic payments. Therefore, the positive link of the Cash-less policy to financial inclusion should not be taken for granted but carefully assessed over time, and measures need to be taken to maximize the inclusion effect.

More impact on inclusion in the medium term may come by widening the angle of the policy focus to payments by government and business to excluded people; that is, by sharpening the focus on larger payers where more money can be ‘born electronic’, rather than trying to get people to turn cash to electronic value via retail channels like merchant alone. Here, the bottom line is that the CBN should take a more active approach to monitoring the implementation of the current guidelines for salary disbursements and government tax collections at the state and local levels, linked to, or even prior to, any roll out of the current Cash-less policy.

Clearly, an inclusive approach to Cash-less cannot rely solely on card-based solutions – especially use at POS terminals – alone; it must also rely on deploying card-less channels for payments, such as mobile money. The government should come up with policies that will help small businesses to collect soft loans from the formal financial institutions. This is because the basic measure of financial inclusion, as often as it's said, is access to a form of savings account. Globally, 2.5 billion adults lack this type of access; it's about 50 percent of all adult in the world. In Africa, the story is even worse, where there are about 361 million adults without basic access to a form of savings account; that's about 76 percent of all adults across the continent. Right now, 24 percent have an account.

Financial inclusion cannot be forced on people. While they may be forced by government or employers to receive salary or benefits in a particular way, once they have received it, they will ultimately manage the instruments which they know and trust. Consequently, it is very important that the Cash-less messaging to individuals going forward stresses the issue of benefits and incentives more, and less the issue of additional fees, since the latter are perceived (and even described in interviews with customers) as ‘penalties’. While messaging is presently targeted at getting already banked people to use their cards, the message could evolve to targeting people who do not yet have accounts,

propose ways to acquire them. In this way, the Cash-less awareness campaigns could be linked to, and even become, a focal point of the financial literacy and capability exercises which are proposed as part of the National Financial Inclusion Strategy. It is more likely that targeted campaigns around available products, rather than vague general literacy initiatives, will succeed better in promoting uptake and usage

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# CITIES IN THE 21st CENTURY: A CHALLENGE FOR SUSTAINABLE URBAN SPENDING IN BAUCHI- NIGERIA

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## ABSTRACT

This paper is aimed at explaining the relationship between growths of cities in the developing countries and urban governance in the 21st century. The recent development has posed numerous challenges to urban finance as well as sustainability of urbanization and its development. In order to finance viable projects, a resource at all levels of government has to be mobilized and also put into proper use for urban management. Therefore, the paper examined the phenomenon of urban politics in one of the major cities of Nigeria. The study conducted documentary research of city development in the 21st century, with specific reference to Bauchi Metropolis in Nigeria, to give explanation and predict what will be the future of urbanization and sustainable development in developing countries. It assumed that high level of poverty, decay in social infrastructure, legal obstacles and pattern of physical planning are found to be the major predictors of problem bedeviling urban governance.

**Keywords:** Cities, governance, sustainable development, growth, urban finance

## INTRODUCTION

The growth of cities in the world today has both positive and negative consequences. Where cities managed well tends to exhibit significant opportunities for urbanization, innovation, investment and development. Thus, city managers must know that, cities growth offer grounds for economic growth, sustainable development and urbanization, since traditionally cities were known to be the focal area where commercial centers and opportunities are located. But where the reverse is the case, cities pose numerous challenges to urban governance especially in the area of financing human development projects. Cities in the 21st century, particularly in the developing world grow without corresponding improvement in social infrastructure, thereby leading to outbreak of diseases, social problems and increasing demand and pressure for the provisions of more social services for the people. Are cities growth and urban government finances constraints a driving force in lack of sustainable development in most cities in the developing world? Is poor cities management more likely to hinder sustainable development? These questions are vital in the analysis of cities development in the 21st century.

Previous literature on city growth and development had focused more on urbanization and development, intergovernmental relations and urban finances constraints. This paper is an attempt to add to existing literature on city growth and urban management. Most literature has been mainly on whether city growth posed challenges to social service provisions, particularly in the developing countries. Contributions to city

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development and urbanization include Sridhar (2010) and Cohen (2006), who believed that city grow because of proximity and improvement in economic activates like the use development of industries and growth of scientific exchange. This led them to conclude that managing urban growth has become one of the most important challenges of the 21st Century. However, recent findings by Kugelman (2013), elaborated the changing trends in city growth, positing that on average city grow because of factors like social problems. This assertion has broadly consistent with Abdullahi et al (2009), which also find the role of social insecurity in city growth.

### **INDICATORS OF CITY DEVELOPMENT IN THE 21ST CENTURY**

City growth is widely known to be the factor that makes governance more difficult. Some urban growth is highly associated with low social infrastructure provisions, poverty, poor economic growth and increase in crime. These are the major challenges bedeviling urban management and economic outcomes. While the challenges are enormous, indices from the United Nations Department of Economic and Social Affairs Population Division revealed that: world urban population is not distributed evenly among cities of different sizes. Over half of the world's 3.6 billion urban dwellers (50.9 per cent) lived in cities or towns with fewer than half a million inhabitants (United Nations 2012).

From the above, we can argue that, cities development or its rapid growth in the world most have positively or negatively affects the relationship between the urban government and the public. Therefore in developing countries, with incredibly low level of resources to meet the challenges, the growth is to some extent tends to be negative to urban government. And, this is always the result of insufficient resources and difficulties in its management. The question to ask is what are the indicating factors through which city growth will be understood?

The first indicator of city growth is the increasing number of the population in urban centers and this can be caused by a number of factors such as rural– urban migration, natural population increase, high growth rates in economic activities and annexation (Cohen 2006). The second indicator is largely driven by migration through which people entered into cities to escape war, conflict, insecurity, natural disasters (Kugelman 2013), or outbreak of diseases. It is true that cities are growing faster in the developing countries than in the developed countries considering the existential reality and complexities associated to these indicators.

### **THE EXPERIENCES OF BAUCHI CITY IN NORTHERN NIGERIA**

The city of Bauchi is the administrative capital of Bauchi state (one of the 36 states of Federal Republic of Nigeria) which account for about 5.3% of Nigeria's total land mass or 49,359.01 square Kilometers (Mu'azu 2007). The total population of the city stood at 493,730 out of 4,653,066 according to 2006 Census final results (FGN 2009), and it is an important trade center as well as home for many immigrants from neighboring states. It is also popularly known as civil servants town that witnesses the influx of visitors from southern part of Nigeria aiming to establish business. The city is now growing rapidly as in the case of other major cities in Nigeria, where the rural populace move out in large numbers temporarily or permanently to towns and cities to seek out new opportunities, improved livelihoods and better standard of living (Abdullahi 2009).

Apart from rural-urban migration to Bauchi city, other factors like crisis, inter-groups conflict and Islamists group insurgency in the northern region also contributed to over growing population of the town. This new trend poses a greater challenge to city managers especially towards improving the living condition of the inhabitants. The most

challenging one is the too much demand for services and infrastructural facilities which is central to promoting sustainable development and increasingly complex for urban government finances.

A typical example is the ever increasing demand for adequate water supply within the metropolitan area. Since city growth has a great number of impacts on housing, the city expanded with the development of more housing in a newly developed city sites. This also resulted to a growing demand on urban government to provide sufficient water to the public. But insufficient funding and lack of city planning system to meet up with the challenges of urbanization, nothing concrete to manage the problem has recorded. In a similar vein, the issue of housing itself has exhibited another challenge to urban governance; therefore the main city is now over crowded with very high cost of living as well as high housing rent. Though government provides some immediate solution through Public-Private Partnership advocated by new public administration, the demands for government houses even among civil servants is very high. And what is on ground is not sufficient even to provide for civil servant not to mention the general public.

## **THEORETICAL BACKGROUND**

A reasonable starting point for an analysis of city growth and sustainable developments is to consider that urban government is to foster individual choice and provide essential social infrastructure by virtue of processes that are multidimensional in spectrum. Public choice theory and urban regime theory has provided discussions as well as theoretical background that links city development in the 21st century and sustainability of urban spending. Public choice theory sees this from the political economy approach that cities are centers of capitalist accumulation (Potter 1980). That cities and set of cities has become a mechanism through which international economic relations incorporates countries into globalism. Public choice theory is an attempt to explain the collective outcomes which emerge from the political process according to the incentives facing the different individual agents within the political system (Pennington 2000). On the other hand, regime theory a neo pluralist approach to urban politics explains power within local communities where urban government or rather local authorities lack comprehensive powers to govern. With its distinct approach to the study of urban government and issue of power, the theory provides framework for analysis on key aspects of urban government. It also came up with new conceptual framework about causal relationships and behavior in urban politics (Stoker 2009).

The above theories fundamentally explained the relationships between city growth, urban government finances and sustainable development. The theoretical postulates pinpoint vividly the reality of public choice theory in linking city growth with economic growth and free market economy. While the regime theory gives us frame work for analysis of power relations especially in the area of state powers over local governance which seriously undermined mandated functions of municipalities to improve the living condition of its citizens.

## **METHODOLOGY**

The Bauchi city is located in the Bauchi local government area of Bauchi State in the northeastern Nigeria. The town constituted of 22 wards and is a key commercial center with a heterogeneous population from different parts of Nigeria. Therefore the inhabitants of the city constitute both natives and settlers. In the study area clusters of ethnic groups including Hausa, Yoruba and Igbo, as well as the indigenous tribes are the dwellers of the city. The study has benefitted from secondary sources which enable the paper used

documentary analysis in the analysis of data. The documents analyzed comprise official publications, journals and books.

## **URBAN FINANCE AS TOOL FOR SUSTAINABILITY**

Borrowing from Stren (1997), improving the level of service delivery is partly a question of sheer resources (as against a rapidly growing population) and also a question of governance and allocation. Thus, the viability and ability of urban government finances in the cities has stand out to be the major ingredient for sustainable development. To effectively administer city management, funding of local government in the cities as well as improved services delivery can invariably lead to the possibility of achieving good result. But constraints from governance process have limited considerably the degree to which municipalities can assess and execute some important economic and social development programs. This is a challenge to urban management and the general wellbeing of people living in already growing cities irrespective of their geographical location. In explaining these constraints in intergovernmental relations, Wolman (1997) states that, local governments in urban areas are constrained entities, therefore their ability to affect the wellbeing of their citizenry is limited.

In Nigeria, the constitutional financial constraint on local governments to use resources allocated to them without state government regulations have restricted the power of local government to function even within their jurisdiction. The federal structure in Nigeria constrains local governments' ability to mobilize and use revenue to meet their obligation in a sustainable way (Adedekon 2006). Moreover local government system as the third-tier of government does not have adequate finances to enable it cope with numerous developmental challenges. The legal constraint is clear in the 1999 Constitution of the Federal Republic of Nigerian with amendments 2011. Under section 7(1) and (3), Cap (1) the constitution states that:

- (1) The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils.
- (3) It shall be the duty of a local government council within the State to participate in economic planning and development of the area referred to in subsection (2) of this section and to this end an economic planning board shall be established by a law enacted by the House of the Assembly of the State (Federal Government of Nigeria, 2011).

While subsection (1) stated above, tied local government to states in terms of finances and functions, subsection (3) placed municipalities under supervision in issues related to service delivery and management of resources. It is frequently asserted that, principle of diversity has given federal system chance in its intergovernmental relation to provide scope for variety and differences to all level of government in order to ensure public goods are supplied. But indirectly the law has put local government operations under states dictates and legislation. So the formal constraints imposed on Local Government has limits the capability of urban government to deal with challenges of city growth. Therefore, cities in the 21st century are for sure bedeviled by the challenges of sustainable urban finances for their urbanization and development.

In Bauchi, the local government council has exhibited its lack of resources to control the challenges posed by growing urbanization. In spite of monthly grants allocated to the council by the federal sharing formula, limited fiscal autonomy hampered developmental goals and urbanization. It is thus, Ikeji (2011), state that, there are several challenges and contending issues confronting intergovernmental fiscal relation in Nigeria and there is also need to resolve the imbalances between assigned functions and tax power. The phenomenon of city growth has change the level of water supply, housing scheme, and so many services of collective benefits in the town. What is supplied is not sufficient to the demands of the people and this remains the problem of financial constraints. Consequently, urban government operations are frequently undermined by growing deficits (Davey and Devas, 1997).

Like most of the largest cities in Nigeria, the city of Bauchi lacks ability to mobilize resource for their economic and political survival locally. Therefore the local government should embark on sustained grassroots mobilization of resources mostly through local taxes so as to ensure that resources locally mobilized is apply in city management and development. There should be a will to raise and collect taxes simply because what is usually received from the central government is not enough as well as helpful to the growing demands of city growth. In order to finance some viable projects, local government must be given adequate tax power and also share major tax bases with other tiers of governments. Local governments are the nearest government to the people at the grassroots in Nigeria they are strategically located to play a pivotal role in national development (Adedokum, 1997).

### **CHALLENGES AND THE NEED FOR CHANGE IN URBAN GOVERNANCE**

It is obvious that states have control over municipal activity in the form of legislative, administrative, and judicial control. But these powers exercised over municipalities have proved to have negative impact on local government financing. For instance, in USA cities are faced with many problems that are, at the core, financial in nature. These comprises the extent to which cities in particular are limited in their taxes and borrowing abilities by state law and the degree upon which cities can spend money on specified services (Ross and Levine, 2006). These also share commonalities with what is obtainable in Nigeria, where Local Government's power in the area of financing is constraint by section 7(1) and (3). The joint-Account or rather powers over city development between state and local government is purely legislative prescription and supervision in action. Therefore, the incorporation of local financial powers implied what Martin called; state appropriations for subsidies and grants in aid where cities actively seek financial aid (as in the case of USA) and approval as the case may be in Nigeria to meet up their needs. The state has to support their needs in one hand and municipalities on the other hand must also accept state policy direction (Martin, 1990).

It is understood that cities grow rapidly nowadays. And their growth has both positive as well as negative impacts on urban management, urbanization and sustainable urban government finances. Its positive impacts usually turn to a blessing to the city and the economy. But the negative site of the mixed blessings always came with major challenges to urban management, of which effective management is needed. Part of the problem has been the inability of city managers to provide required services to better the living conditions of city inhabitants.

Local government being an important level of government within democratic regime in Nigeria and also relevant unit undertaken grass root services delivery is faced with numerous challenges. There are also wide expectations from the public simply because the local government is best positioned to meet the needs of people at the grassroots.

The local government should be sufficiently empowered with the enabling laws; staff and resources. Most important they require reasonable measure of autonomy to initiate and fashion out policies that will enable them successfully operate.

To overcome these problems, certain changes are required to ensure more effective and efficient services are rendered through improved local management in order to enhance the general welfare of the citizens (Kroukamp and Lues, 2008). To them, this can be achieved through “citizen-centered Programme delivery”, which centrally placed emphasis on the traditional role of public sector in service delivery via modern administrative reform. Focusing on this improved local management, the challenge of city development can also be managed when urban governance utilizes the potentials of urbanization towards improving economic growth. Secondly, the pressing problem of poverty, lack of basic needs, decay in social infrastructure, limited financing which adversely affected the way local government operate can also be dealt with through private sector involvement and existence of autonomous municipalities. Thirdly, efficient decentralization in revenue collection and utilization at the local level may likely enable urban governance whereby municipal governments within its jurisdiction may have the capacity to perform their mandated functions. And these may surely create enabling environment for economic growth and development as well as achieving sustainable city development.

Though most of the urban financing in Nigeria came directly from the Federal government and prove relatively inefficient to deal with emerging challenges of city growth. Local Government taxes are minimal hence this limits their ability to raise independent revenue and so they depend solely on allocation from the federation account (Adedokum, 1997). Use of grassroots development which involves acceleration of economic growth, reduction of inequality and the eradication of absolute poverty can assist the city managers tackle major challenges bedeviling the smooth running of the city. Adhering to requirement of grassroots development will inevitably meet the basic needs of the people i.e. food, shelter, clothing and health care delivery. Thus, local government development should be planned in a way that the context of providing sources of portable water supply, ensuring primary education; rural agricultural production, primary health care services, in order to ensure speedy urbanization and development.

Participatory planning and budgeting is another avenue for strengthening accountability in the area of city governance. There are evidence that in some countries where citizens are organized into committees [such as neighborhood development or ward or district development committees] to assist the local governments in the planning and preparation of the yearly capital budget. Therefore such work of development partners may support the creation of a forum that brings together the various actors involved in the local level including the citizens for periodic consultation and deliberation on matters concerning the social welfare of citizens and the economic well-being of the whole community.

Oates (1993) contends that “there are surely reasons, in principle to believe that policies formulated for the provision of infrastructure and even human capital that are sensitive to regional or local conditions are likely to be more effective in encouraging economic development than centrally determined policies that ignore these geographical differences” There is a great relationship between decentralization and economic growth and behavior for economic fundamentals within the decentralized jurisdiction is a matter that remains an empirical issue and discussions must be country specific.

## **CONCLUSION**

City growth especially Nigeria, is rising a serious leadership challenges to city managers. Therefore, local government council in Bauchi is not exceptional in encountering with these key problems associated with sustainable urban governance finances. But, as we see from our investigation, the problem of local finances has huge problem in terms of effective and efficient local governance and proved that, for sure poor city management has demonstrated its impacts on sustainable development of growing cities. It can be overcome with good intergovernmental relations, improved local management performance via involving third sector and above all ensuring effective urban management through quality financial administration.

It is fundamental to note that without viable resources to support local government operations and ensure successful provision of social infrastructure. While the local authority needs some degree of autonomy to function effectively and efficiently, the federal government seems to exercise too much control over distribution of resources. The ability to generate sense of belongings, safety and satisfaction among populace lies in urban government effective and efficient as well as capability to handle city growth and development challenges.

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# **COLLABORATION PARTNERSHIP MANAGEMENT FOR GREEN OPEN SPACE OF STRATEGIC NATIONAL WATERSHED IN INDONESIA**

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## **ABSTRACT**

This research is motivated by the phenomenon of the destruction of the watershed of Brantas River in Indonesia. This study aims to develop a model of collaboration partnership management (CPM) for green open spaces of Brantas River. Factors studied were institutional and government relations, private sector, and citizens which include: control functions, coordination or coherence, consensus, community participation. Determination of the research object is purposive, in East Java. The method used was a qualitative method. The research subject is the city government, private and citizens, the Department of Public Works, Department of Irrigation and Jasa Tirta Public Corporation. Data was collected by in-depth interviews, observation, focus group discussions (FGD), and documentation. The data were analyzed by qualitatively description. The results of the study are: 1) the lack of Partnership Collaboration among stakeholders in the management of green open space Brantas River; 2) management institutions have committed in the management of green open space Brantas River, but still run a partial and less integrated. The conclusion of this study is CPM models can improve the effectiveness of the management for green open space of Brantas watershed. Recommendations of this research is the need to build an alternative model of the coalition force citizens are bottom up.

**Keywords :** Green Open Space , Watershed , and Urban Politics

## **INTRODUCTION**

Brantas River is the biggest and longest river in East Java Indonesia. Since 2006, this river has been decided by the Indonesian Government with Government Regulation (PP) 42/2008 about Water Resources Management as a national strategic river in Indonesia. In 2014 the condition of the Brantas River upstream was damage caused by shrinking number of springs in the upstream areas of the mountain region is the source of the Brantas, Arjuno, Welirang, Kelud, Kawi, and Wilis Mount. Springs located in Batu has dried, which up springs 11 while 46 decreased spring discharge of 10 m<sup>3</sup> / second to less than 5 m<sup>3</sup> / second. Decreasing the spring caused by reduced water catchment areas. A total of 16 regions during the Brantas River using water as raw material drinking water of 14.4 m<sup>3</sup> / second in 2005 and will increase to 24.1 m<sup>3</sup> / second in 2020. If there is no improvement with better management of the Brantas River, in 2020 East Java will experience a water deficit, because the supply of Brantas, which reached 39.62 m<sup>3</sup> / second will not be able to meet the water demand in 2020 reached 43.12 m<sup>3</sup> / second (Perum Jasa 1 Malang, 2010). The focus of this research study is: 1. How institutional stakeholder relationship management of green open space in the Brantas River Basin? 2. Is Green Open Space management Watershed has led to the concept of

Collaboration Partnership? 3. How Collaboration Partnership Model formulation development in watershed management to achieve sustainability Brantas River.

## **CONCEPTUAL/THEORETICAL FRAMEWORK**

In this study there are two approaches used in understanding CPM. The first one is to view this practice at the stakeholder relationship. Collaboration Partnership is a collaboration of various parties, individuals and groups. According Notoatmodjo (2003), the partnership is a formal collaboration between individuals, groups or organizations to accomplish a particular task or goal. The principles of partnership are: 1) equality; 2) transparency; and 3) mutual benefit. The same thing was stated by the Directorate General of PHPA (1998) that the development of partnership required an understanding and the development of essential elements: a) the common perception of a common goal, b) trust, c) mutual respect, d) openness, e) equality, and f) willingness. CPM can create a synergy relationship pattern between the actors. This model contains the elements of the development potential if developed optimally will be able to overcome adversity Green Open Space management (David, N., 2003) of the Brantas River.

The second approach is to look at CPM at the sustainability green open space of Brantas River (Sulistyaningsih, 2010-2012). Collaboration Partnership Management for green open space Brantas River can be applied from upstream to downstream. The importance of management in the upstream are: 1) the upstream watershed ecosystem is an important part, because it has the function of protection against the entire watershed, namely in terms of water function; 2) changes in land use in the upper watersheds not only affect the activities that take place in the upper watersheds, but also will have an impact in the downstream areas in the form of changes in discharge fluctuations and transport sediment, and dissolved materials in the system other waterways ; 3) Ecosystem Watershed upstream of an important part, because it has the function of protection against the entire watershed, namely in terms of water function. Definition of green open space is an elongated area / path and / or groups, whose use is more open, a place to grow plants, whether grown naturally or intentionally planted (Undang-Undang Penataan Ruang Nasional No. 26, 2007). Definition of open space has different meanings depending on the perspective adopted. Open space can be related to all landscape; tap elements (hard cape which includes: roads, and sidewalks), parks and recreation space in the city. The elements of open space also includes a green field, city green space, trees, fences, plants, water, lighting, paving, kiosks, bins, drinking water, sculpture, and hour. Overall these elements must be considered to achieve comfort in urban design. Open space is an essential element in the design of the city (Darmawan, 2003: 18)

Forest is one of the green open space of which were contained in the upper river and watershed. Forest has the function to absorb water through photosynthesis and store it in a rooting in the soil. Some research suggests a link between the straight and the real existence of the jungle by the number of points springs. The loss of forest was accompanied by a reduced number of points springs (Zaini, 2005). According Asdak (1995) forest vegetation plays an important role in the hydrological cycle as retaining water before it reaches the soil surface and then absorbed in the process of infiltration. Thus the existence of the forest is crucial in the hydrological cycle is reflected in the condition of the water system in the region Watershed (DAS).

Upstream watershed ecosystem is an important part because it has the function of protection against all parts of the watershed in terms of water function. So that land use change activities are carried out in the upstream watershed will not only affect where

these activities take place (upstream) but will also impact downstream in the form of changes in discharge fluctuations and transport of sediment and dissolved material in the water flow of the other systems (Asdak , 1995).

CPM model development basically refers to the synergistic relationship of government and citizens. The synergy between government and citizens is an important element in the implementation of good governance (UNDP). Government or the state is an institution that has an important task is to realize sustainable human development (sustainable development) which include protecting the environment, maintaining social harmony and economic stability (Wildwood).

## METHODOLOGY

This study utilized a qualitative approach employing case study method (Islamy, 2004) Primary information derived from 5 key informant, who chair on many governmental office and 2 informant councilors who served office non government organization. This study used direct observation of the relationship of government actors, private sector and citizens are viewed from the institutional, control functions, coordination and integration, and community participation. This study not only used observation and interview, but also used focus group discussion (FGD). Data analysis technique used interaction models. The data basically have analysis since the data collected, even at the time of collection. This interaction method basically involves: (1) Data reduction is the process of selection, focusing, simplifying, and abstraction from existing in the field notes; (2) Display the data which is an assembly of information organization that allows the conclusion that research can be done; and (3) that the depiction conclusion drawing conclusions (Miles and Huberman, 1984).

## RESULT AND DISCUSSION

Based on observations in the field (observation), interviews, and documentation of data (secondary data) were conducted by the researcher during the data collection process, this chapter will be described in the search results on: 1) overview of the Brantas Watershed Management; 2) Institutional Relations Brantas Watershed Management; 3) Model Development Collaboration Partnership.

### Overview of the Brantas Watershed

Brantas watershed is located in East Java, 320 km in length and has a watershed of 12,000 km<sup>2</sup>, covering approximately 25% of total area of East Java Province. Some of them passed by the District Town Batu, Malang, Blister, and Tooling Court last Surabaya. Although located in East Java, the Brantas river basin not only has a strategic value for the region of East Java, but he is also a national strategic river (Table 1).

**Table 1:** Land Use in the Brantas Watershed

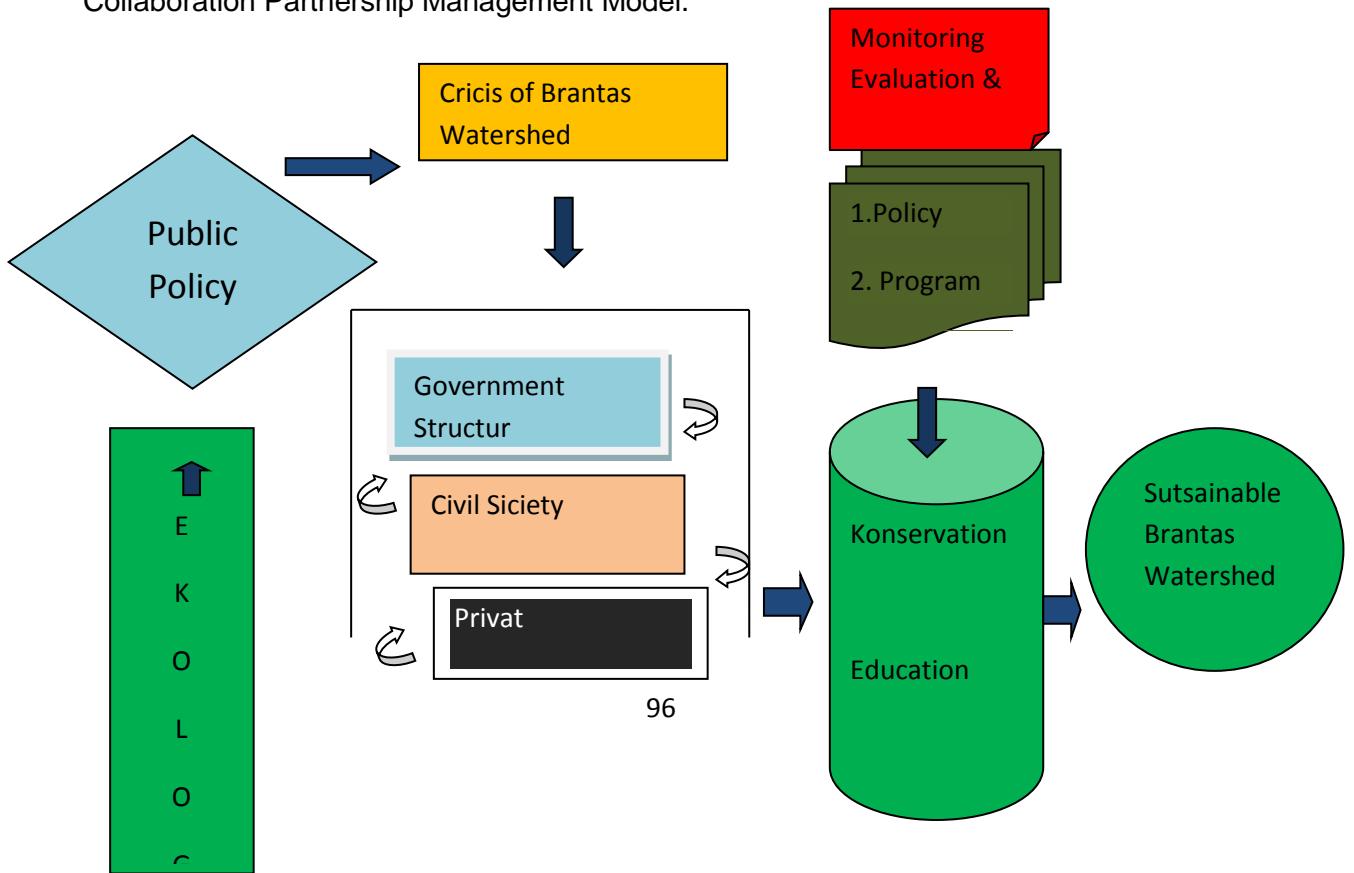
No	Land Use	Area (ha)	%
1	Natural Forest	2569.88	14.8
	Mixed Forest	46.24	0.3
3	Production Forest	469.31	2.7

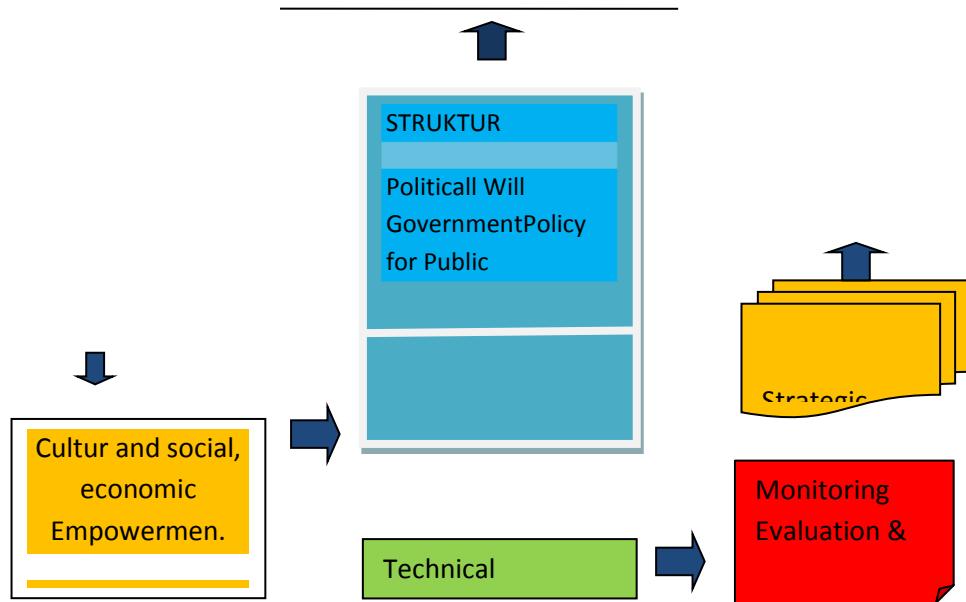
4	Forest Reforestation	821.54	4.7
5	Open Space	1161.31	6.7
6	Settlement	1226.17	7.1
7	Plantation	2220.5	12.8
8	Paddy Field	652.77	3.8
9	Paddy Field/Vegetable Garden	1877.24	10.8
10	Vegetable Garden	105.81	0.6
11	Shrubs	3024.38	17.4

Source: Environmental Agency of the Province of East Java 2011

The forest in the Brantas river basin, especially in the upper part is a must. However, for various reasons over the function of forests in watershed commonplace by elements that is not responsible. If the upstream part of the Brantas river basin likely saved the lower and middle was also saved. Because that's where upstream RTH / forest becomes very important.

Critical damage to land or land and are very critical in the upper Brantas river basin located in the region of land in Batu Batu as the Brantas river basin upstream side showed a very severe which amounted to 51.76 per cent. In other words, more than half of the upper reaches of the Brantas is damaged. Critical lands in the Upper Brantas sub-watershed upstream can be used as indicators of disturbance in forest and land functions both as a function of production, ecological and social. Figure 2 shows the Collaboration Partnership Management Model.





**Figure 2:** Collaboration Partnership Management Model

### **Institutional Management Watershed Brantas.**

Brantas river management institution to date has been pretty much made up of government and non-government elements. Among the Brantas River management institutions are Coordinating Team Water Resources Management Brantas River. Membership consists of: Central River Region Brantas, Jasa Tirta I Public Corporation Malang, East Java, East Java Province Department of Agriculture, Irrigation Department Malang, Blitar Infrastructure Department, Kediri District Irrigation Office, Department of Water Resources and Energy City of Stone, Department of Public Works Mojokerto and Surabaya Environment Agency and so on. Specifically for the management of water resources in the area of the Brantas River in East Java Province, Minister of Public Works has made a Public Works Ministerial Decree 248 / Kpts / M / 2009 on Establishment of Coordinating Team Water Resources Management Brantas River Basin. Membership of TKPSA of Non-Government elements including Farmer Water User Association Joint Source Barokah Jombang, Association Farmer Water User Tirto Supreme Mojokerto, Mutual Aid Blitar, Malang, Indonesia Nganjuk Farmers Association, Association of Geotechnical Indonesia East Java and so on.

The other institutions of elements such as Non Governmental Institutions and Heritage Law Student Forum Chairman Justice Care and religious institutions such as poor wallet. While at the district / city level and the basin formed as required. Coordination forum was expected to coordinate the various interests of agencies, institutions, communities, and stakeholders (stakeholders) and other water resources in the management of water resources, especially in formulating policies and strategies for water resources management, and encourage increased community involvement in resource management water power. The formation of coordination management of water resources at the provincial, district / city and river areas have been set in the Minister of Public Works No.04 / PRT / M / 2008 on Guidelines for the Establishment of Containers Management of Water Resources Coordination

At the Provincial level, District / City and River region. There are several aspects of institutional suspected as the cause of the failure of critical land management program Brantas river basin, among others: (1) sectoral institutions in the region are less involved in planning; (2) weak performance management functions critical land rehabilitation; (3) lack of coordination functions in the management of degraded land; (4) no / no but does not support the strategic program planning, implementation, and supervision of watershed-based management of degraded land; and (5) lack of priority activities / programs are not effective in supporting the Brantas river basin management of degraded lands. Disharmonious relations among government agencies, citizens, and environmental activists will have an impact on the inability of these institutions to maintain the Brantas river basin forest. In operations management in the field, found many disruptions to the forest area. Of course, these disturbances will affect the function of forests as watersheds. In general, the forms of disturbance to the forest area can be grouped into encroachment of forest area to be arable land, the illegal harvesting of timber and non-timber, illegal grazing and forest fires.

The involvement of the community in order to save the Brantas river of damage, encroachment or theft, in the upstream region in Batu also a group of farmers who are concerned about the sustainability of the Brantas river basin. They are members of the Community Watershed Farmers Rescue (KPPDAS) Brantas. The number of farmers involved in as many as 41 farmers KPPDAS institutions. They are very risk forests in the upper Brantas river basin. One form of institutional cooperation in the Brantas river basin management is carried out by the NGO Pusaka as with Company Jasa and Wallets Dhuafa. Heritage in collaboration with Company Jasa Tirta I, since 2007 has worked not only in the field of land conservation, but also coaching small businesses through the provision of soft loans for 2 years. Material assistance includes entrepreneurship, accounting administration, and environmental concerns. The purpose of the program is to raise the awareness of the business community on the importance of conservation upstream Brantas. The Heritage trained partners work together in partnership ecological networks.

### **Model Development Collaboration Partnership.**

Management of community-based management of degraded land is a new approach for environmental scientists. In the management of community-based land management, public invited directly from planning, policy formulation, implementation and collection of benefits. This approach allows the community can directly calculate the impact of economic and environmental (conservation of natural resources). The two aspects cannot be separated in reviewing the management of natural resources in order to support community-based environmental sustainability. Kindervatter (1970) in Harini, 2012 imposes limits as an improved understanding of human empowerment to improve his position in the community which includes: access, power levers, options, status, critical reflection ability, legitimacy, discipline and creative perception.

Many natural resources in the watershed belong with certain groups, such as pastures, woods, ponds, and groundwater. Other resources tend to be managed individually, especially agricultural land, as well as several pieces of meadow, and forest. Required collective action of all resource users to manage hydrological processes in order to obtain maximum productivity throughout the watershed system. It required a deal of regulatory resource access, allocation, and control (Steins and Edwards 1999a in Kerr, 2007).

## **CONCLUSION**

Watershed management institutions Brantas representatives from the government and non-government. Among the agency managers are Brantas Watershed Management Coordinating Team Water Resources Brantas River Basin (TKPSDA-WS Brantas). Found the existence of a less harmonious relationship among government agencies, citizens, and environmental activists will have an impact on the inability of these institutions to maintain the Brantas River Basin forest. In general, the forms of disturbance to the forest area can be grouped into encroachment of forest area to be arable land, the illegal harvesting of timber and non-timber, illegal grazing and forest fires.

Community involvement in efforts penyelamatkan Brantas River Basin of damage, encroachment or theft, in the upstream region in Batu also a group of farmers who are concerned about the sustainability of the Brantas River Basin. Management of community-based management of degraded land is a new approach for environmental scientists. In the management of community-based land management, public invited directly from planning, policy formulation, implementation and collection of benefits. This approach allows the community can directly calculate the impact of economic and environmental (conservation of natural resources). The two aspects cannot be separated in reviewing the management of natural resources in order to support community-based environmental sustainability. In the end, it is recommended to perform rearrangement or reconstruction of the Collaboration Management Green Open Space Partnership Watershed River National Strategy for Sustainability Management Regulation Based Green Open Space and Watershed.

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# THE ROLE OF PRODUCT INNOVATION FOR THE INTERNATIONALIZATION OF SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

Auwalu Inusa<sup>1</sup>  
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## ABSTRACT

Internationalisation of business is not limited solely to large and multinational corporations alone, today the business world has witnessed many case scenarios where Small and Medium-sized Enterprises (SMEs) are predominantly gaining a wave and spaces at the international market. The growing share in the developed and even in the developing economy explains their strong participation to the internationalisation. The aim of this paper is to examine how small and medium-sized enterprises internationalise by using innovative approach to their product development, and how this influences their internationalisation process. The focus therefore is on obtaining better understanding of the role of innovation for the SMEs as a driver for their participation at the international market environment. The paper adopts a literature survey where extant literatures are reviewed with a view to gaining an insight into the role of innovation in the internationalization process. The paper concludes that being innovative and vast in R&D can lead to gaining many accesses to the international market, seeking more opportunity and discovering new market for products and services. It recommends that managers of SMEs should focus on new technology, effective Research and Development, and try to be responsive to market changes in the industry they belong to. This can be achieved by having an effective and efficient management that values innovation for change not for fashion.

**Keywords:** Internationalization, innovation, SMEs, entrepreneurship, technology innovation,

## INTRODUCTION

Internationalisation and entrepreneurship among Small and Medium-sized Enterprises (SMEs) is a topic of considerable relevance, principally owing to observed growth effects of cross-border venturing, and the demonstrated capacity of SMEs to drive economic development at national, regional and global levels. SMEs internationalisation is perceived as an important aspect to look into, and do anything to promote its gravity across the globe, and remains of considerable contemporary relevance (OECD, 2008). SMEs are important components of economic development due to their flexibility and innovative characteristics. SMEs are not usually thought as international players, but in fact they play a significant role in the international economy, and about one per cent (1%) of SMEs are global players (OECD, 2004). In very general terms, SMEs contribute between fifteen per cent (15%) and fifty per cent (50%) of exports and between 20% and 80% of SMEs are active importers. Overall, it is estimated that SMEs now contribute

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between 25% and 35% of world manufactured exports (OECD, 2004). Thus, internationalisation of SMEs has in recent years attracted research and policy attention. Yet, it is not clear what skills and capabilities an SME needs to succeed in the international marketplace. More specifically, an important question is whether and to what extent innovation plays a role in SMEs internationalisation?

The answer is simply to be as much innovative as possible. The innovative and entrepreneurial capabilities help to improve economy through their international involvement and domestic employment generation. Their growing share in global activities induced many writers to focus on SMEs internationalisation. However, SMEs increasing number in international involvement explains how strong they compete and fully participate in internationalisation (Coviello and McCauley, 1999). Dynamically, those SMEs that are internationally active are generally growing faster than their domestic equivalents. It is hard to get an accurate gauge on just how fast they are growing, but two to three times average rate of growth of OECD economies is probably not reasonable(Hall, 2004). This suggests that internationalised SMEs are making a significant contribution to the growth of the world economy. This is the major reason why many scholars engage in studying the overall importance of the SMEs in relation to regional and economic growth (Li, 2008).

The aim of this paper is to explore the dimension of the small and medium enterprises internationalisation through innovation. The purpose of the study is to examine how small and medium-sized enterprises internationalise by using innovative approach to their product development, and how this influences their internationalisation process.

### **SMALL AND MEDIUM-SIZED ENTERPRISES**

There are many definitions in the selected literature about what Small and Medium-sized Enterprises are all about. One issue about SMEs definition is that certain criteria have been used to define what SME stands for most especially according to countries, size and sectors. Conrad and Darren (2009), cited in Lucky and Olusegun (2012), explain that the main reason why SMEs definition varies particularly from industry to industry; country to country; size to size and number of employee to employee is to reflect industry, country size and employment differences accurately. SMEs represent a business and not a public limited company. They are businesses in India having not less than 250 workers in the case of manufacturing and service industries including trading businesses (Jasra, Khan, Hunjra, Rehman and Azam, 2011) also cited in Lucky and Olusegun (2012). The above point shows that the common criteria for defining SMEs are employment, number of employees, size, industry, country and asset value. In Nigeria, the definitions of SMEs focussed on are small firms leaving a gap in the definition of medium enterprises. Ogudele (2007) defines SMEs as a business with minimum of 5 employees with minimum capital outlay of not less than five thousand Naira (\$33).

The Medium businesses as the name suggests are bigger than both micro and small businesses in terms of operations, manpower capacity or number of employees, structure, capital investment and size. According to Darren et al. (2009), they are the businesses that employ up to 249 employees in UK, in European Union, they employ up to 250 employees, in Australia, they employ up to 200 employees while in U.S.A, they accommodate up to 500 employees.

A major characteristic of Nigeria's SMEs relates to ownership structure or base, which largely revolves around a key man or family. Hence, a preponderance of the SMEs is either sole proprietorships or partnerships. Even where the registration status is thus that of a limited liability company, the true ownership structure is that of a one-man, family or

partnership business. Other common features of Nigeria's SMEs include the following among others (Onugu, 2005)

- a. Labour-intensive production processes
- b. Concentration of management on the key man
- c. Limited access to long term funds
- d. High cost of funds as a result of high interest rates and bank charges
- e. High mortality rate especially within their first two years
- f. Over-dependence on imported raw materials and spare parts
- g. Poor inter and intra-sectoral linkages - hence they hardly enjoy economies of scale benefits
- h. Poor managerial skills due to their inability to pay for skilled labour
- i. Poor product quality output
- j. Absence of Research and Development
- k. Little or no training and development for their staff

## **INTERNATIONALIZATION**

The process by which firms increase their awareness of the direct and indirect influences of international transactions on the future, establish and conduct transactions with other countries (Beamish, 1990). Internationalization of a firm is a process in which the firms gradually increase international involvement (Johanson & Vahlne, 1994). It is also described to be a cumulative process in which relationships are continually established, maintained, developed in order to achieve the objectives of the firm (Johannson and Mattsson, 1993). These definitions are quite interesting but viewed internationalisation as the process of developing networks of business relationships in other countries through extension, penetration and integration. This paper aims at looking at the innovation as the process of firm's internationalisation, especially the Small and Medium sized Enterprises.

## **CONCEPTUAL PERSPECTIVE AND RESEARCH ISSUES**

It has been said that "a nation's competitiveness depends on the capacity of its industry to innovate" (Porter, 1990) but it is increasingly difficult to come up with new products in the face of intense global competition of present business environment (Jerrard, 1998). The new product literature is vast and growing. After all, developing a new product and service is one of the core business or organisational concern- and, one could argue, the most important process. The growing interest in the behaviour of SMEs internationalisation refocuses attention on the role the innovation plays for their development at all levels, ranging from economic development through job provision and competition and important culture of innovation. A variety of disciplines engage in research and publishing articles on product development and innovation complimenting the work of people like Joseph Schumpeter(1930) and David Keeble, due to the importance of the concept in today's business. SMEs have today embraced innovation as their source for gaining competitive advantage at the international environment (Zheng, 2008).

This section aims at surveying the literature on two dimensions; exploring the importance of new product innovation at the high tech SMEs and the internationalisation process. The reason for choosing this literature is that our understanding of SMEs success in terms of product development and internationalisation is currently limited. They provide theoretical basis for exploring the importance of innovation for SMEs internationalisation process.

### **Relation to Entrepreneurship Field of Research**

Innovation is located in the field of entrepreneurship, a concept which for over centuries has been in business and economic literature (Morris et. al, 1994: cited in Abubakar, 2009). As a general field of research, entrepreneurship seeks to understand how opportunities to bring into existence future goods and services are discovered, created and exploited by whom and with what consequences (Shane and Vankataraman, 2000). Entrepreneurs use innovation to exploit or create changes and opportunity for the purpose of making profit. They do so by shifting their economic resources from area of lower opportunity into area of higher productivity and greater yield, accepting a high degree of risk and uncertainty (Burns, 2007). Therefore, innovation cannot be separated from entrepreneurship as it is the life blood for entrepreneurs' success in business, also regarded as a tool of entrepreneurship by Burns (2007). Today, many people refer entrepreneurship as innovation synonymously. Entrepreneurship and innovation are two important elements which are derived in nature that one cannot go without the other. Entrepreneurship has also been defined as the creation of new organisations (Gartner, 1985, 1988). The concept has also been defined as dynamic process of creating incremental wealth (Ronstadt, 1984). The wealth here is created by the individual who put in their resources in form of money and time to get profit. In this context, since the research seeks to explore whether product innovation offers opportunity for SMEs internationalisation we need an operational definition that will show clear connections with the topic of discussion. Thus, entrepreneurship in this research refers to the study of sources of opportunities through which future goods and services are discovered and exploited (Vankataraman, 1997; Ventakaraman, 2000). This definition is adopted here because it relates to the topic and new product development, and importantly due to the authorities contributions involved. The emphasis on small firms is because small firms are viewed as relatively more innovative compared to large firms especially in high-tech industries (Acs and Audretsch, 1987; Acs, 2002). The study is generally related to the field of entrepreneurship as the heart of entrepreneurship is alertness which relates to searching for the market for the opportunity that could be turned into better goods, new products or less expensive goods to the market (Abubakar, 2009). Alertness here according to Abubakar,(2009) means seeing outside the box of routine ways of getting things done, especially as it relates to new product, alertness means the process of discovering new knowledge that others have not yet noticed, alertness is simply the product innovation.

One important way of getting opportunity for product innovation to entrepreneurial firms is through changes in technology, as technological opportunities are potentially innovative and break away from existing knowledge (Acs, 2005). Therefore the major source of opportunity is simply the amount of innovation available in place by entrepreneurial firms (Drucker. 1985). Technology is therefore an important part of entrepreneurial opportunity today in realising the ultimate goal of business entrepreneurship as it makes possible for people and organisations to allocate resources in different and potentially more productive ways (Casson, 1995). Soon after the Second World War II, the work of Joseph Schumpeter has appeared to show a clear relationship between entrepreneurship and innovation, thereby drawing interest on the importance of innovation in business activities for success, development and economic growth. According to Schumpeter, at the centre of innovation process is the entrepreneur who initiates changes and generates new opportunities which exploits commercial gains (Abubakar, 2009). Therefore, technology is an important source for innovation and entrepreneurial opportunity, and will therefore form the basis for this paper. We therefore found it necessary to clarify the important link between technology and innovation.

### **Technology Innovation: New Product Innovation**

For Schumpeter (1996), a normal healthy economy is the one that is continually disrupted by technological innovation. Silicon Valley in California is synonymous with innovation (Smith, 2006). It is the quintessential example of a place that is all about innovation as Schumpeter views. Nowhere else in the world is so readily identified with new product and new services. It is not merely the number of firms that innovate in the valley that matters, it is the fact that Silicon Valley has gone on producing wave after wave of innovations (Smith, 2006). There are other places in the world that have stronger records in scientific discoveries and scientific breakthroughs, for example Cambridge in the UK has quite outstanding records in terms of scientific breakthroughs that include: discovery of electron, splitting the atom, and the identification of DNA. Though these achievements are the stuff of Nobel prizes as such are highly significant, they are scientific breakthroughs rather than innovations (Smith, 2006).

Innovation is the result of an entrepreneur converting ideas, concepts and opportunities into marketable products and process. Innovation is the means by which the entrepreneur implements changes. If successful, this change will lead to economic advantages of the firms; and this economic change is simply the PRODUCT innovation (McDaniel, 2002), which is the main focus of this paper.

Probably there are as many definitions of innovation as the number of supposed experts on the field around the world (Daniel, 2009). It has been given several definitions by several writers and scholars. Those definitions include the following: an innovation is an idea, practice or object that is perceived as a new by an individual or other unit of adoption (Rogers, 1995). Mitra (2008) defined it to be a successful exploitation of new ideas. According to Mitra's view mobilisation of knowledge, technological skills and experience to create new products and/or services for diffusion in the market place is what referred as innovation. According to Betje (1998) innovation is a new thing applied in the business of production, distributing and consuming products or services. It is also viewed as the commercial application of a new process or products (Freeman and Soate 1997). In a nutshell, we can simply use the contribution of Acs and Audretsch, (1992) to describe innovation as a process of developing a new item, the process of adopting a new item and a new item itself. Therefore, this will take us back to Mitra's view of successful exploitation of new idea in product or service to make more unique to the users and to withstand the competition. Innovation is all about something entirely new to the market in terms of quality or features.

### **INTERNATIONALIZATION AND SMEs**

Globalisation encompasses a wide range of issues and developments. It includes changes in business strategies in production, marketing, finance, and research and development (R&D). The increase in globalisation has significantly influenced global trade and investment. Rapid technological changes in communications and increasing trend towards significant change in the structure of industry and business competitiveness necessitate SMEs to become global. Globalisation has created greater incentives and opportunities for SMEs to access the various markets and knowledge sources needed to build a lasting international commitment and competitive advantages through international market and continuous innovation (OECD, 2000). As well, it has brought new competitors for SMEs in industrialised world, especially in countries with high technology like the UK and US. SMEs need to search for competitive advantages across national borders in order to sustain their existence more efficiently. To achieve this end, they have to internationalise their business activities beyond a single operational geography to a more diverse territory. Traditionally, competition in international business has been the realm of larger firms (Etemad and Wright 2001), while

smaller firms remained local, but that was the story of before because today SMEs can compete with any form of business origination due to their immense innovative activities. Therefore, today size is not an issue when it comes to innovation because SMEs are the topic of discussion in that regards. Consumers today want the best with little concern where products are produced provided that they satisfy the overall taste of the customers in terms of the features and the general benefits composed in the product. As the businesses become more integrated into globalised arena, there is an increased strength in the side of the SMEs to need an intensified support in their activities to become globally competitive. In this heading we will explore the meaning of the internationalisation and relate it to SMEs.

Internationalisation of SMEs may come in different forms. Johnson & Mattson (1999) identified three process of internationalisation. First, that the firm has to develop a source of competitive advantage in its domestic market by being very innovative in their products to gain strong market share, and if this advantage cannot be efficiently exploited domestically, then the firm has to move on and seek for the opportunity abroad. A good example of this is the case of Alibaba.com a firm whose massive innovation in terms of technology assisted in going far to the global trading. Two, the process of increased international sales and production and lastly, the network approach which focuses on the relationships between companies. Madhumita, (2008) viewed internationalisation as the act of bringing something under international control using any methods possible to get through the process. SMEs today have realised that the major opportunity for them to rub shoulders with their larger firm's counterparts is to innovate massively on products or service they are dealing with. Many SMEs operating across the border today have achieved that through product innovation. According to Gleave (2008), the increase in number of firms (SMEs) in the international market results from the following reasons: -

- a) Increase in innovation activities by the Small and Medium-sized Enterprises (SMEs),
- b) Increasing networks by SMEs across geographical boarders,
- c) Globalisation, and
- d) Government's support for innovation activities.

#### **FIRM'S FOREIGN MARKET ENTRY MODE**

According to Kotler & Keller (2006) as cited in Tahir and Mehmood (2010), firms adopt four approaches to enter in the international market: exporting, licensing, joint venture and direct investment. The most common way firms adopt to enter in the international market is exporting activities. The firms sell their product in foreign country to expand their business globally. According to Kotler and Keller (2006), firms can adopt direct and indirect approaches to start their exporting activities. In case of direct exporting activities, firms handle its export activities by itself. Firms establish a network of their representative in the international market. While in indirect approach strategies, firms did not handle its export activities by itself but the company works through independent intermediaries. Lindh (2009) also cited in Tahir and Mehmood (2010) maintains that the intermediary of the firm may be a domestic buyer or export agent who buys the firms product and exports it into international market.

The second entry mode firms adopt to start their internationalization process is through licensing. Firms did not sell their product by itself but issue license to a local company to use its manufacturing process, trademark etc. Kotler & Keller (2006) described that the

advantage of the licensing method for firms is that firms enter in the international market with a little risk. However this method also involves risk for the firms, if the license is terminated, the firm has a threat of potential competitor in the new market. (Lindh, 2009)

The third entry mode firms use to enter in the international market is via joint venture. Company makes partnership with foreign company to share the ownership and control of the firm. Kotler & Keller (2006) described that the firm establish partnership with firms in the foreign country if the firm has limited resources, market knowledge and investment to start their operation or if it is a requirement in the host country. This method also has disadvantages, in case of joint venture it is some time hard for firms to carry on worldwide policies. (Lindh, 2009)

The last method according to Kotler & Keller (2006) firms use to enter in the international market is by making direct investment in the host country. Firms can start its own production facilities in the host country by purchasing a local company or by building its own production plant. Although in this method firms has full control on its operations but the disadvantage of the method includes devaluing the country's currency and blocking the heavy firm's investment. (Lindh, 2009)

## **CONCLUSION**

The study concludes that innovation plays a pivotal role for SMEs' global penetration of both market and dissemination of new products. The activities of SMEs confirm that massive innovation is the yardstick for the internationalization of the small firms. They do that by engaging in Research & Development which was before related to larger firms alone. R & D in Small and Medium-Sized Enterprises is the key for their excessive innovative capacity which leads to their internationalization. Being vast in R&D can lead to gaining many accesses to the international market, seek more opportunity and discover new market for their products/services. SMEs are very important for the economic development of any nation and their present participation has boosted regions and nations. Therefore, for SMEs to become fully globalised, they have to develop a source of competitive advantage domestically which will enable them to gain strong market share. This they can do only by being highly innovative in their business. This will tremendously boost their potential of becoming international. The paper recommends that the managers of the existing SMEs should focus on innovation for them to achieve the success of global trading. They should focus on new technology, effective Research and Development, and try to be responsive in nature to the market changes in the industry they belong to. This can be achieved by having an effective oriented management that values innovation for change not for fashion. In addition, all small businesses should try to have a global focus in their affairs as this will boost their level of thinking and realize the opportunity of networking and Foreign Direct Investment (FDI).

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# **GOVERNANCE OF THE FAMILY UNIT: REGISTRATION OF MARRIAGES UNDER THE LAW REFORM (MARRIAGE & DIVORCE) ACT 1976**

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## **Abstract**

The *Law Reform (Marriage and Divorce) Act 1976* (Act 164) is a progressive piece of legislation which was introduced to govern all matters pertaining to the formation and dissolution of Non-Muslim marriages in Malaysia from 1<sup>st</sup> March 1982. The Act was introduced with four identified objectives in mind, first it provides that Non – Muslim marriages after the appointed date are to be monogamous, secondly for the solemnisation and registration of Non- Muslim marriages, thirdly for the consolidation of the laws relating to divorce and fourthly to provide for matters incidental there to. The provisions of the Act without doubt provides for the mandatory registration of all marriages after the appointed date. Section 34 of the Act however provides: “*Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered*”, thereby creating a conundrum in the state of the law relating to the registration of Non – Muslim marriages in Malaysia.

**Keywords:** Other topics relating to governance studies, issues, theories and practices.

## **INTRODUCTION**

### **Legal Governance Of The Family Unit**

The family unit forms the basic building block of any society. It is irrefutable that on the foundation of the family lies the strength and stability of societies and nations. Should this basic unit disintegrate it will undeniably have an adverse impact on the whole of society. It is therefore a legitimate social concern that the family unit is protected, strengthened and safeguarded as an institution. It can be argued that the legal protection provided by the governance of the family unit is one of the fundamental functions of the law in any state. These principles have been clearly reiterated in Article 19 of ASEAN Human Rights Declaration (AHRD 2012)<sup>2</sup>which provides as follows:

The family as the natural and fundamental unit of society is entitled to protection by society and each ASEAN Member State. Men and women of full age have the right to marry on the basis of their free and full consent, to found a family and to dissolve a marriage, as prescribed by law.

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<sup>2</sup>The AHRD 2012 was made by the heads of states /government of all ASEAN member states on 19 November 2012 on the occasion of the 21st ASEAN Summit in Phnom Penh, Cambodia. To help establish a framework for human rights cooperation in the region and contribute to the ASEAN community building process and further reaffirming ASEAN's commitment to the Universal Declaration of Human Rights.<http://www.asean.org/news/asean-statement-communiques/item/asean-human-rights-declaration> (retrieved on 24.8.2013)

Legal governance of the family unit covers a wide ranging area of interest including the formation of marriage, dissolution of marriage, maintenance, property distribution and child custody. Mimi Kamariah in her book Family Law in Malaysia defines a family as follows:

*A family in the modern world consists of a man, a woman and their children. Marriage between the children's mother and the father is central to the family.<sup>3</sup>*

Thus the keystone to the family unit is the existence of a valid marriage between a man and a woman. While the right of men and women of full age to freely enter matrimony is universally accepted<sup>4</sup>, it is by no means an absolute right and is subject to governance by the laws of the state. The prescription by law is necessitated by the legitimate social need to protect the family unit. Thus legalgovernance is introduced not to undermine but in order to strengthenand protect the family unit. It is therefore abundantly clear that the institution of marriage which acts as the bedrock of the family unit must be buttressed by legal governance. In the context of Non – Muslims in Malaysia, the legal governance of the institution of marriage and the formation of marriage is provided for by the *Law Reform (Marriage and Divorce) Act 1976* (Act 164).

### **Historical Background**

The Law Reform (Marriage and Divorce) Act 1976 (Act 164) was introduced to govern all matters pertaining to the formation and dissolution of Non-Muslim marriages in Malaysia from 1<sup>st</sup> March 1982 (the appointed date).<sup>5</sup> The Act was intended to consolidate the law relating to Non –Muslim marriages and to end the hotchpotch state of marriage laws in Malaysia prior to the appointed date, which consisted of both statutory marriages<sup>6</sup> and customary marriages<sup>7</sup>. The maze like state of the law before the appointed date appears to be a study on all that would be undesirable in terms of the governance of the family unit and the institution of marriage, more adapt to undermining the bedrock rather than protecting.

On the one hand relevant statutory provisions such as *Civil Marriage Ordinance 1952*(No 44 of 1952), *Christian Marriage Ordinance 1956* (No 33 of 1956), *Church and Civil Marriage Ordinance(Sarawak) Cap 93 of 1958* and *Christian Marriage Ordinance 1953(Sabah) Cap 24 of 1953*, expressly provided that those marriages solemnised

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<sup>3</sup>Mimi Kamariah, Family Law in Malaysia (1999) p1.

<sup>4</sup>See Article 16 of the Universal Declaration of Human Rights (UDHR 1948),Article 8 of the European Convention of Human Rights (ECHR1950) and Article 19 of ASEAN Human Rights Declaration (AHRD 2012).

<sup>5</sup>s.3 (1) & s. 3(3) Law Reform (Marriage and Divorce) Act 1976(Act 164).

<sup>6</sup>Solemnised under anyone of the following Civil Marriage Ordinance 1952(No 44 of 1952), Christian Marriage Ordinance 1956 (No 33 of 1956), Church and Civil Marriage Ordinance(Sarawak) Cap 93 of 1958 or Christian Marriage Ordinance 1953(Sabah) Cap 24 of 1953.

<sup>7</sup>Both Chinese and Hindu customary marriages were recognised at common law under the principles enunciated in *Reg v Williams* [1858] 3 Ky 16. Also see *Dorothy Yee Yeng Nam v Lee FahKooi* [1956] MLJ 257 and *KarpenTandil v Karpen* [1895] 3 SSLR 58.

thereunder are monogamous and set strict regulations as to who may enter matrimony, it did not however render registration of marriages mandatory. Unregistered polygamous Chinese and Hindu customary marriages were equally recognised in the eyes of the law. The wealth of choices in terms of the form of marriages available to an individual before the appointed date may of course be argued to reflect a total freedom in the private sphere of marriage and reflects the multiracial fabric of this country. On the face of it this freedom may appear to be a very desirable trait of the law, closer scrutiny however will reveal cracks of structural weakness in the institution of marriage perpetrated by the minimal legal governance.

The plurality of recognition resulted in not only incoherency and inconsistency in the law but gave rise to a myriad of undesirable social impact including under aged marriages, secret second marriages, uncertainties as to the legitimacy of children and conflict in inheritance matters.

It is evident that the state of marriage laws prior to the appointed date had lost sight of the paramount purpose of legal governance in relation to the family unit which is to protect the vulnerable and to strengthen the institution. It became abundantly clear that the law as it was then was in need of reforms to end the state of uncertainty which many found themselves in. It was with this in mind that the *Royal Commission on Non - Muslim Marriage and Divorce Laws 1971*<sup>8</sup> in its report recommended that Non – Muslim marriages should be monogamous and that the registration of marriages should be made compulsory to ensure the proper implementation of such laws. The recommendations of the *Royal Commission* become the catalyst for the enactment of the far reaching changes introduced by the *Law Reform (Marriage and Divorce) Act 1976* (Act 164).

## **LEGAL GOVERNANCE UNDER THE LAW REFORM (MARRIAGE AND DIVORCE) ACT 1976 (ACT 164)**

### **The Law Reform (Marriage and Divorce) Act 1976 (Act 164)**

The legislative intent behind the Law Reform (Marriage and Divorce) Act 1976 (Act 164) was clearly laid down in the preamble of the Act provides as follows:

An Act to provide for monogamous marriages and the solemnisation and registration of such marriages, to amend and consolidate the law relating to divorce; and to provide for matters incidental thereto.<sup>9</sup>

The first objective of the Act which has been expressly identified in the preamble is that all Non – Muslim marriages after the appointed date shall be monogamous and the second is the solemnisation and registration of such marriages. The main reason for the ending the recognition of polygamous marriages after the appointed date and the concordant need for stringent regulations on solemnisation and registration has been set forth in the Explanatory Statement to the Law Reform (Marriage & Divorce) Bill 1972 as follows:

This Bill seeks to lay down a uniform law on marriage and divorce and matters incidental thereto .... Such law is necessary and expedient to replace the heterogeneous personal laws applicable

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<sup>8</sup>See the Report of the Commission on Non - Muslim Marriage and Divorce Laws 1971.

<sup>9</sup>Preamble, Law Reform (Marriage and Divorce) Act 1976(Act 164).

heretofore to persons of different ethnic origins comprising the majority of the non-Muslim population of Malaysia with a diversity of customs and usages observed by them. The primary virtue of the proposed reforms is certainty — replacing doubts regarding the true legal status of women cohabiting with men under circumstances which may or may not be legal wedlock until the question is determined by the courts and clarifying the legal status of their issue.

A perusal of the *Royal Commission's* report, the Explanatory Statement of the Act and the preamble will lead us to the genesis of the new rigorous regime of legal governance on the formation of civil marriages in Malaysia under the *Law Reform (Marriage and Divorce) Act 1976* (Act 164). It is without doubt that the purpose is to protect, strengthen and buttress the fragile institution marriage which is the bedrock of the family unit and of society. The Act seeks to achieve this purpose by not only by setting forth a mandatory requirement that all civil marriages must be monogamous but also by introducing regulations on the formal requirements which must be satisfied to enter matrimony and what appears to be a regime compulsory registration. The overarching purpose of the Act is clearly congruent with the legitimate social need protect the family unit.

The first underlying aim of achieving the prohibition of polygamous unions after the appointed date is provided for under Part II of the Act, the most significant provision being espoused in section 5(3) of the Act which provides as follows:

Every person who on the appointed date is unmarried and who after that date marries under any law, religion, custom or usage shall be incapable during the continuance of such marriage of contracting a valid marriage with any other person under any law religion, custom or usage, whether the first mentioned marriage or the purported second mentioned marriage is contracted within Malaysia or outside Malaysia.

The concept of monogamous civil marriage for Non – Muslims is further fortified by the requirement that after the appointed date no marriage under any law, religion, custom or usage may be solemnised except as provided in Part III.<sup>10</sup> Taken together the impact of this two subsections are far- reaching indeed, in that by a single master stroke of the legislative pen not only had the scourge of polygamous marriages ended but further all marriages after the appointed date must be solemnised in accordance with the provision Part III of the Act thereby repealing all previous provisions relating to formation of marriage and putting to an end the state of inconsistency and uncertainty in the law. In terms of the legitimate and effective governance of the family unit by law, these reforms are without doubt a step in the right direction. The much needed consolidation of marriage laws into a single Act to end the confusing maze which existed previously had finally been achieved with the new provisions that a valid marriage may only be solemnised in accordance with Part III of the Act. Part III of the Act which covers sections 9 to section 26 *inter alia* relates to legal restrictions on marriage<sup>11</sup>, preliminary requirements to a marriage<sup>12</sup> and the solemnisation of marriages<sup>13</sup>.

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<sup>10</sup>See section 5(4) of the *Law Reform (Marriage and Divorce) Act 1976* (Act 164).

<sup>11</sup>See sections 9, 10, 11 & 12 Law Reform (Marriage and Divorce) Act 1976(Act 164).

<sup>12</sup>See sections 13 to 21 Law Reform (Marriage and Divorce) Act 1976(Act 164).

<sup>13</sup>See sections 22 to 26 Law Reform (Marriage and Divorce) Act 1976(Act 164).

A clear reflection of the principles set forth above can be in Section 9 of the Act which provides "A marriage under this Act may be solemnised only by a Registrar" sets forth a clear restriction as to who is authorised to solemnise a marriage under the Act. This section is designed to achieve the dual objective of ending the scourge unauthorised marriages while promoting the philosophy of stringent governance by providing for a single source for solemnisation of a valid marriage in the form of registrars appointed under this Act.<sup>14</sup>

A reading of section 5(4) and section 9 of the Act will lead us to one irresistible conclusion, that the scheme of the Act requires all marriages after appointed date not only to be solemnised by a registrar but also to be solemnised in accordance with the requirements as set out in Part III. This is further reinforced by the provision of section 22 (1) of the *Law Reform (Marriage and Divorce) Act 1976* (Act 164), which provides as follows:

Every marriage under this Act shall be solemnised-

(a) in the office of a Registrar with open doors within the hours of six in the morning and seven in the evening; or

(b) in such place other than in the office of a Registrar at such time as may be authorised by a valid licence issued under subsection 21(3); or

(c) in a church or temple or at any place of marriage in accordance with section 24 at any such time as may be permitted by the religion, custom or usage which the parties to the marriage or either of them profess or practise.

Section 22 therefore sets clear restrictions as to where a valid marriage may be solemnised. Section 23 sets forth the procedure for the actual solemnisation of the marriage in the following terms:

"The Registrar acting under paragraph 22(1)(a) or (b) shall, after delivery to him of a certificate for the marriage issued by the Registrar or Registrars concerned or a licence authorising the marriage, address the parties in the following words, either directly or through an interpreter:

"Do I understand that you A.B. and you C.D. are here of your own free will for the purpose of becoming man and wife?" Upon their answering in the affirmative he shall proceed thus:

"Take notice then that, by this solemnisation of your marriage before these witnesses here present according to law, you consent to be legally married for life to each other, and that this marriage cannot be dissolved during your lifetime except by a valid judgment of the court and if either of you shall, during the lifetime of the other, contract another marriage, howsoever and wheresoever solemnised, while this marriage subsists, you will thereby be committing an offence against the law".

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<sup>14</sup>s. 2 (1) Law Reform (Marriage and Divorce) Act 1976(Act 164): A Registrar is defined as "a Registrar of Marriages appointed under this Act and includes the Registrar General, an Assistant Registrar General, a Superintendent Registrar ,a Deputy Registrar and an Assistant Registrar of Marriages."

Next, the Registrar shall enquire of the parties, directly or through an interpreter, whether they know of any lawful impediment why they should not be joined together in matrimony. Upon their answering in the negative he shall enquire, directly or through an interpreter, of each of the parties whether he or she will take her or him to be his or her lawful wedded wife or husband. Upon their answering in the affirmative, the Registrar, the parties and the witnesses shall comply with section 25.”

Section 24(1)<sup>15</sup> of the Act is greatly admirable as an ingenious piece of legislative draftsmanship as it not only satisfies the clinical requirements of solemnisation but also caters to the larger human and cultural needs of a marriage by incorporating the option of solemnisation in accordance with religious rites by a priest or clergyman. The procedural steps leading towards solemnisation of a marriage culminates with Section 25 of the Act which provides as follows:

- (1) Immediately after the solemnisation under section 23 or 24 is performed the Registrar shall enter the prescribed particulars in the marriage register.
- (2) Such entry shall be attested by the parties to the marriage and by two witnesses other than the Registrar present at the solemnisation of the marriage.
- (3) Such entry shall then be signed by the Registrar solemnising the marriage.

The next section of great significance is not found in Part III of the Act but in Part IV and provides for what may be considered as the most efficient means of implementing a regime of legal governance over the formation of marriage, by way of compulsory registration .This objective is achieved by section 27 which provides:

The marriage of every person ordinarily resident in Malaysia and of every person resident abroad who is a citizen of or domiciled in Malaysia after the appointed date shall be registered pursuant to this Act.

It should be noted that the registration of marriages is now a blanket requirement applicable to all persons who fall within the ambit of the Act regardless as to whether they are in Malaysia or resident abroad.<sup>16</sup> The provisions in the sections discussed above without doubt support the legislative scheme of the Act to consolidate the solemnisation and registration of Non – Muslim marriages in Malaysia. The Law Reform (Marriage and Divorce) Act 1976 (Act 164) provides the much needed legal framework for the effective governance of the institution of marriage which will serve to strengthen, protect and buttress the family unit.

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<sup>15</sup>Section 24(1) *Law Reform (Marriage and Divorce) Act 1976*(Act 164): “Where any clergyman or minister or priest of any church or temple is appointed by the Minister to act as Assistant Registrar of Marriages for any marriage district, such clergyman or minister or priest may after delivery to him of a statutory declaration under subsection 22(3) solemnise any marriage, if the parties to the marriage or either of them profess the religion to which the church or temple belong, in accordance with the rites and ceremonies of that religion.”

<sup>16</sup>See sections 26, 31 & 104 *Law Reform (Marriage and Divorce) Act 1976*(Act 164).

## The Legislative Conundrum of Section 34<sup>17</sup>

Section 34 of the Act provides as follows:

Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered.

At first glance it is indeed quite puzzling to find Section 34 within the confines of an Act which was enacted with the purpose of tightening the legal governance on the formation of marriage by introducing what appears to be a regime of mandatory registration. It does not take a stretch of the imagination to conclude that the section 34 of the Act is in direct conflict with not only section 27 of the Act but equally with the provisions of sections 5(4), 9, 22, 23, 24 and 25 which sets forth solemnisation by a registrar as a mandatory requirement as well.

The question that needs to be addressed is what purpose does section 34 serve within the scheme of the *Law Reform (Marriage and Divorce) Act 1976*(Act 164). If interpreted literally it acts as a curing provision for non – registration of a marriage after the appointed date. However such an interpretation will result in a conflict with one of the objectives of the *Law Reform (Marriage and Divorce) Act 1976* (Act 164) as identified in the preamble and would appear to be contrary to the very scheme of the Act, which is clearly centred on the concept of greater governance.

To take the opposite approach and allow the the earlier sections, in particular sections 5(4) and 27 to prevail over the provisions of section 34 would no doubt resolve the conflict. To do so however will render section 34 quite redundant. Herein is the conundrum of section 34, a hard question which can only be answered by looking at the true legislative purpose of the *Law Reform (Marriage and Divorce) Act 1976* (Act 164).

The prevailing legal and judicial approach endorses the latter interpretation on the premise that section 34 must be read in harmony with the other provisions of the Act which encapsulates the overall intention of the Legislature in enacting the Law.<sup>18</sup> A similar approach was advocated by Balwant Singh Sidhu in his article “*Married or not married? That is the question*”<sup>19</sup>, wherein it was argued that that section 34 was not intended to cure the defect of non-registration generally but was only intended to cure the effect of non - registration in the limited instances where a person domiciled in Malaysia and subject to the provisions of the *Law Reform (Marriage and Divorce) Act 1976* (Act 164) has contracted a foreign marriage abroad, which had been validly solemnised in accordance with the laws of that country but had not been duly registered in accordance the provisions of the domestic law. It can be argued that adopting this interpretation to section 34 will without doubt result in greater clarity and certainty in the law, rendering the requirement of registration under the *Law Reform (Marriage and Divorce) Act 1976* mandatory. It also appears at first glance to be in accordance with the legislative intent ,however a closer analysis will reveal that this interpretation will not achieve the true legislative intent in relation to the *Law Reform (Marriage and Divorce) Act 1976* (Act 164).

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<sup>17</sup> Law Reform (Marriage and Divorce) Act 1976(Act 164).

<sup>18</sup> Chai Siew Yin v Leong Wee Shing Federal Court Civil Appeal No 02-10 of 2003(W) (Unreported).

<sup>19</sup> Balwant Singh Sidhu, “*Married or not married? That is the question*” [2002] 3 MLJ cxxix.

A perusal of the Court of Appeal's decision in *Chai Siew Yin v Leong Wee Shing*<sup>20</sup> goes far to shed a flood of light on the true legislative purpose of not only section 34 but also the Law Reform (Marriage and Divorce) Act 1976 (Act 164). His Lordship Gopal Sri Ram JCA (as he then was) giving the leading judgement stated as follows:

The argument is that the respondent's customary marriage in question is void for want of registration under the Law Reform (Marriage and Divorce) Act 1976 ("the Act"). The learned judge rejected – and in our view rightly rejected – that argument. It is plain that the fallacy of the appellant's argument lies in its oversight of the object and purpose of the Act. The main purpose of the Act is to prohibit polygamous marriages among non- Muslims. This is made clear in s. 5 of the Act. It is to achieve this object that the Act requires the registration of non-Muslim marriages. But nowhere in the Act is provision made declaring as void any marriage contracted between non-Muslims in accordance with the customary ceremonial rites of the community to which they belong. And Parliament has taken pains to make that abundantly clear in s. 34 of the Act. The judge quoted it. He relied on it. This is what it says: Nothing in this Act or the rules made thereunder shall be construed to render valid or invalid any marriage which otherwise is invalid or valid merely by reason of its having been or not having been registered..... At the end of the day, a marriage is a contract; albeit a very special type of contract; and if it is Parliament's intention to strike it down for want of registration I would expect very clear language to that effect in the Act. For, the result would be to legitimise the issue of non-registered customary marriages. This would produce a harsh and unjust result. And as Raja Azlan Shah J (as he then was) said in *Pesurohjayalbu Kota Kuala Lumpur v. Public Trustee & Ors*[1971] 2 MLJ 30: "The presumption is that the legislature does not intend what is unjust." However, as it happens, in the present case, Parliament has expressly said that non-registration is not to have any effect on an otherwise valid marriage.

Therefore to find the answers to the hard questions on the correct interpretation of section 34 we must harken back to the underlying philosophy justifying legal governance of the family unit. The answer is resoundingly clear, it is to protect the vulnerable from exploitation and to strengthen the family unit. This purpose could be only be achieved by allowing the interpretation of section 34 as a curing section for monogamous customary marriages which had been validly contracted but left unregistered. Section 34 was clearly intended to act as a social justice clause to extend the protection of the law and legitimacy to those who would otherwise be unjustly left unprotected and branded as illegitimate due to the technical defect of non –registration. To whittle down the impact of section 34 in the interest harmonisation with other provisions of the Act would not only be contrary to clear legislative intent but would do grave violence to the very scheme of legal governance of the family unit which is without doubt to protect and strengthen.

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<sup>20</sup>[2004] 1 CLJ 752 at pg756 -757.

## **CONCLUSION**

The so called conundrum in section 34 does not arise, if it is interpreted in the light of the paramount purpose of legal governance within the family unit. To reject the curing properties of section 34 in the short sighted interest of so called harmonisation with other provisions of the Act may result grave social injustices transforming a lawful wife to a mistress and legitimate children illegitimate. It is precisely this scenario that section 34 was enacted to safeguard against. Further the threat of the floodgates opening resulting in all manner of dubious unions being validated by section 34 and thereby undoing the entire scheme of monogamy and registration introduced by *Law Reform (Marriage and Divorce) Act 1976* (Act 164) does not arise. It is clear that section 34 will only cure the defect of non-registration in cases where a valid monogamous marriage has been contracted. Thus in practice it will only apply in very limited circumstances, where strict factual requirements have been satisfied.

Thus we may conclude that the legitimate social interest of protecting and strengthening the family unit which is served by the legal governance of the institution of marriage is in no way undermined by interpreting section 34 as a curing provision in cases of non – registration of an otherwise valid marriage.

# CONSTRUCTIVE DISMISSAL: THE MANAGEMENT DYNAMICS

Md Rejab Bin Md Desa<sup>1</sup>

## Abstract

Constructive dismissal a fiction of law wherein a worker ceases employment simpliciter at his own violation consequential upon the infringement of the employer who transgressed on his contractual obligation hence breaching the contract of employment. The worker resigned immediately and henceforth commenced legal redress through filing a suit for constructive dismissal. The abundance of such cases reflect the gravity of the transgression and as it strikes to the core issue of one's livelihood which has been liken to one proprietary right guaranteed under the Federal constitution which are the mirror reflection in this respect of the Universal Declaration of Human Rights 1948. The law as it stands approved this notion of legal fiction as developed by the common law which underlying principles have been firmly established in our jurisprudential reasoning in many cases rehearsed before our courts. The liberties to file an action by the workers are all constitutional guarantee. The functional role by the judiciary is to decide on laws and facts and to redress the grievances in a just and equitable manner within the confined of their findings. However, "constructive dismissal" is an internal issue within an organization and its solution too could be internally devised. The humanistic approach seems plausible to mitigate the rising tide through admittedly as all of us are litigation free since no one could stop us from excising that right which is constitutionally guarantee. Friction in industrial relation do occur since there are divergence of interest within the industry stakeholders as well as the rebellious impulse innate in us as well as other variables that fuelled up the inertia for one to disagree and resent. The very least the figure could be suppressed through dauntingly impossible to eliminate as reasoned above said.

**Keywords:** Constructive dismissal, judicial pronouncement, humanistic ethical approach

## INTRODUCTION:

In any human endeavor they are bound to be fiction and inevitably it is one of the gruel some encounter which one attempts to avert. This conflict is a subset of various discontentment and rightly sum-up by Wolski as a "forum" of interaction between two or more groups of people who perceive that their interests or values be incompatible or opposed. In the contextual discourse of workplace disputes according to him the identifiable predictors could fall into four broad categories viz:-

- a) The allocation of resources tasks and responsibilities
- b) Allocations of rewards-that is wages, salaries and profits
- c) Working conditions and

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- d) Interpersonal issues such as discrimination and harassment.<sup>2</sup>

These workplace disputes would cause industrial disharmony and would gravitate into conflicts over one night. The antagonistic relationship between workers and management would give rise to adversarial relationship and hence the issue accentuates into direct conflict between these two adversaries. The argument that in order for the business to prosper the close cooperation and commitment from the entire workforce is exigent. The organization would reap the harvest enhanced productivity and in return be able to pay salary and sustain the workers' livelihood. Paradoxically while the ideal should be as articulated the conflict at times could not be averted as the employment contract with circumspection as regard to the terms and conditions are lopsided favouring the employer who are wielded with authoritarian power which is excessive and they are proved to abuse that power over their workers. The discontentment exacerbates and borrowing the succinct observation of Bolton,<sup>3</sup> "To be human is to experience conflict". The jurisprudence behind the issue of worker's right are well entranced as Malaysia are the signatories to the Universal Declaration of Human Right 1980, The ILO Declaration on Fundamental Principles Rights. Again it is a constitutional guarantee under the Federal Constitution, the supreme law of Malaysia<sup>4</sup> which firmly accord one right to livelihood<sup>5</sup>.

Gopal Sri Ram JCA in *Hong Leong Equipment SdnBhd v LiewFookChuan*<sup>6</sup> had through legislative intention approach to statutory interpretation had given a new lease of life to the interpretation of Article 5 (1) Federal Constitution wherein in his Lordship views that the broad and liberal interpretation of life could not only be just the mere existence of life but it encompasses all other facets which form the corpus of itself which ranges from the quality of life, the right to seek and engage in a lawful and gainful employment which inter alia also includes the right to live in a reasonable healthy and pollution free environment.

In congruent with this decision, it may also be articulated that the question of the unilateral right to claim damages in lieu of reinstatement simpliciter upon the justified entitlement of the worker under the contract of employment to discharge himself from obligation consequential upon the employer's breach is fundamental. The issue of constructive dismissal on discharge by breach was discussed in the English locus classical case of *Western Excavating (E.C.C) Ltd v Sharp*<sup>7</sup> wherein the Court of Appeal had placed four hurdles to a worker before it could satisfy the "contract test" or "discharge by breach" viz

- a) The nature of the employer's breach is of such that entitle the employee to terminate the contract without notice.
- b) Has to show that the reason of leaving is because of the employer's breach
- c) He must not have terminated the contract before the breach has taken place

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<sup>2</sup>Wolski, Bobette (2009), Skills,Ethics and Values for Legal Practice, 2<sup>nd</sup> Edition, Thomsom Reuters, Australia p.416-418

<sup>3</sup> Bolton R,People Skills : How to Assert Yourself, Listen to Others and Resolve Conflicts (Simon & Scheter, Sydney,1987) p.206 excerpt from ibid at p.416

<sup>4</sup> Article 4(1) of the Federal Constitution, "This constitution is the supreme law of the Federation any law passed after Merdeka Day which is inconsistent with this constitution shall to extent of inconsistency, be void."

<sup>5</sup>Article 5 (1) Federal Constitutions." No person shall be deprived of his life or personal liberty save in accordance with law."

<sup>6</sup> (1996) 1 MLJ 481

<sup>7</sup>(1978)ICR 221 (C.A)

- d) He must not have waived his right to terminate through leases or delaying for an unreasonable period after the breach

It is now settled law that “constructive dismissal” if *prima facie* proven would entitle the aggrieved worker to legal redress and indeed the Malaysian court had placed that right in tandem with the spirit and intent of the Universal Declaration of Human Rights 1948 which declare that “Everyone has the right of life, liberty and security of person”. The judicial reinstatement in *Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* wherein the constitutional guarantee of Article 5 (1) of the Federal Constitution had been interpreted to ascribe and elevate the right of employment to a sacrosanct state of “proprietary right” reflected this.

### **THE POLEMIC OF CONSTRUCTIVE DISMISSAL**

The discontentments are twofold and it works likewise both ways. The employer may be dissatisfied with the workers. The workers are disgruntled with management. Either way the belligerent seems to offer plausible explanation in tandem with their version that their actions are justifiable and meritorious under the prevailing set of circumstances. The management could flex their muscles and indirectly force the workers to resign. The re-designation and the transferring out as well as insulating the workers from their control and command position within their organization are a few from the multitude of high handed armed twisting techniques engaged by some quarters of the management. Fundamentally, it implies on the fact that the employer had breached a major term of his agreement with workers.

The underpinning legal assumption was that the workers left employment as a direct and immediate response to this breach. The timely decisions of the workers to leave could sway in their favour and this could be the initial pro-active tactical play to jump start the civil action for constructive dismissal claim. The tolerance level of the workers are beyond re-appraisal and since they are beholden on the good sense of the employer then the way out of this impasse is to resign and get out of the employment.

The diametrically opposing wants of the workers and employer are the recipe for a potent industrial conflict, divergent needs in maximizing profits and the contrary demand for better working terms and conditions as well as pay hikes and altruist welfare packages have exacerbated these polemics.

The humanistic approach in decision making should be the priority of the management. The organization could not lose out and equally for the workers, the organization’s crucial human capital assets. The lynchpin behind successful and dynamic organizations is the resourceful as well as contended workforce who is comfortable with work environment. The organization needs to have an “aspirational code of ethics” and also a “directional code of ethics”<sup>8</sup>. In the “aspirational code” the common aspirational goal within the standard sets of ascribed values that guide the behavior within the organization need to be devised or if already emplaced need to be further augured, enhanced or improvised based on the past and present experiences. Whilst at the other end of continuum, the directional code provides specific guideline to be adhered and followed. The expected organizational behavior within the workforces and the management are clearly emplaced. The do’s and don’ts as well as the no go and grey areas are well spelt out leaving little room for misinterpretation. Any transgression would

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<sup>8</sup>Rossouw, D and Vuuren L.V (2011), Business Ethics as edited by Abdullah Hj Abdul Ghani and Mohamad Zainal Adam, Oxford University Press, Oxford, N.Y, KL et al at p.236-251

be death with accordingly and within the parameter of good governance as well as the laws, the bitter and belligerent confrontation could be averted. This is well and succinctly summed up by Maimunah as follows:-

*“.... Good labour relations will lead both parties to work for a common goal-the increasing growth and success of the organizations so that its future is guaranteed and both profits and wages can be assured. This concept of the employer and the employees being interdependent reflects the unitary frame reference for understanding industrial relation. However, certain experts believe that conflict is inevitable and therefore, there is a need to establish mechanism and institutions to resolve the conflict....”<sup>9</sup>*

The management has to be wise and prudent in their decisions. Their sobriety should not be tainted as the decision to indirectly compel a worker to resign must at all-time be done bona fide utilizing facts, evidence and within the permitted parameter of the laws and shutting eyes to their vested interest based on personal biases, attitude, feelings, pre-judgment and other incriminating adverse factors that might induce them to make such decision”.<sup>10</sup>

## **CONCLUSION**

In the final analysis, it is difficult to totally resolve the conflict since according to Derek Torrington a renowned British human resource practitioner and “guru” that by nature conflict is insurmountable.

By the very nature mankind inherit the inborned aggressive impulse. The divergent as opposed to convergent interest of the management and workers would ultimately cause frictions and couple with the competition for a share of the limited resources plus lastly the organizational tradition within the sat work settings,<sup>11</sup> belligerency and opposition to the organization do and almost certainly will flare-up. The decision to file constructive dismissal claim though could not be avoided but through even-headiness and through humanistic resource and soft approach, a re-appraisal could be achieved which would culminate in a conducive, healthy and purposeful working environment for the mutual and reciprocal benefits of all the stakeholders viz workers, employers, end –users and the country as a whole.

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<sup>9</sup>MaimunahAminuddin (2011), Malaysia Industrial Relations Employment Law, 7<sup>th</sup> Edition, McGrawHill, Kuala Lumpur p.15.

<sup>10</sup> See Dato Syed Ahmad Idid (2008), Writing of Judgments: A Practical Guide For Courts And Tribunals, Lexis Nexis, Malaysia, p.1-20

<sup>11</sup>Maimunah Aminuddin (2011) op.cit at p.14

# **CORPORATE GOVERNANCE DEVELOPMENT IN NIGERIA: PROSPECTS AND CHALLENGES**

Nuraddeen Usman Miko<sup>1</sup>  
Hasnah Bt Kamardin<sup>2 \*</sup>

## **ABSTRACT**

Corporate governance is one of the recent global issues that attract the attention of corporate investors', researchers and governments due to the recent collapses and failures of the giants corporation in every angle of today's world. Reliability on managers and authenticity of what they are reporting periodically has vanished. Corporate governance was introduced in many sovereign nations including Nigeria to restructure the corporate leadership and management. This study tends to look at the corporate governance development, future prospect and challenges within the Nigerian context.

**Keywords:** Corporate Governance, Development, Prospect, Challenges

## **INTRODUCTION**

Separation of business ownership and control cause the emergence of joint stock companies which allowed millions of peoples from different locations to jointly own a business. The complexity of businesses across the globe is due to multiple ownerships of the business. Separation of power and control of private, public companies, shareholders and other investors' supply of information about their companies' performance depend largely on the published financial reports. It is difficult to the shareholders to predict behaviors and actions of managers because managers may falsify the reports of the business activities entrusted on them by the shareholders. This could cause managers to provide misleading information about the assets; liabilities and risk are taken in the business on the process to earn profit before the contract ends(Kalbers, 2009)

The cause of information asymmetry may lead to the loss of investments. For example, collapses and scandals of giant companies such as Enron, WorldCom, and Xerox in developed nations called attentions for the investors because they suffered loss of their investments(Fodio, Ibikunle and Oba, 2013). Consequences from these events are many shareholders lost their trust in the affected firms and major players globally (Watts & Zimmerman, 1990).

Corporate governance mechanism and control are designed and implemented to reduce the inefficiencies that arise from the moral hazard and adverse selection (Agbonifoh, 2010). Corporate governance is irrelevant unless the internal and external measures are installed to ensure transparency, responsible leadership and stewardship of organizational resources. Thus, the aim of this study is to explore the corporate governance development in Nigeria and its prospect and challenges.

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## CORPORATE GOVERNANCE DEVELOPMENT

Nigeria as a sovereign nation has suffered numerous problems for over a long period of time. These problems originate from various areas which included political atmosphere and business segment. Many policies were put on board such as corporate governance code. Corporate governance “encompasses the combination of laws, regulations, listening rules and voluntary private sector practices that enable the company to attract capital, perform efficiently, generate profit and meet other legal obligations and general societal expectations” (Maier, 2005).

Corporate Governance as previously noted was relatively new in Nigeria. The History of corporate laws, regulations, controls and governance of business enterprises in Nigeria can be traced back from the colonial period, where total control was in the hands of colonial masters. At the badge of the departure, Nigeria inherited various rules and regulations left behind by the colonial government, among others were the British company legislation, Company Ordinance of 1922 which were introduced into the Nigerian business environment. Since that period, Nigerian's legal system and Corporate Governance practices began to adopt the UK style. After political independence, the Company Ordinance of 1922 was reviewed and replaced by the company's Act 1968 (Okike, 2007).

Foreign Multinational Corporation dominates and controls the activities of business enterprises along with their economic interest brought in. They also use foreign company legislation, because legislation in Nigeria have failed to address company's law problems that were peculiar to Nigerians' social-cultural and political environment, and did not address the rapid economic and commercial developments of the Nigerian country (Okike, 2007). System of Corporate Governance in Nigeria in that period is basically “outsider control system” (Franks & Mayer, 1994), it is a reflection of its colonial heritage. In an attempt to reflect its peculiar socioeconomic and political system in the legislation and control of the economy, Indigenization Policy of 1972 was introduced which enable the foreign companies to nationalize. The following principles were applied: The interest of the shareholders is supreme in the day-to-day activities of management, and their priority is maximization of shareholders' wealth.

Subsequently, other laws and regulatory bodies have been established. Privatization and Commercialization Act 1980 was promulgated in the 1988 to establish a Privatization and Commercialization Programme of the Federal Government, which continues to these days. Insurance Act (IA) the Insurance Act sets standards in the insurance industry in Nigeria through the regulatory oversight of the National Insurance Commission, which in turn constituted by the National Insurance Commission Act of 1977, that ensures the effective supervision, regulations and control of insurance business in the country. The Insurance Commission Act charges the Commission to establish ethical standards for the conduct of insurance business in Nigeria. The Bank and Other Financial Institutions Act 1991(BOFIA) was established in the wake up of banks' collapse in Nigeria in the late 1980s. The Nigerian government promulgated BOFIA and imposed certain standards to govern employees and officers of banks. The first type of the standard deals with capacity for banks directorships. The Investments and Securities Act 1999 (ISA) establishes the Securities and Exchange Commission of Nigeria (SEC). The SEC endowed with many functions among which is to “protect the integrity of the Securities Market against abuses arising from the practice of insider trading”.

Company and Allied Matters Act 1990 (CAMA 90) was established to set a standard that is generally applied to all companies operating in Nigeria while provisions of the Banks and Other Financial Institutions Act (BOFIA) and Securities Act (ISA) represent specific reaction to the perceived problems in the industry. In CAMA, provisions are found in

relations to the standards of corporate governance regarding the management of the company, reporting requirements and the oversight functions of the audit process.

Central Bank of Nigeria (CBN) was established by the CBN Act 1958 as amended 1969, CBN is the apex regulatory bank in Nigeria and has been outstanding on standards particularly regarding persons whom were appointed as chairperson, members of the board of directors and top management of the banks. It does not permit the practice of the board chairperson serving simultaneously as chairman/member of the board committee in Nigerian banks.

The Nigerian Stock Exchange is another body that exercises control through its rules that govern the companies that are allowed to trade their stocks and shares. The Exchange was established in 1960 as a Lagos Stocks Exchange. It listed Securities on Government Stocks, Industrial Loans (Debentures/Preference) Stocks and Equity/Ordinary Shares of the companies. The markets for ordinary shares of the exchange consist of First and Second Tier-market.

In modern days, due to the complexity, uniqueness and the important roles played by modern corporations in economic development of any nation stakeholders' attentions turn to the issues of good corporate governance. Nigeria follows suit of other developed countries like UK, US, Canada, France and Germany, to introduce corporate governance code. Nigerian corporate governance concerned with the process of direction, supervision, controlling, self-regulation, policy compliance and leadership to be in line with the status and jurisdiction of the Federal Republic of Nigeria (Yakasai, 2001).

In June, 2000 the Securities and Exchange Commission (SEC) and Corporate Affairs Commission set up a joint committee consisting 17 members committee on Corporate Governance of public companies in Nigeria, realizing the need to align Nigerian system with the international best practices of Corporate Governance. A committee composed of members selected from all sectors of the Nigerian economy, such as professional organizations, private sectors, and regulatory agencies. The terms of reference of the committee were: to identify weakness in the current public companies Corporate Governance practice in Nigeria; to review practices in other jurisdictions with a view to formulate best international practice in Nigeria; to make suggestions on necessary changes to current practices and to review other issues relating to corporate governance in Nigeria.

This committee has submitted its report in April 2001 to made recommendations on transparency and accountability of the management and boards of public companies. The final meeting on the review and corrections was held in February 2003, and the Code was effected in October 2003 (SEC Code, 2003).

Subsequently, some years after the adoption of corporate governance code in 2003, many complaints and observations for the weaknesses were raised, among others, it is generally agreed that weak Corporate Governance has contributed largely to some corporate failures in Nigeria (SEC Code, 2003). Although, along the period several Corporate Governance Code were introduced to address specific industry problems such as Central Bank of Nigeria Code (CBN) 2006, Pension Commission (PENCOM) Code 2008, and National Insurance Commission (NAICOM) Code 2008.

In September 2008, a committee was set up and inaugurated to review the weaknesses of the Corporate Governance Code 2003 Mechanisms for improvement and enforceability. The committee was headed by Mr. MB Mahmoud with the following terms of reference: to identify weaknesses in and constraints; to examine and recommend ways of effecting greater compliance; to advice on other issues that are relevant for

promoting good Corporate Governance practice by public companies in Nigeria and to align the code with international best practice (SEC Code, 2011).

The board of SEC believes that this new Code of Corporate Governance will ensure the highest standards of transparency, accountability and Good Corporate Governance(SEC Code, 2011). The new Corporate Governance Code effected from 2011 (SEC Code, 2011).Thus, despite the existence of this code, another general code of corporate governance was introduced by the Financial Reporting Council of Nigeria to harmonize all the quoted and unquoted, private and public companies to comply and it effected in 2013.

## **PROSPECT OF THE CORPORATE GOVERNANCE IN NIGERIA**

The prospects of corporate governance include the total reformations of companies' governance through the issuance of different codes in Nigeria. The main role corporate governance code are outlined as (1)- the role of the board and management; (2)- the right and privileges of the shareholders;(3)- the role of the audit committee (Kajola, 2008). The roles of corporate governance can be divided into two, i.e.internal control mechanism and external control mechanism.

### **Internal Control Mechanism**

Internal control mechanism has been further divided into board structures and performance; management system; and ethical codes. Board structure and performance deal with the quality of governance in a firm in such a way that size, composition, membership diversity, power separation, independent directors' role and audit committee roles enhance the quality of the corporate leadership (Maier, 2005). Management system deals with quality of management in such a way that internal control, training of employee, whistle-blowing procedures, reporting practices, corporate culture and remuneration disclosure ensure the quality of the management style (Maier, 2005). Ethical conduct deals with the ethical issues such as laws and regulation, given/receiving bribes, given/receiving gifts, donations to political parties, conflict of interest, illegal use of company resources and ethical completion among others to protect the integrity and wellbeing of the corporations(Agbonifoh, 2010).

### **External Control Mechanism**

External control mechanisms are the control put in place to protect the shareholders and the company at large, for example such controls include government regulations, competitions and media pressure, stock exchange requirement, regulatory requirement and shareholders activism(Agbonifoh, 2010).

### **Good Governance**

Good governance consists ofsound public sector management (efficiency, effectiveness, and economy), accountability, exchange and free flow of information (transparency), and a legal framework for development (justice, respect for human rights and liabilities)(World Bank, 1993).

## **CHALLENGES OF CORPORATE GOVERNANCE IN NIGERIA**

Corporate governance of any nation has many challenges that are peculiar to their own territory, but Nigerian cases include corruptions and bad attitude towards compliance are among other reasons.

### **Corruption**

Corruption is one of the main challenges of corporate governance in Nigeria contributed immensely to the collapses and backward of the corporations in Nigeria. For example, Nigerian Deposit Insurance Corporation (NDIC) reported that the number of fraud increases drastically:

Table 4.1  
Financial institutions fraud from 2008-2012

Years	Numbers of Fraud	Percentage of Fraud Increase
2008	2007	18.2
2009	1764	16.0
2010	1532	13.9
2011	2352	21.3
2012	3380	31.0

Source:NDIC (2014)

The number of financial fraud increases in Nigeria from 18.2% in 2008 to 31.0% in 2012, which is a serious issue that call the attention of researchers and the authorities to find out reasons behind this scenario.

Similarly, in terms of corruption, Nigeria is ranked in the world ranking order as 142, 147, 121, 130, 134, 143, 139 and 144, in 2006, 2007, 2008, 2009, 2010 and 2012 respectively. This common attitude will definitely affect the integrity of the entire environment.

Table 4.2  
*Corruption world ranking index 2007-1013*

Years	Ranking	Index
2006	142	2.2
2007	147	2.2
2008	121	2.7
2009	130	2.5
2010	134	2.4
2011	143	2.4
2012	139	2.7
2013	144	-

Source: CPI Global (2013)

Fadairo, Fadairo and Aminu (2014) in their analysesreported that only 3 newspapers (The Nation, Tribune, Guardian) in Nigeria published financial frauds up to 143, 142, 209, 203, 216 times in 2006, 2007, 2008, 2009 and 2010 respectively. This shows the volume and frequent fraud occurrence is very high in all sectors being private or public in all angle of the nation.

Table 4.3  
Reports of financial fraud in Nigeria

Years	Number of Cases
2006	143
2007	142
2008	209
2009	203

This is a serious issue that will affect the general attitudes of employees, shareholders and directors being it in private or public sector organization.

### **Corporate Governance Code Compliance**

Corporate governance legal framework largely appears and exists in the Nigerian firms, however there is poor compliance and enforcement (Oyejide & Soyibo, 2001). Most of the firms do not comply with the provision due to one reason or others. A survey conducted by SEC in 2003 found that only 40% of the quoted firms including banks complied with the provisions in corporate governance code(CBN Code, 2006). Therefore, the financial institution distress in Nigeria is caused by the poor governance (Ahmad, 2008).

According to Oyebode (2009),the failure of corporate governance in Nigeria is due to the following factors, among others:

- (1)- Non-executive director is nominated by managing directors;
- (2)- CEOs/directors' appointments or reappointments are being without knowledge skill of financial statement;
- (3)- Many audit committee members have little or no skills of finance; and
- (4)- Most of the firms bribe shareholders in the pre-AGM forums to compromise their views.

### **CONCLUSION**

Despitely many regulations in the Nigerian business environment such as Company and Allied matters Act (CAMA 1990), Investment and Securities act 1999, Bank and Other Financial Institution Act 1991, Statement of Accounting Standard (NASB 2003), Insurance Act 2003,which were available before the Corporate Governance Code, yetthese problems of corporate failures, bankruptcy and governance lapses have persisted as a result of many reasons, among others are corruption and poor compliance with the policy.

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# **ELECTRICITY SECTOR DEREGULATION AND CONSUMER PROTECTION: ASSESSING THE IMPERATIVES OF A COMPETITION LAW AND COMPETITION REGULATORY AUTHORITY IN NIGERIA**

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## **ABSTRACT**

For about three decades now, electricity ceased to be provided as a public service across the globe. The liberalisation of the electricity industry started in Chile and later became a global trend. Developing countries have ventured into the reform agenda, and Nigeria is one of the new entrants. Literature abounds on the high risk of the electricity sector deregulation and the susceptibility of the deregulated electricity markets to manipulations and abuse by the electricity service providers. For better and fair market operations and the protection of consumers' interest, the paper adopts the doctrinal research approach and assesses the imperatives of competition law and competition structures in the deregulated Nigerian electricity market. The paper found that the Nigerian experiment took off without the necessary consumer protection structures such as a competition law and competition regulatory agency leaving the electricity consumers at the mercy of the electricity service providers. The paper concludes that the country urgently needs a comprehensive competition regime to guarantee consumer benefits and to prevent substituting public monopoly with a private monopoly in the new Nigerian electricity market.

**Keywords:** Deregulation, Electricity, Consumer Protection, Competition Law, Competition Authority

## **INTRODUCTION**

Until the late 70s, utility such as electricity was globally a monopoly service provided by the state as part of the social responsibility of governments (2010; Das, 2010). Beginning from Chile, the status of electricity services changed from public service to business product offered for sale by private electricity companies. The shift in ownership and control of the electricity industry from public to private resulted in consumer exploitation across jurisdictions. The Californian debacle remained the most celebrated because of the colossal consumer fraud from market manipulations and magnitude of consumer sufferings associated with it. According to Sally (2002) “{d}eregulation is widely viewed as a failed experiment, competition as a rip-off.”

The idea of utility deregulation and/or privatization stem from the neo-liberal economists understanding that the government should not be in business. Government should only

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be concerned in ensuring the proper functioning of markets by all means including force if desirable(Harvey, 2005). This idea received the warm embrace of global financial institutions that nurtured and promoted it. Whilst the idea was received as a matter of choice in the developed countries, the case of developing countries such as Nigeria was a different ball game altogether. The idea was imposed on the developing economies as conditions for loans and continued fraternity with International Financial Institutions (IFIs) such as the World Bank and International Monetary Fund(Harvey, 2005; MacLaran & Kelly, 2014).

Nigeria is a country of over 174 million people. For about two decades now, Nigeria like other developing countries landed into the traps of IFIs when it ventured into deregulation and/or privatizations of its public utilities. Historical trace of privatizations and commercialization of public enterprise in the country began with the passage of the Public Enterprise (Privatization and Commercialization) Decree of 1999 (currently an Act of National Assembly). This law laid the legal and institutional foundations and the later structures for the commercialization of public enterprises in Nigeria. Following the passage of the law, several public enterprises such as hotels, cement industries, publishing companies were either fully or partly privatized or commercialized. The electricity industry is the recent industry deregulated in Nigeria. This paper seeks to assess the legal and institutional arrangements for electricity sector deregulation and electricity consumer protection in Nigeria. The choice of the electricity sector is premised on the “institutional complications,” complexities, the special nature of the industry, and the risk and irreversibility of deregulation in that industry.(Howells & Weatherill, 2005; Hunt, 2002). This paper aims to critique the Nigeria’s electricity sector deregulation without putting in place the necessary and critical structures especially competition law and competition regulatory authority. The paper, therefore, assesses the imperatives of competition law and competition structures for better and fair operations in the deregulated Nigerian electricity market in the consumers’ overall interests. This is because electricity deregulation without the necessary structures is “disastrous to the consumer.”

## **THE VALUE OF COMPETITION AND ANTITRUST STRUCTURES IN DEREGULATED ENVIRONMENTS**

The need to improve efficiency, attract investment and to secure better deals for the consumers are advanced as the reasons that underlie the initiation of reforms in the electricity industry especially in developing countries. The aims of these reforms especially on consumer benefit are impossible without a legal regime regulating competition. This is because competition law significantly shapes the operation of market, guarantees fair pricing and optimizes supply of goods and service provisions (K. J. Cseres, 2005; Howells & Weatherill, 2005). Competition is “consumers’ best friend” (Reich, 1986) especially in deregulated markets. It focuses on, and guarantees choice, reduced prices, and ensures quality service and efficiency(Andersson & Bergman, 1995; Das, 2010; Farris & Pohlen, 2006; Kuner, Cate, Millard, Svantesson, & Linsky, 2014; Taylor, 2006).

Promotion of consumer welfare and the protection of consumers from harmful market conducts are among the prime objectives of every competition system(Bhat & Kamath, 2013; Buttigieg, 2005; Larson, 2014; Reich, 1992). Competition regulation is a double edged sword as it serves both the consumer and businesses. Competition law assures the consumer of a market free from manipulations and cartelization on the one hand. On the other hand, it protects smaller or weak businesses from the dangers of exploitation of economic powers by economically stronger firms. A Competition framework is required

to prevent anti-competitive conduct in free markets(Veljanovski, 2014). In fact, it is a precondition for the proper functioning of markets if the consumer is to benefit(Das, 2010).Reason has been that consumer and competition law exist to prevent distortions of the marketplace (StepaNoviĆ, 2014). Deterrence has been held to be the greatest value of establishing competition and competition regulatory authorities. The existence of competition law and competition authorities alone in places such as the UK, has been found to be effective than the enforcement of the said laws in deterring anti-competitive behaviour(Gordon & Squires, 2008; Christine Parker, 2011, 2013; C Parker & Platania-Phung, 2012; Wils, 2013)

Consumer organizations and United Nations(UN) equally underscored the importance of a competition law in the area of consumer protection. A Consumer International's study states in categorical terms that "adequate competition laws are an integral part of effective consumer protection." The UN in its Guidelines for Consumer Protection (UNGCP) seems to agree with this stand. It is submitted that once deregulation has taken root in any country, the need for a strong competition regime arises. Unlike other jurisdictions that deregulated their electricity sectors earlier, Nigerian neither had or enacted competition law nor establish agencies in that regards. The early competition laws came from the developed countries and the developing countries across the world have followed suit enacting similar legislation in the pattern of the developed countries. Noting, however, that only recently is the value of competition appreciated by developing countries(UNCTAD & CI, 2006).

Deregulated electricity markets have been found to be vulnerable and susceptible to manipulations and failure. Companies colluded instead of competing. Prices skyrocketed, and the consumer was the worst of it (Jansson, 2010; Tishler & Woo, 2007; Woo, King, Tishler, & Chow, 2006). A comprehensive competition law is one of the regulatory approaches design to address such market manipulations and failures especially in deregulated environments (K. Cseres, 2008). That could be the reason Tooraj et al. emphasized that any government that desires deregulating its electricity, needs to among other issues put in place "appropriate institutional arrangements such as legislation and new agencies" (Jamasp, 2005).To guarantee healthy competition amongst companies, the need for a competition law and competition regulatory authority in deregulated sectors has been underscored (K. Cseres, 2008; Mehta, 2012). According to Gasparikova "{w}ithout an authority assuring compliance, competition rules would merely remain a powerless declaration of intent." The success of competition in deregulated environment has a direct link on consumer protection. According to Jones, no consumer protection programme succeeds in the business environment full of restrictive trade practices and monopoly activities (Jones, 1973). Unavailability of competition laws in deregulated environment has it telling consequences on the daily lives of consumers (David, 2003)

The idea behind calling for a robust competition law for fair competition in the Nigerian electricity industry is premised on the abusive and restrictive market behavioursfound to be occurring in the electricity industry in several jurisdictions. These behavioursinclude anti-competitive agreements, abuse of market dominance or market power, cartel formation and merger concentration, etc. All these harm the consumers and the entire market operations. They result in high prices and hamper market operations. Evidence for instance abounds in the European electricity market. Electricity companies engaged in practices that favoured their affiliate companies at the expense of consumers(Das, 2010; John, 2007). If these difficult to trace anti-competitive practices are being committed in developed countries, is Nigeria an exception that the electricity providers would not want to manipulate the Market? Anti-monopoly laws and agencies beingthe necessary ingredients for a functioning competitive market are, therefore, necessary.

Their existence would deter monopolistic practices thereby safeguarding competition, protecting consumer interest and overall increase economic efficiency(Weatherill, 2010). These anti-monopoly laws are necessary to control not only domestic competition but anti-competitive practices outside the borders of Nigeria. The Chinese Anti-Monopoly Law and the Indian Competition Act 2002 fashioned based on the approaches of US and UK are good examples(McGinty & Nicholson, 2008; Mehta, 2012).This is required more in the context of the Nigerian electricity industry in which most, if not all the companies that were successful have foreign partners. The external structures of these foreign partners could take anti-competitive decisions outside the shores of their countries that have the tendency to restrict domestic competition in Nigeria.

## **ASSESSMENT OF COMPETITION PROVISIONS UNDER THE RELEVANT LAWS ON CONSUMER PROTECTION IN THE NIGERIAN ELECTRICITY INDUSTRY**

Like most countries, Nigeria has a body of law in the area of consumer protection. The Consumer Protection Council (CPC) Act, 1992 is the principal legislation in the area of consumer protection. The law established the Consumer Protection Council (CPC) as the highest authority in the sphere of consumer protection for the whole country. The Electric Power Sector Reform Act (EPSRA), 2005 is the electricity sector specific law made to regulate the electricity industry. The Act established the Nigerian Electricity Regulatory Commission (NERC) as the sector regulator. Part of the mandates of the NERC includes consumer protection. These laws are examined and analysed below.

### **Consumer Protection Council Act, (CPC Act), 1992**

The CPC Act is made up of 33 sections. Sections 1, 2 and 3 of the Act deal with the establishment and functions and powers of the Consumer Protection Council. Regrettably, nowhere is the issue of competition and competition regulation mentioned in detailing the functions and powers of the apex agency for consumer protection in the country. In fact, a thorough reading of the whole CPC Act reveals that nowhere is the word competition or any substitute used. This is a flaw in the principal legislation because competition law is an integral of consumer law and both aim at guaranteeing efficient functioning of markets(K. J. Cseres, 2005; Weatherill, 2010). According to Jules,(2005) competition law is the corner stone of any consumer law. Effective regulation of competition is, therefore, very critical to consumers' well-being in a deregulated industry(CI, 2007). The Nigerian CPC Act is short-sighted in relation to competition and competition regulation. This is not the case in the United States (US) where the Federal Trade Commission (the Nigerian CPC equivalent), could act where any conduct could harm competition in the US(K. J. Cseres, 2005; Stallibrass, 2013).The same applies to UK and Netherlands where the Office of Fair Trading (OFT)and the Netherlands Competition Authority have among their respective goals ensuring that markets work in the best consumer interest.

### **Electric Power Sector Reform Act (EPSRA), 2005**

The EPSRA is the electric sector specific legislation. Unlike the CPC Act 1992, the EPSRA 2005 made reference to competition. Part VII of the EPSRA is devoted to competition and market power. This is in addition to other related provisions under sections 24 (3) 25 and 26 of the EPSRA.To start with, sections 24 (3), 25 and 26 deal with attainment of a competitive electricity market without more. The sections provide;

#### **Section 24 (3);**

The Minister shall present to the president and National Council on Privatization and NationalAssembly, each report submitted by the Commission under

subsection 2 of this section and when the Minister, in consultation with the President and the National Council on privatization is satisfied that the electricity market in Nigeria has developed to a point where a more *competitive market* ought to be established pursuant to section 26 of this Act, having regard to the criteria described in paragraphs (a), (b), and (c) of subsection 2 of this section, and the Minister shall issue a declaration that a more *competitive electricity market* is to be initiated. (Italics supplied).

Section 25 provides;

Immediately following the issuance of interim licenses the successor in accordance with section 23 and prior to declaration by the Minister under section 24 (3), that a more competitive market is to be initiated. (Italics supplied).

Section 82 is more direct on the issue of competition even though not so comprehensive.

Section 82 (3) provides;

The section shall not be construed to limit the Commission authority to determine such matters as whether to restrict the introduction of competition to certain geographical areas or to ascertain licensees or customers on a temporary or permanent basis.

Section 82 (4) provides;

The commission shall determine the preconditions and any transitional arrangements required for a service to be offered competitively, including, codes of conduct, rules regarding access to information, access to the electric system, and constraints against undue discrimination in offering of services.

Section 82 (5) provides;

The Commission shall also have an ongoing responsibility to consider, in respect of services on competitive markets, the prevention or mitigation of abuses of market power in its decisions and orders regarding matters such as, but not limited to, license terms and conditions; the setting of prices and tariffs; whether or not to approve a merger, acquisition or affiliation

Section 82 (6) provides;

In discharging its ongoing responsibility and markets to determine whether there is or may be, an abuse of market power, the Commission shall be entitled to;

- (a) Require information from licensees;
- (b) Undertake inquiries; and
- (c) Establish or contract with an independent entity to provide monitoring services

Section 82 (7) provides;

In the event that the Commission determines that there is an abuse of market power, it may

- (a) Issue orders as may be required;
- (b) Levy fines not exceeding fifty million Naira.

Although the above sections talked about competition and issues of abuse of market power, they are not comprehensive enough to cater for competition in an industry as complex as the electricity industry. The provisions fail to provide the rules to guide and protect the process of competition for the maximization of electricity consumer welfare. There is the need for a comprehensive competition law and competition regulatory

authority as obtainable in jurisdictions such as United States. This is because apart from statutes such as The Public Utility Regulatory Policy Act (PURPA), 1978 (which regulates utility like the EPSRA in Nigeria) and the Energy Policy Act 1992, a specific competition and anti-trust legislation the Sherman Act exist in the United States and solely regulates competition and competition related issues(Larson, 2014). It is worrying that nowhere in the EPSRA is competition or the rules guiding anti-competitive conduct defined or provided in detail. The EPSRA only defined the word “competition transition charge”("EPSRA," 2005) Equally, the consumer is schemed out of remedies for violation of competition rules in the industry. This is seen clearly in section 82 (7) supra as the subsection only provided the penalty against the violator. No compensation for the consumer is envisaged in the sub section.

### **THE IMPERATIVES OF A COMPETITION LAW IN NIGERIA**

From the above analysis one can see that although Nigerian government in the electricity deregulation process did enact the EPSRA2005, as important as competition, no legislation on competition was enacted. The competition related provisions in the EPSRA are not adequate for the regulation of competition in the industry. Again, from institutional perspectives, the country did establish a new agency the NERC to regulate the electricity industry, but the other key agencies that ensure the proper functioning of new competitive market, and affords the consumer the protection he deserves in deregulated environment such as competition regulatory authorities were not on the priority lists of the government. This was not the approach in places that implemented the deregulation project earlier. It is indeed a flow in the Nigerian reform process.

Furthermore, a careful examination of the legal regime for electricity consumer protection in Nigeria reveals that the country lacks a clear and comprehensive competition law. In the entire principal consumer protection legislation the CPC Act 1992, the word competition did not appear. In the case of the electricity sector Act, (the EPSRA 2005), although the Act made reference to competitive electricity industry, it did not provide detail rules sanctioning restrictive trade practices, industrial concentration and other anti-competitive practices harmful to consumer interest. Equally, out of the regulations issued by NERC none was on competition and competition related issues. Again, no provisions exist in the EPSRA defining and prohibiting restrictive agreements and related issues. In fact, the word competition and the competitive market were not defined under the interpretation and citation section of the EPSRA. Interestingly, the NERC established a division for market, competition and rates. According to the NERC, the department is “responsible for determining tariffs and monitoring the electricity market to prevent abuse of market power, (and) for the commercial evaluation of license applications.” One wonders how this division is to prevent market abuse when the enabling law the EPSRA does not define competition, anti-competitive conduct which includes the abuse of market power. Where the country does not want to enact a specific competition law, the EPSRA ought to define the “norms conduct and practices” in the electricity sector that are anti-competition. The Act should spell out the range of activities that fall within the anticompetitive conducts. It should also declare in clear terms that going against the said norms conduct and practices are anti-competitive.

### **CONCLUSION**

Competition regulation in deregulated electricity environment is a very useful tool in protecting consumer's welfare. A country deregulating its electricity sector requires a competition law and a competition regulatory authority to oversee the conduct of

electricity firms. Unfortunately these structures are missing in the deregulation time table of the Nigerian privatization and deregulation of its utilities. These structures are needed to instill order in the economy and to ensure that giant firms are kept under watch and check. Enacting a comprehensive Nigerian competition law would, in the words of the US Supreme Court serve as a “comprehensive charter of economic liberty”(SC, 1958) for the preservation of unrestricted competition and for fair deal to the Nigerian electricity consumers in terms of reduced price high quality electricity service. Absence of consumer protection structures such as competition law and competition regulatory authority especially in deregulated environment such as electricity means little or no protection of the consumers. Consumers’ right and welfare protection are not guaranteed(Rachagan, 1992). The 174 million Nigerians are indirectly denied the benefits of competition regulation. According to Sir Henry, there are two errors a government cannot afford to make that is neglecting to regulate a free market economy and failing to have a competition law. He argues that the later mistake is the most disastrous (Jacoby, 1974). A competition law is required being a double edge sword. It serves both the interest of consumers and businesses. It guarantees efficient and proper functioning of markets for the consumer and businesses. With respect to the businesses, competition serves in “holding all firms to the same account, so that business can feel confident in fair and open markets, undistorted by cartels or other anti-competitive behaviour.”(Odudu, 2013)

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# **TOWARDS DEMOCRACY: UPRISING AND ITS AFTERMATH IN AFRICAN CONTINENT WITH REFERENCE TO HUMAN RIGHTS**

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## **INTRODUCTION**

Noam Chomsky opined that "National Interest is used as a euphemism for the interest of only certain groups, the government, and a military, elitist / influential and powerful group"<sup>1</sup>. This thesis has been recently proved and witnessed by global leaders from the uprising and the aftermath events in the African continent. Let we analyze and ponder over the aforementioned thesis by having a bird's eye view upon the gradual development of democratic governance from the period of Greek polity.

Democracy as an ideal and practice emanated from the land of Greece and a handful of Philosophers made a mention in their written work. Socrates the mentor of Aristotle kindled younger generation in order to have full freedom for right to speech, expression, and association. For this noble cause he was poisoned to death<sup>2</sup>. Plato and Aristotle also voiced their concern related with freedom of expression. They lamented democracy as a fragile government with all sorts of disabilities. Alexander the great never concerned about his mentors' suggestions and he himself indulged in empire building process by which large scale of violations happened in his own territories. John Locke in his "Two Treatises of Government" remarkably stated that men surrender all rights to the state except right to life, liberty, and property. If these rights are denied by the state machinery people tend to involve in revolution. In the medieval period also history of world witnessed rights violations which possessed foundation of religious bigotry and obscurantism. There are countless people burnt alive due to varied thinking which was against the established religious set up in the medieval arena. In the aftermath of the Industrial revolution, Britain, France and Spain emerged as nation states and started to accumulate as much territories as possible. The Berlin conference held in 1885 in which Europeans demarcated artificial borders in the African continent for the sake of their own benefits. Thus Africans were forced to live together which speaks voluminous deterioration of rights. The war episode from 1914 to 1991, either direct or indirect has come across a lot of violations of basic rights of people along the nations of the world. Colonialism, Neo-colonialism, Imperialism, Neo Imperialism, Bretton Woods Institutions, New International Economic Order, International monetary fund are all various phases of world history in which unprecedented and untold suffering were faced by developing and underdeveloped nations. People in the modern world are well aware of world happenings due to the advent of globalization and as well as upgraded and quick communication link. Samuel Huntington opined that, "the next generation war will be between civilizations on the basis of religion and ethnic communities"<sup>3</sup>. This has been disproved recently although it is not war, but uprising against governmental machinery topped world news for fighting against repressive and dictatorship rule. Most of the countries in the African continent, people voluntarily indulged in agitation for in order to protest for their inherent right that was denied to them hitherto. Egypt, Tunisia, Syria, Libya, Yemen are all the countries in which people fought against the established regime<sup>4</sup>. But the protests have not yielded good results. The aftermath of revolutions taught a lesson to

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the people, that democratic establishment is not that much of easy to deal with. Comparatively speaking, people in these affected countries are now facing worst amount of rights violations, which surprised the scholars and supporters of democratic ideal.

## **REVOLUTIONS AND RIGHTS**

All uprising and protests were aimed at upholding democratic ideals such as liberty, equality and fraternity that was constitutionally legitimized by almost all democratic countries<sup>5</sup>. Ironically the nations in which revolutions happened has not implemented or legitimized these ideals so far. Rather the present state machinery indulges in more human right violations by resorting to violence in order to suppress people's voices and peaceful agitations.

Egypt witnessed 30 years of dictatorship rule and freed at present but in vain. Almost 12000 protesters were referred to tribunal which is all time high, comparing with the past regime for rising against the government<sup>6</sup>. In between Jan-Feb 2011, 846 people were dead in one way or another when involving in agitation. The security forces detained people including children who were physically abused tortured whipped and electrocuted. The government raided "Aljazeera" a media channel for propagating the secret information related with violations of human rights in Egypt. The Supreme Council of Armed Forces (SCAF) posses' huge powers who even checked the private accounts of human rights defenders. Egyptian government also cancelled women quota in the parliament thus restricting women in political participation.<sup>7</sup>

Looking upon Libya, Gadaffi's 42 years of suppressive regime was overthrown by the agitating protesters who claimed for freedom of rights. Libya was the first country to get independence through United Nations organization (U.N.O). The protesters involving in revolution were fired indiscriminately causing 100's of civilians losing their lives. UNSC imposed sanctions on accordance with the resolution 1970 which further deteriorated the living conditions of Libyans. There were around 1000 people arrested without prior warning and number of people went missing in the controversial region. Mortars and rockets were propelled against armless civilians which was a gross human rights violation.<sup>8</sup> North Atlantic Treaty Organization (NATO) involved in making peace but with futile attempts.

In Syria Basher Assad's régime along with his strong security forces are fighting with rebel groups which are supported by Anglo-American countries<sup>9</sup>. Hitherto around 70,000 people were dead due to insurmountable clashes between ruling party and rebel groups. Detainees were beaten with sticks, twisted wires and metal racks and asked to lick the shoes of security forces. State and Government are having an undeniable role of providing safety and security to the subjects. But if state itself indulges in unleashing violence there is no other option of the people who are dependents of a particular state. Above all those injured protesters in Syria were denied medical assistance causing further pain and agony for the people.

Likewise Tunisia under the regime of Benali undermined the rights of expression, association and assembly. In taking strong opposition against this people got involved in protests in which more than 1464 were injured and 250 were killed. The arrested Tunisians were given harsh treatment and police excesses are high in dealing with detainees. In 2012 there was 1, 95,241 third country nationals present in Tunisia causing further turmoil in this country.<sup>10</sup>

In Yemen women uprising in revolutionary participation are higher comparing with other African countries. 33 years of sale's dictatorship is engulfed up with unemployment and

corruption practices which created a stir among the people. In the subsequent anti-governmental activities around 250 killed and 1000 injured which include 35 children. 100000 people displaced due to unrest that affected the country due to the impact from Egypt and Tunisia. The protesters were denied of medical care. Essentials like electricity, fuel and water were denied to the people causing discontent and hatred among them. There is also high level prevalence of child marriages and forced marriages which affected the dignity and status of women in Yemen. 7 to 8 women every day, due to child birth complications because of the callous attitude of the governmental machinery.<sup>11</sup>

As it is observed from the above issues, apart from religious and ethnic causes, people give more priority to rights. Issues like Palestine and Afghanistan are completely religious and the involvement of big ways at the international level is not denied. Issues of migration and refugees are causes of concern to be handled carefully. But without a concrete and clear humanitarian law or implementing agency, all issues got diluted at the international level. There are number of NGO's which assists the people voluntarily for in order to save humanity from pain and agony. Almost all the countries and people who involved in agitations are now facing a large amount of human rights violations which is unprecedented. People in these countries are even denied of basic requirements by the state machinery. Mutual multilateralism may be a remedy for checking out human rights abuses at international level. U.N.O., E.U, is all the International organizations which strive for International peace and security, but with ineffective mechanisms and illegible international law. The law can be mended only for superpowers' benefits and not for real concerns. People of African continent indulged in revolution in order to attain the democratic status .But democratic form itself is having its fallacies. Alex Tocqueville opined about "the dangers of a tyranny of the majority" Thomas Jefferson spoke about "Elective despotism was not what we fought for". In this junction scholars of democratic governance should ponder over and fathom out a real and concrete structure which fulfills all the requirements of appropriate governance. But without authentic leadership any sort of people-oriented governance is a futile attempt.

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# SOCIO- ECONOMIC CONSEQUENCES OF EBOLA VIRUS OUTBREAKS IN WEST AFRICA

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## ABSTRACT

The recent Ebola virus outbreaks in some West African countries which according to world health organisation has so far affected many countries has raise scholarly attention on preventive measures to combat the disease. The objective of this paper therefore is to review existing literature on Ebola virus: Its historical development, its classification, it's mode of transmission and treatment as well as access its socio- economic consequences on affected victims, communities and nations. The method of data collected is secondary using textbooks, journals, newspapers, health bulletins/magazines, annual reports of various national and international organizations etc. The findings revealed that at least 3000 people, out of which over 2000 have died within 2 to 3 weeks, which constitutes serious health treats to humans and wildlife as well as the socio-economic well-being of the affected nations. The paper recommends (amongst others) a holistic approach in tackling the menace of Ebola virus as one of the most deadly disease known to human society in recent history.

**Keywords:** Ebola virus, humans, wildlife, transmission, treatment.

## INTRODUCTION

Ebola virus (EBOV) formerly referred to as haemorrhagic fever, is a deadly transmissible infectious that has a mortality rates of about 90% among its victims (Pehitt, 2013; Heymannet al, 1980). The virus was initially transmitted from wild animals to humans and now it is now being transmitted from human to human through direct contact with infected persons bodily fluids i.e. urine, salves, faeces, vomit and even semen (martini G.A et al 1971) EBOV is however not airborne (The Week, 2014).

Ebola virus was first discovered in 1967 at a German hospital- Marburg where laboratory workers were admitted with an unusual disease. On investigation, the source of the virus was traced to imported green monkeys used for research and vaccine testing (Peters et al 1999). Again Ebola virus outbreaks occurred in 1976 in Southern Sudan and North-Western Zaire(now Democratic Republic of Congo). Subsequently from 1976-2014 there are over 27 Ebola virus outbreaks in about eleven African Countries. These countries include Kenya, Zimbabwe, Cote d'Ivoire, Gabon, Congo, Sudan, Uganda, Liberia, Sierra Leone, Guinea, Liberia and Nigeria(Muyembe-Tamfun, et al, 2012; The Week, 2014; Fact Sheet, 2014) The recent outbreaks in west African countries have been most devastating as the virus affected over 3000 people, with over 50% mortality (1500) recorded within weeks ( The Week, 2014). However, it was thought that the magnitude of EBOV in the affected West African countries was grossly underestimated, and that the rate of the virus outbreaks could rise to 20,000, cases (WHO, 2014; The Week, 2014)

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Unfortunately, however in spite of the numerous and series of EBOV outbreaks since 1967 when it was first discovered in Marburg hospital Germany, there is no tested vaccine/antiviral drugs that have been produced to treat its victims (Muyembe Tamfun, et al, 2012). However a drug called Zmapp, developed to treat animals with Ebola virus is now been to treat Ebola victims. This is despite the fact that the drug has not been tested clinically to know its side effects on human. Another health measures taken by governments of the affected countries in treatment of affected victims of Ebola virus is through isolations of the victims and given them intensive care under strict quarantine(The Week, 2014). Various measures have been adopted by governments to prevent the spread of Ebola virus among African Countries and indeed the world over. These measures include travel ban of people suspected with the virus, strict quarantine of affected people, wearing of protective clothes by health workers while treating the victims, screening of all passengers at international air ports, seaports, land boarders (The Week, 2014), these preventive measures no doubt have achieved their intended goals but they have also produced devastating effects on the socio-economic lives of the citizens of the affected west African countries

## LITERATURE REVIEW AND THEORETICAL FRAME WORKS

### Concept of Ebola Virus

Ebola virus (EBOV) was initially referred to as Ebola haemorrhagic fever. It is a deadly infectious disease or a severe acute viral illness that is transmitted through contacts with bodily fluids (i.e. vomit, urine, broken skin/mucus, faeces and semen) of infected persons(Bausch et al, 2007; Pettitt et al, 2013; Peter et al 1999). Ebola virus, can also be transmitted when a person has a bodily contact/consumed the meat of infected animal (Morell; 1995; WHO, 1976; Gear, 1975). The virus derives its name from Ebola, a river located in the Democratic republic of Vamkobu village Congo. Situation Report on Ebola in West Africa shows that Ebola virus particularly the Zaire Ebivirus(ZEBOV) is more deadly and can cause up to 90% mortality among infected persons(Wong, et al 2012).

### Signs and Symptoms of Ebola Virus Disease(EVD)

The most common signs and symptoms to be noticed in an infected person or animal include at the initial stage sudden onset of fever, intense weakness, muscle pain, headache and sore throat. After a while, it would degenerate to vomiting, diarrhoea, rash, impaired kidney and liver function and in few cases internal and external bleeding (WHO, 2014; Peters et al, 1999). The results of laboratory testing of an effected Ebola victim would normally show low white blood cell, and platelet counts and elevated liver enzymes (WHO, 2014).

### Classification of Ebola Virus and its origin

Biomedical scientist had provided at least four genetic types of Ebola virus: Zaire(EBO-Z), Cote d'Ivoire(EBO-CI), Sudan(EBO-S) and Philippines(EBO-R) (Fact sheet, 2014, Monath, 1999; Peter et al 1999). However the Ebola virus that mostly affects human beings has been linked to EBO-Z, EBO-CI, and EBO-S(Centre for disease control, 1995, WHO, 1995).

Ebola virus belongs to the family Filoviridae. Its outbreaks is not restricted to Africa, as it happened in Marburg Germany 1967, USA 1989. In Africa, the virus was first noticed in 1976 when two outbreaks took place in two villages located 800km apart from each other in Yambuku in Zaire, Nazare or Maride in Southern Sudan (WHO, 1978a, 1978b;

Barrette et al, 2009; Kissling 1970). Between 1980- 2014 the Ebola virus outbreaks occurred in a number of African countries including Kenya (1980:1982), Zimbabwe(1982), Garbon(1996), Cote D'ivoire , Sierra Leone(2014), Liberia (2014), Guinea(2014) and Nigeria (2014) (WHO 1978, WHO 1995, The Week, 2014, Muyembe-Tamfun, et al, 2012).

Ebola virus was first discovered in monkeys, in tropical rain forest of Africa (i.e. Western Congo swamp. The tropical rain forest of Africa provides most fertile ground for the emergent and transmission of Ebola Virus, since when it was first noticed in monkeys. In other words, the virus has a Zoonotic origin, since the first human causes of Ebola virus was noticed in people who had direct contact with gorillas, chimpanzees, antelope or bats(Muyembe- et al, 2012).

### **SOCIO-ECONOMIC CONSEQUENCES OF EBOLA VIRUS ON FAMILIES AND ECONOMIES OF THE AFFECTED NATIONS**

The fact that Ebola Virus is transferred through bodily contact with the blood, secretions, organs and other bodily fluids of infected person or animal, thus resulting in death within few days, coupled with the fact that there is no tested drugs in the market, governments of UN have adopted some prevention measures to halt the spread and eradication of Ebola virus since its recent outbreaks in some west African countries in August, 2014 .These measures although have achieved their intended goals but have nevertheless resulted in some socio-economic calamities on the people and their governments.The restrictions of movement and association of people has lead to stigmatization of not only the in infected people, but citizens of the affectedcountries. They are subjected to rigorous screening at sea ports, airports and land borders of many countries. African sportsmen and women were also barred from participating in international games in China, Russia, Uzbekistan,France, Spain, Italy and many other European and Asian countries (Daily Trust, 2014),thus depriving them of their fundamental human rights to freedom of association. This is particularly more worrisome in Liberia where the Ebola virus outbreak appeared out of control. Similarly people travelling from Africa into Europe, Asia and the America faced more intense scrutiny than other passengers (Daily Trust, 2014). All these discriminations against people of Africa travelling to Europe, Asia and the America have persisted despite the numerous calls by the UN secretary General for them to stop. On the economic front, the economies of the affected West African states have suffered colossal economic losses particularly in their tourism industries, due to suspensions of flights from other countries. For example Sierra Leone has cut its 2014 economic growth forecast from8 to 7 percent because according to its finance minister its previous target of 11.5% economic growth for 2014 is unachievable in the face of the Ebola outbreak.Similarly government has lost revenue of 60 million dollars within the last three months due to Ebola outbreak as mining and tourism sectors of the economy were badly affected revenue in Sierra Leone. While the economies of Liberia and Guinea suffered similar faith. As the economy of Liberia is expected to drop from 5.9% to 4% while that of Guinea is expected to drop from 4.5% to 2.5% (Daily Trust, 2M, and BVk0\014).

Some Sociological theories view sickness as a form of social deviance. However this paper considers two theories most relevant in explaining the recent Ebola virus outbreak in some WestAfricancountries. These theories are: sick role theory of Talcott parson which views sickness as a form of social deviance which disturbs/hinders/affects the smooth and efficient operation/functioning of a society. It maintained that a sick person in today's modern society have certain rights and obligations. The sick person's rights include the right to health care to be provided by health professionals within a health

care system and the right to be exempted from carrying out normal social obligations (i.e. employment) depending on the seriousness of the sickness. Their obligations include accepting their health conditions as an undesirable phenomenon, thus they must seek medical care and also cooperate with health care providers in order for them to be treated and get well, so as to contribute their quota within the society (Haralmabous, 2009). This theory clearly provides explanations about the importance of the health measures adopted by government of the affected countries which include isolation and quarantining of the affected victims. The second theory is the theory of Robert Merton on structural functionalist where he spoke on intended functions and unintended (latent/dysfunctions consequences) which is associated with most government policies/measures (Ritzer, 2003). Based on this theory, it can be argued that the measures adopted by governments for treatment of Ebola virus victims through isolation has achieved the intended function of providing treatment to the victims as well as protecting the larger society from becoming infected. However the policy has also produced unintended consequences on the victims, citizens of the affected countries and their economics. This is because the victims were not only isolated but they suffered stigmatization as well. Similarly, the citizens particularly those travelling to Europe, Asia and the America were subjected to intense scrutiny at airports/seaports than other passengers. Similarly, some airlines cancelled their flights to the affected countries thus affecting businesses and tourism.

## **CONCLUSION**

Ebola virus is one of the deadly infectious diseases that was initially transmitted from wild life animals (monkeys, rats, antelopes etc) to humans who had contact with their blood or organs. The first case of Ebola infection was discovered in 1967 at a German hospital which was traced to medical laboratory staff that had contact with imported Chimpanzee from Zaire. Subsequently the virus was discovered in 1976 in Zaire and southern Sudan. However Ebola virus surprised everybody when for the first time it appeared in the West African sub region in 2014 covering five countries. So far the virus has continued to spread like bush fire affecting over three thousand people and claiming the lives of at least two thousand people all within two to three weeks time. This forced the UN and government of the affected countries to adopt panicky but far reaching health measures through isolation of victims, travel bans and intense scrutiny at airports in order to decelerate the speed at which the virus was being transmitted. While these measures have in some respect achieved the goals for which they were intended but they have also produced negative social and economic consequences on the people and economies of the affected countries.

## **RECOMMENDATIONS**

1. A holistic approach involving all stakeholders (governments, UN, health professionals, religious leaders, family members, and the press) should be involved in sensitization of people about the deadly nature of Ebola virus.
2. Preventive measures rather than curative (sanitation, provision of drainages, clean drinking water etc) should be adopted in dealing with Ebola virus and other diseases not only in the affected countries but other countries as well.
3. The UN and other donor countries/agencies should help African countries with the necessary funds to upgrade and improve their healthcare facilities as well as training of more health workers of African origin to attend to the health needs of their countries.

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# **ECONOMIC GOVERNANCE AND SECURITY PERSPECTIVE IN WEST AFRICA: THE ROLE OF ECOWAS**

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Knocks Tapiwa Zengeni<sup>3</sup>

## **ABSTRACT**

The West African States are known for endowed natural and human resources that ought to have an enlargement in the area of economic growth and development which will yield results to the countries in West Africa through economic cooperation among states within the region. It is therefore, the goals and objective of the Economic Community of West African States (ECOWAS) is to promote regional integration and co-operation for the purpose ensuring economic growth and development through economic and monetary union among the states in the sub-region. The endowed resources in West African states are mostly untapped due to challenges that face the region such as lack of technological know-how, bad governance, political instability, lack of adequate diversification, infrastructure problem, lack of political will and the inability to involve the private sector, partnership with other countries outside Africa. The objective of this research is therefore, to create an environment where peace and security is sustainable for West African states to engineer economic governance through regional integration and economic co-operation among the countries in West Africa, partnership with the private sector, other African countries, the international community, and as well as countries from Asia, America, Europe and Australia which will lead to economic growth and development in West African States. The methodology used in this research is review of previous literatures and the use of content analysis which will also provide useful information on the available resources in the region. The findings from this study thus, the security of the West African states is very essential for the purpose of economic governance to be effective in the region where the states can engage in economic integration and co-operation. Through the role of ECOWAS in engineering economic growth and development therefore, envisioned the role of partnership with other countries outside Africa to solve the faced challenges in the region.

**Keywords:** Economic governance, Security perspective, ECOWAS, Partnership.

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## **INTRODUCTION**

The West African sub-region is endowed with human, agricultural and natural resources which the states in the said region sought to cooperate and to promote economic integration. As it well known, the Economic Community of West African States (ECOWAS) was established for this reason in 1975 for the purpose of engineering economic growth and development of the region given her endowed resources. Among others, the region contributes to the growth of the African economy as well as the global economy through her resources which are exported from the region to other parts of the world.

It is therefore, a region that needs to be studies in resolving some of the conflicting issues that surrounds the West African States so as to provide suitable solutions to such issues as we look at the bases of setting up the sub-regional organization known as ECOWAS. This will take us to understanding the role of ECOWAS in ensuring and enhancing good economic governance and the role of sustaining peace and security in the region so that the main purpose of its establishment would be achieved. We will also focus on revealing some of the issues that could affects the region when the said economic governance is not taken into consideration in relations to transparency, accountability, financial management, fight against corruption, fight against poverty, unemployment, health related issues, and to relates such with security issues.

Terwase, Abdul-Talib and Zengeni (2014) relate their work to the endowed resources in Nigeria that are still untapped while many people are in search of job opportunities in the case of Nigeria. In the said country which is the most populated state in West Africa and the host of ECOWAS Headquarters in Abuja, the country is richly blessed with both human and natural resources, however, her overdependence on oil has left other resources untapped while her people in the rural communities leaves within endowed resources but die of poverty. This work tends to look into such issues as it affects the security of the people when government tends to neglects functional economic governance.

For the European Union (EU) as a regional body, they look at the preventive measures that can sought to foster economic growth and stability while tackling issues that could make or result into economic problems. As such, they have agreed as members of the EU to ensure policies that would lead to economic growth and development of the region (European Union, 2014). When these issues are not taken care of, it then have negative effects which may also lead to insecurity of the said environment and region as the case may be. This paper will review the relevance of economic governance and as well as security issues as it relates to bad government, poor governance and as well as the role of ECOWAS in ensuring regional economic governance and security of the people and the region through transparency, accountability, early warning system, conflict prevention, conflict resolution and post-conflict reconstruction in West Africa.

## **LITERATURE REVIEW**

Deas, Hincks and Headlam (2013) in their paper look at the how changes can affect a regional geographical establishment which also relates to local, national and as well as international economic development. This becomes very important to this study as countries within the said sub-region of Africa established a body with the necessity of promoting economic development and international integration but after many years of its establishment, there are still many challenges facing the West African countries. Thus, the issue of economic governance becomes relevant to study as well as the security implications therein. Benit-Gbaffou, Didier and Morange (2008) reveals how private-public partnership can be used as a tool in economic and security governance as they studies city improvement scheme in the in South Africa's Cape Town and Johannesburg. They therefore sought to balance access to equal security opportunities and treatment of the people.

Verdun (2013) on the view to seek out issues affecting economic governance, related it to the role of the European Union as a regional organization in Europe reveals how democratic accountability can affects economic governance when such is lacking within the countries therein. This also reflects a major issue that is affecting not only the ECOWAS community but as well as other regional bodies and countries even in Africa especially the sub-region under study. Adams and Mengistu (2008) in their work, focused on how privatization can be implemented yet it does not have significant impact on economic growth and as well as income inequality but the major substance is good governance.

Economic problems can then be prevented through the process of ensuring stability and growth of economic policies that would gear towards the advancement of such countries involved. It can also be done through sound public finances which can thus, boost jobs opportunities leading to economic development and national growth (European Union, 2014).

What then is the linkage between economic governance and security? Lindberg (2001) looks at trade as a main function of states which can be conducted by the private sector in negotiation with the state; it is then expected of the state to provide the needed strategies that would enhance economic governance towards services that can be provided to the people as well as public governance leading to security of the people.

## **THE CHALLENGES OF ECONOMIC GOVERNANCE AND SECURITY IN WEST AFRICA**

What do the people expects from their leaders? How can such expectations be accomplished? Here we are looking at the issues that affect economic governance leading to unanswered results that the people expect from states within the sub-region. Since the establishment of ECOWAS in 1975 as a regional organization in the West African sub-region, the expectations of the people goes beyond haven a government in place in their respective countries to seen results to which it was established. Within the sub-region, there are countries that went through civil war, conflicts within states, military regimes and as well as democratic governance. There are challenges that arises from

lack of transparency and accountability, mismanagement of public funds, poverty, and as well as unemployment of the citizenry. The role of states here covers not only signing of treaties but ensuring good economic governance where the people are well taken care of in relations to proper management of resources in order to promote national economic growth and development.

As such, the stability and growth of the economic policies that would ensure both the development of the people through provision of services such as jobs for the people, provision of infrastructure, accountability on the part of the government towards her role in developing the state is what the people expects from their leadership. Furthermore, when such issues are not taken into consideration, it then creates an environment for insecurity which we shall be discussing in order to relate on how it affects the states in West Africa and the role of ECOWAS therein on how to prevent such occurrences.

### **1. Unemployment**

Countries that went through war and were affected in the past will certainly understand that the youths were mostly used during war, periods of political conflicts as a result of the availability of the youths who were basically unemployed and had nothing doing as a source of living. They become available to be used at any given time since the value for their life was no longer placed. This is one way of ensuring sustainable development through provision of job opportunities to the youths within the countries under the ECOWAS body (ECOWAS Commission, 2014). As in the case of the insurgency in Nigeria, most of the people who are directly involved are the youths who found themselves virtually uneducated and as well as unemployed either by way of acquiring skilled or unskilled job.

### **2. Poverty**

The communities and villages that are basically endowed with resources but the people living in such environment continues to suffer as a result of poverty driven environments tends to be useful in the hands of actors to fight the government during conflict periods. To some, they live on less than one dollar a day where they expect the government to intervene in their situations and provide economic policies that would lead to the development of such communities. However, when such issues are not sought for solutions, the people living therein becomes tools in the hands of war and conflicts against the government.

### **3. Transparency And Accountability**

This is one of the important areas of focus which some countries tends to neglect. In any government, the leadership in place is been watched by the people respective of whether democratic, military regimes, monarch or even authoritarian in nature. In most cases, the people may tend to ignore but a time comes when they fight back against a seating government when the leadership in place is not accountable to the people on how the resources are been managed and evidence of corrupt government may tends to face security challenges. Good governance therefore, would ensure transparency and accountability in

management of the available resources where economic policies that would lead to the development of such country can be enhanced.

## **THE ROLE OF ECOWAS IN SUSTAINING ECONOMIC AND SECURITY GOVERNANCE**

There are mechanisms that can be put in place to monitor the development of West African States, be it economic cooperation between states, economic integration, peace and security sustainability, the fight against corruption, control of small arms and cross-border crime by ECOWAS. These are some of the issues that would be discussed in order to understand ECOWAS' role in ensuring economic and security governance within the sub-region.

### **I) The Early-warning Mechanism:**

Through the provision of an early-warning system by the ECOWAS Commission, it will enable the development of a monitoring system where issues that may affect any of the member states, it will then be looked into before it would lead to any form of conflict (ECOWAS Commission, 2014). Conflict prevention mechanism in this case should be applied so as to enhance a resolution of issues that if not resolved may escalate to war. It could even be economic or political issues due to bad governance.

### **II) Economic Cooperation and Integration:**

The most significant issue that brought the idea of establishing ECOWAS was based on member states to cooperate among them for the purpose of promoting economic cooperation and integration, however after many years the sub-regional establishment it is still facing challenges in relations to such development and sustainability to which was established. ECOWAS' role therefore, can be focused on resolving such challenges through ensuring transparency and accountability in governance from the political point of view to economic face amongst the member states. This will go a long way in fostering growth and development in the region. Hence, issues such as corruption should be highly fought by encouraging and campaigning for zero tolerance on corrupt practices in dealing with public issues thereby putting the interest of the state first rather than personal interest. This would promote good governance within the sub-region and when the interest of the masses comes first, national interest is then placed and it then discourages personal interest which may lead to corrupt practices.

## **CONCLUSION**

In conclusion, the endowed resources in the West African sub-region can be developed through the cooperation and integration of the states involved. The issues that can lead to the underdevelopment of the region are traced to bad governance, corrupt practices by the leadership in government, negligence of the mass needs, placing of personal interest first above national interest especially those in leadership at any level, these are the problems that are truly facing the states. These issues need to be resolved for the

countries within the sub-region to move forward. ECOWAS therefore should apply the early-warning mechanism in relating to the states the consequences therein when the people are neglected, it then provide an avenue for insecurity of both the states and the sub-region. We have witnessed crisis in the region across states such as Liberia, Cote d'Ivoire, Mali, and Nigeria.

It is therefore the role of ECOWAS to see to it that early-warnings are passed to the states when there are effective monitoring systems within the regional body so as to encourage good governance, zero tolerance to corrupt practices, ensure transparency and accountability in governance be it political, economic and socio-cultural dimensions in order to eradicates all forms of challenges facing the sub-region such as poverty, illiteracy, unemployment, economic backwardness, and poor leadership at all levels. This would lead to the transformation of the sub-region through promotion of economic growth and development where private-public partnership could be encouraged and engaged, as well as partnership among other countries within and outside Africa for the purpose of engineering production and enhancement of the available resources therein.

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# ENVIRONMENTAL GOVERNANCE IN MALAYSIA: AN OVERVIEW

Haslinda Mohd Anuar<sup>1</sup>

## ABSTRACT

The importance of environmental issues was first discussed during the Stockholm Conference on Human Environment in 1972. Later, the United Nations Conference on Sustainable Development 1992 reinforced the needs for effective environmental protection which includes the role of various actors and stakeholders in this environmental issue. The concept of sustainable development was also introduced to give balance between economic development and protection of environment. All environmental issues are captured under environmental governance which contains the management of all man activities including politics, social and economics. The objective of this paper is to focus on the concept of environmental governance and its current status in Malaysia. Some environmental issues are also discussed to yield the effectiveness of environmental governance in Malaysia.

**Keywords:** environment, governance, Malaysia.

## INTRODUCTION

Natural resources and the environment are public goods in which everyone benefits from for example, clean atmosphere, good climate and stable biodiversity. These goods are not only shared within a nation but interconnected with other states, jurisdictions and global community and economies. To manage environmental threats, particularly which involve cross borders, effective global, national and local environmental governance is needed to address the environmental issues. To achieve its objective, this paper discusses the concept of environmental governance, its applicability in Malaysia and various issues in implementing environmental governance.

## THE CONCEPT OF ENVIRONMENTAL GOVERNANCE

Environmental governance is a concept that advocates sustainability as the supreme consideration for managing all human activities including political, social and economic. It takes into account the role of all actors that impact the environment, namely the government, business and civil society.

By definition, environmental governance refers to the process of decision-making involved in the control and management of the environmental and natural resources. International Union for Conservation of Nature (IUCN) define environmental governance as the '*multi-level interactions among, but not limited to, three main actors, that is, state, market, and civil society, which interact with one another, whether in formal and informal, in formulating and implementing policies in response to environmental-related demands and inputs from the society; bound by rules, procedures, processes, and wide-accepted*

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*behaviour, possessing characteristics of “good governance”, for the purpose of attaining environmentally-sustainable development’ (ICUN, 2014).*

Good environmental governance is crucial to combat environmental degradation. Among others, the key drivers of environmental degradation are; economic growth, consumption, destruction of biodiversity, population growth, pollution, and agricultural practices. The Rio Declaration 1992 had shifted the idea of neo-liberal economics to sustainable development to attain more sustainable economic growth. However, there are those who maintain the earlier idea for fear of losing social efficiency or lowering quality of life. Thus, the growth of consumption is also part of economic growth. Overdevelopment as an alternative to poverty, irresponsible lifestyles by having a number of homes and cars, somehow do affect the existing environment. In other aspect, deforestation is one of the factors in destruction of biodiversity. The damage caused is irreparable and a precautionary principle should be effectively applied to. Population growth is also viewed as one of the main drivers in environmental degradation. The growth, particularly affects the developing countries, need to be countered by developing education, family planning programs and improving women’s status. One of the most common cross borders environmental issues is the air pollution. It also caused an issue on climate change and global warming. Lastly, destructive agricultural practices lead to land degradation. Once the soils get eroded, it may lead to silting in river and erosion in high land. Overuse of fertilizers may also cause water pollution.

The above impacts to environment urge all actors, international and local, public and private body to meet the crisis. Cooperation is the key element to achieve sustainable development and to ensure the effectiveness of environmental governance. However, some challenges to the environmental governance have been identified. It includes:

1. Inadequate continental and global agreements
2. Unresolved tensions between maximum development, sustainable development and maximum protection, limiting funding, damaging links with the economy and limiting application of Multilevel Environmental Agreements (MEAs)
3. Environmental funding is not self-sustaining, diverting resources from problem-solving funding battles
4. Lack of integration of sector policies
5. Inadequate institutional capacities
6. Ill-defined priorities
7. Unclear objectives
8. Lack of coordination within the UN, governments, the private sector and civil society
9. Lack of shared vision
10. Interdependencies among development / sustainable economic growth, agriculture, health, peace and security
11. International imbalance between environmental governance and trade and finance program e.g. World Trade Organisation (TWO)

12. Limited credit for organisation running projects within the Global Environment Facility (GEF)
13. Linking UNEP, UNDP and the World Bank with MEAs
14. Lack of government capacity to satisfy MEA obligations
15. Absence of the gender perspective and equity in environmental governance
16. Inability to influence public opinion
17. Time lag between human action and environmental effect, sometimes as long as a generation
18. Environmental problem being embedded in very complex systems, of which is still quite weak

Fulton & Benjamin (2011) came out with seven principles of effective environmental governance. First, environment laws should be clear, even-handed, implementable and enforceable. Second, environmental information should be shared with the public. Third, affected stakeholders should be afforded opportunities to participate in environmental decision-making. Fourth, environmental decision-makers, both public and private, should be accountable for their decisions. Fifth, roles and lines of authority for environmental protection should be clear, coordinated, and designed to produce efficient and non-duplicative program delivery. Sixth, affected stakeholders should have access to fair and responsive dispute resolution procedures. Seventh, graft and corruption in environmental program delivery can obstruct environmental protection and mask results and must be actively prevented. These seven principles should first be implemented at local environmental governance to ensure its effectiveness before pursue to higher level of cooperation.

### **LOCAL ENVIRONMENTAL GOVERNANCE AND PUBLIC PARTICIPTION**

One of the challenges is the inability to influence public opinion which is important in democratic system. Public participation in decision-making process particularly in environmental issues is widely accepted with a weak system. Here, local governance can be a key factor in to fight against environmental degradation. According to Leach, Mearns & Scoones (1997), global community had consensuses that sustainable development implementation should be based on local level solution and initiatives designed with and by the local communities. Community participation and partnership along with the decentralisation of government power to local communities are important aspects of environmental governance at the local level. Local level governance shifts decision-making power away from the state and/or government to the grassroots.

Bulkeley & Mol (2003) summarised the importance of public participation in any programs of environmental governance as follows:

1. It helps to bridge the gap between a scientifically-defined environmental problem and the experiences, values and practices of actors who are at the root of both cause and solution of such problems;
2. Participation helps in clarifying different, often opposite, views and interests regarding a problem, making problem definitions more adequate and broadly supported;

3. Participation has an integral learning component for the participants which is reflected in the enhanced quality of, and the support for, environmental decision-making;
4. Participation may improve the quality of decision-making by preventing implementation problems, establishing commitment among stakeholders and increasing the democratic content.

The benefit of having public participation is not only to attain a better solution in decision-making process but also to ‘welcome’ the public and considered them as part of the process. Pulgar Vidal (2005) then noted four techniques that can be used to develop the public participation process;

1. Formal and informal regulations, procedures and processes, such as consultation and participative democracy;
2. Social interaction that can arise from participation in development programs or from the reaction to perceived injustice;
3. Regulating social behaviour to reclassify an individual question as a public matter;
4. Within-group participation in decision-making and relations with external actors.

However to get a good result in public participation, the process must be clearly projected and implemented. It is important to note that public participation is not just a matter of representing people. It involves '*who has participated in the process of environmental decision-making*' (Bukleley & Mol, 2003), and '*what kind of participation, by whom, to which purposes*' (Pellizzoni, 2003).

For developing decentralised environmental governance, Pulgar Vidal (2005) found that the key conditions are;

- a. Access to social capital, including local knowledge, leaders and local shared vision;
- b. Democratic process to information and decision-making;
- c. Local government activity in environmental governance; as facilitator of access to natural resources, or as policy maker;
- d. An institutional framework that favours decentralised governance and creates forums for social interaction and making widely-accepted agreements acceptable.

Here, environmental education and awareness play important role to make sure the conditions are met.

## **ENVIRONMENTAL GOVERNANCE IN MALAYSIA**

The Third Malaysia Plan, for the first time, had introduced the National Environmental Policy in Malaysia. The objectives of the policy are:

1. To maintain a clean and healthy environment;

2. To maintain the quality of the environment relative to the needs of the growing population;
3. To minimise the impact of the growing population and human activities relating to mineral exploration, deforestation, agriculture, urbanisation, tourism and development of other resources of the environment;
4. To balance the goals for socio-economic development with the maintenance of sound environmental conditions;
5. To place more emphasis on prevention through conservation rather than on curative measure inter alia by preserving the country's unique and diverse cultural and natural heritage;
6. To incorporate an environmental dimension in project planning and implementation inter alia by determining the implication of the proposed projects and the costs of the required environmental mitigation measures through the conduct of Environmental Impact Assessment;
7. To promote greater cooperation and increased coordination among relevant Federal and State authorities as well as the ASEAN governments.

The policy is based on eight principles. These are:

1. Stewardship of the Environment – where respect and care of the environment is to be exercised in accordance with the highest moral and ethical standard.
2. Conservation of Nature's Vitality and Diversity – which is in effect the protection of ecosystems to maintain biological diversity.
3. Continuous Improvement in the Quality of the Environment – where these improvements are to be ensured whilst pursuing economic growth and human development.
4. Sustainable Use of Natural Resources
5. Integrated Decision-Making – where the environment is to be integrated into the decision-making of all sectors
6. Role of Private Sector – where the role of the private sector in environmental protection and management is to be strengthened.
7. Commitment and Accountability – which in effect means transparency in government in their decision-making.
8. Active Participation in the International Community.

The above principles are supposed to be realised through seven 'green strategies', as follows:

1. Education and awareness
2. Effective management of natural resources and the environment

3. Integrated development planning and implementation
4. Prevention and control of pollution and environmental degradation
5. Strengthening administrative and institutional mechanisms
6. Proactive approach to regional and global international issues
7. Formulation and implementation of Action Plans

These policy, principles and strategies show the seriousness on part of the government to ensure the environmental issues are effectively governed, thus, to achieve sustainable development. However, in Malaysia, environmental matters are subject to different government agencies. The following are among the Malaysian government ministries and agencies related to environment at federal level.

No	Government Ministry	Agency
1	Ministry of Natural Resources and Environment	Department of Director General of Land and Mines
		Department of Survey & Mapping Malaysia
		National Institute of Land and Survey
		Forestry Department Peninsular Malaysia
		Forest Research Institute of Malaysia
		Minerals and Geo-Science Department, Malaysia
		Department of Environment
		Department of Wildlife and National Parks Peninsular Malaysia
		Department of Irrigation & Drainage
		Institute of Hydraulic Research, Malaysia
		Department of Marine Parks Malaysia
2	Ministry of Energy, Green Technology and Water	Energy Division
		Green Technology Division
		Water Division
		Department of Irrigation and Drainage

Besides these ministries and agencies, there are more than forty environmental-related legislation in Malaysia (Suzanna, 2006). Among them are the following:

1. Water Act 1920 (Revised 1989)
2. Mining Enactment 1929 (FMS Cap. 147)
3. Mining Rules 1934
4. Forest Enactment 1935
5. Natural Resources Act 1949
6. Poison Act 1952
7. Merchant Shipping Act 1952
8. Irrigation Area Ordinance No. 31 1953
9. Explosives Ordinance 1957
10. Land Conservation Act 1960
11. National Land Code 1960
12. Housing and Development (Licensing and Control) Act 1965
13. Radioactive Substances Act 1968
14. Civil Aviation Act 1969
15. Malaria Eradication Act 1971
16. Continental Shelf Act 1966 (Revised 1972)
17. Petroleum Mining Act 1966 (Revise 1972)
18. City of Kuala Lumpur (Planning) Act 1973
19. Fisheries Act 1985
20. Factories and Machinery Act 1967
21. Protection of Wildlife Act 1972
22. National Forestry Act 1984
23. Road Transport Act 1987
24. Local Government Act 1976
25. Town and Country Planning Act 1976
26. Environmental Quality Act 1974
27. Pesticides Act 1974
28. Dangerous Drug Act 1952 (Revised 1980)
29. Drainage Work Act 1954 (Revised 1988)

### 30. Land Development Act 1956 (Revised 1991)

These legislations are governed by different agencies based on their jurisdiction. According to Ainul (2005), the root causes the ineffectiveness of the decision-making process that hinders the successful implementation of environmental protection measures comprises factors such as; first, adoption of policies which gives preference to economic development rather than a sustainable approach to balanced economic development and environmental protection; second, lack of coordination between various government agencies endowed with decision-making in planning and economic development; third, characteristics of civil society; and fourth, lack of resources such as manpower and expert professional and finance.

This findings support the earlier research by Haslinda, Harlida & Nurli (2002) which found that there are seven problems in implementing environmental regulation as part of environmental governance in Malaysia. First, lack of effective enforcement; second, lack of competence and expertise among the law-enforcers; third, federal-state jurisdiction; fourth, lack of coordination and cooperation among the environmental agencies; fifth, disperse competence in natural resources sectors; sixth, lack of criteria and standard in streamlining and reinforcing the legislation; and seventh, financial constraint.

Besides national legislation, Malaysia had also ratified several international environmental treaties after Rio Declaration 1992. The following are the list;

No	Date of ratification	Treaty
1	14 September 1993	Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer 1990
2	14 June 1994	Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer 1992
3	22 September 1994	United Nations Convention on Biological Diversity 1992
4	11 October 1994	United Nations Framework Convention on Climate Change 1992
5	8 January 1995	Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal 1989
6	10 March 1995	Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat 1971
7	26 December 1996	International Convention to Combat Desertification in those countries experiencing serious Drought and/or Desertification particularly in Africa 1994
8	1 January 1997	International Tropical Timber Agreement 1994
9	4 September 2000	Kyoto Protocol to the United Nations Framework Convention on Climate Change 1997

Again, this ratifications show that environmental issues and governance is not only tackled at local level but also at international platform.

## **CONCLUSION**

Sustainable development is a well-known concept adopted by most of the countries in the world. However to achieve sustainable development, a good environmental governance must be exercised by the government both at national and international levels. To achieve effective environmental governance, participation from all sectors; public and private, individual and civil society, rural or urban people are vital.

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# **THE LAW GOVERNING MARRIAGE, DIVORCE AND RELATED ISSUES IN SRI LANKA**

Seeni Mohamed Nafees<sup>1</sup>

## **ABSTRACT**

Sri Lanka is a multi-ethnic, multi-religious and multi-cultural country where Buddhists, Hindus, Muslims, Christians, and Burghers inhabit. The major ethnicity of the country is Sinhalese who represents 74% of the population. Tamils and Muslims are main minorities of the country. At present, almost nine pieces of legislation govern matrimonial matters in Sri Lanka. Of which the general law and personal laws are significant. While marriages of Tamils are governed by the general law, Sinhalese may choose either general law or customary law. Muslim marriages are governed by Muslim personal law that is based on the Muslim Marriage and Divorce Act 1951. In this sense, different laws govern different ethnicity of the country and there is no uniformity in regulating family matters which render the issues more complicated. Therefore, this paper strives to investigate family law in Sri Lanka covering whole societies and proposes some suggestions based on need of the modern times. For this purpose, a qualitative research methodology is adopted. The study reveals that although a number of reforms have been introduced from time to time, there is still a need to adopt more practical approach in implementing the legislation on matrimonial matters. Especially, the Muslim Marriage and Divorce Act that was enacted in 1951 has not been revised for long time and it needs to be reformed in order to give effect to needs in line with social changes taking place globally. Although the law governing family issues of other ethnicities has gone through some important changes, there are a lot to be reformed.

**Key words:** Marriage, Divorce, Law, Reform, polygamy.

## **INTRODUCTION**

Marriage is an institutional organ that is structured for the wellbeing of an individual and a society. Marriage contract imposes mutual rights as well as the obligations binding on spouses and children. So, the parties to the marriage contract may incorporate into their contract of marriage any terms within the framework of law.<sup>2</sup>

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<sup>2</sup>Marsoof, S., 2006, The Muslim Law of Marriage Applicable in Sri Lanka, Law College Law Review.

The Marriage Registration Ordinance of 1907 governs the general law on marriage in the country. This Ordinance is applicable to the marriage between Tamils and other ethnic groups. Kandian Sinhalese either may choose the general law or the Kandian Marriage and Divorce Act. Marriages between Muslims are not governed by this ordinance, but the Muslim Personal Law .Under this law, the Muslim Marriage and Divorce Act 1951 is considered an important piece of legislation. Therefore, it clears that different laws govern different ethnic group pertaining to their matrimonial matters in Sri Lanka.

### **AGE OF MARRIAGE AND PROHIBITED RELATIONSHIP**

In accordance with the amendment made to the Registration Marriage Ordinance in 1995, the minimum age of marriage is 18 for both men and women. However, the law enables parent to give consent for a marriage of a minor. Although consent is required, the marriages contracted under the Ordinance without consent are still considered valid. This exception is not applicable to the customary marriage.<sup>3</sup>

The Muslim Marriage and Divorce Act does not provide for minimum age for a valid marriage. However, the girl under 12 years old must obtain the consent of the Quazi.<sup>4</sup> In Islamic law, the girl who attains puberty has the right to repudiate the marriage that took place when she was a minor.<sup>5</sup> At the same time, according to the Penal Code of the country, sexual intercourse with a wife who is under 12 is considered rape.<sup>6</sup>

The minimum age of marriage may be included in the Act in order to avoid child marriages. However, such practice is very rare in any community in Sri Lanka. But, in many Muslim countries such as Yamen and Afghanistan child marriages are very common. According to a UNICEF Study between 2000 and 2008, 43 per cent of women in Afghanistan were married under age, some before puberty.<sup>7</sup> However, age of marriage has been fixed in many Muslim countries. Forexample, in Morocco, this has been increased from 15 to 18 now.<sup>8</sup>

Meanwhile, the Ordinance prohibits marriages between two individuals within prohibited close relatives. It also prohibits the cohabitation which is punishable with imprisonment.<sup>9</sup> It is notable that the Penal Code has penalized such marriages. In addition, the polygamy is prohibited under the Ordinance.<sup>10</sup> The prohibited relatives to marry in Muslim law include affinity, consanguinity and fosterage.<sup>11</sup>

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<sup>3</sup>Section15 of the Marriage Registration Ordinance No. 19 of 1907 (CLE 1956 Official Ed. Cap 112) as amended by Act No. 11 of 1963, Act No. 3 of 1970, Act No. 18 of 1995, Act No. 12 of 1997, Act No. 11 of 2001, Act No. 36 of 2006 and Act No. 38 of 2006.

<sup>4</sup> He is similar to a judicial officer.

<sup>5</sup>Mohammad,I.J., &Lehmann,C. , women's Rights in Islam regarding Marriage and Divorce, Journal of Law & Practice, 2011.

<sup>6</sup>Section 363(e), Penal Code, No. 2.of 1883.

<sup>7</sup> Robert Fox, Girl , Eight sold to an Afghan Police Officer as his bride, London Evening Standard, October 6, 2011.

<sup>8</sup>Rashad,H., Osman,M., Fahimi,F.R., Marriage in the Arab World, Population Reference Bureau, 2005, 5.

<sup>9</sup>Section 17 of the Marriage Registration Ordinance No. 19 of 1907.

<sup>10</sup>Section15 of the Marriage Registration Ordinance No. 19 of 1907.

<sup>11</sup>Section 80(1), (2), Muslim Marriage and Divorce Act, 1951.

## **REGISTRATION OF MARRIAGE AND CONSENT**

Registration of marriage is not mandatory according to the Ordinance. However, it could be a best evidence of marriage if it is recorded in the register of marriage. The customary marriages inclusive of those took place in accordance with the Hindu, Buddhist and Christian rites are accepted as valid although they are unregistered. A marriage by habit and repute is recognized by the law and, for example if a man and woman cohabit as husband and wife, a presumption may be established that they are living in a valid marriage although it is not a conclusive proof. However, the Act requires specified persons to register a marriage and non-compliance with that will constitute an offence.<sup>12</sup> Consent of marriage is given in the form of signature in general law where there is a column in which the bride must place her signature whereas in Muslim law the consent of bride is obtained by her wali by placing his signature.<sup>13</sup> However, it is not sure whether the real consent is obtained from the bride. There are occasions where a number of marriages are consummated against will of the bride. This is one of the pitfalls that the Muslim Act consists. According to Islamic law, the bride has a right to refuse any marriage that she does not like to continue. There is a documented decision by the Prophet Muhammad where a girl approached him stating her father forced her into marriage. The Prophet Muhammad gave her the choice to either accept the marriage or overturn it immediately due to the duress involved. Although Islam provides many rights to women regarding marital issues, cultural traditions can greatly influence the proposal and acceptance process beyond the Islamic requirements and, in some cases, directly contradict Islamic practices.<sup>14</sup>

The concept of wali still plays a significant role in Muslim marriages of shafi sect. The Act requires that consent of wali must be obtained. In case of Hanafi sect, this rule is not necessary. In Islamic law, generally couples are allowed to negotiate regarding the marriage and related matters such as the place where to live after marriage in order to ensure that their marriage goals are achieved.

## **POLYGAMY**

Polygamy is prohibited to other than Muslims in Sri Lanka. However, the Muslim Marriage and divorce Act requires the husband to give notice to the Qazi of his intention to contract a second or subsequent marriage. The courts are concerned about the equal treatment of co-wives with regard to facilities given by the husband. The Qazi has no authority to determine the actual ability of the husband.<sup>15</sup>

In order to curtail the ill practice of non-Muslim males converting Islam merely to circumvent rigid divorce law under the general law, the Supreme Court held in landmark judgment in 1988 that a second marriage upon such conversion would be void during the subsistence of the first marriage.<sup>16</sup>

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<sup>12</sup>Section 15 of the Marriage Registration Ordinance No. 19 of 1907.

<sup>13</sup>[Yaseem v Noor Naeema]3 MMDLR 113.

<sup>14</sup>Mohammad, I.F and Charlie Lehmann, women's Rights in Islam regarding Marriage and Divorce, Journal of Law & Practice, 2011.

<sup>15</sup>Section 27-33, Muslim Marriage and Divorce Act, 1951.

<sup>16</sup>Marsoof,S., 2005, The AbyasunderaDecision:Plygamy v Bigamy: An Area for Reform, Meezan, 89.

In this sense, the rigidity of general law must be reduced or abolished in order to pave the way to separate a couple who are no more interested in living together. It is unfair to force them to maintain their matrimonial relationship while they are distant mentally from each other. In this sense, Islamic law may give guidelines with regard to the divorce of other ethnic groups in Sri Lanka.

## DIVORCE

The Marriage Registration Ordinance and the Civil Procedure Code establish the general law on divorce. The provisions of the Ordinance constitute divorce as a fault-based and this fact has been reiterated by case laws.<sup>17</sup>

As such, adultery is considered as one of factors to obtain divorce. Standard of proof in this respect is beyond the reasonable doubt. The specification of the date and the place of the act may be required by the courts. It has to be noted that an aggrieved party may demand damages from the person with whom adultery is committed.

Another ground for obtaining divorce is malicious desertion. It is defined by courts that the deliberate and unconscientious, definite and final repudiation of the obligations of a marriage state and it clearly implies something in the nature of a wicked mind. The intention to terminate the matrimonial relationship and the willful termination of cohabitation are to be established. The constructive desertion is also recognized by the law, that is, the innocent spouse is forced to leave because of the behavior of the other spouse.

One more ground for divorce is incurable importance at the time of marriage.

In addition to them, under the Civil Procedure Code, either spouse may make a petition to terminate the marriage following two year judicial separation decreed by the court. However, the current practice of the court suggests that mere separation may not be sufficient.

Moreover, it has to be noted that a draft Matrimonial Causes Act is underway whereby divorce can be obtained on the ground of irretrievable breakdown of marriage.<sup>18</sup>

The Kandians married under the Kandian Marriage and Divorce Act may obtain their divorce on the following grounds as prescribed by the Act:(a) they are adultery by the wife(b) adultery by the husband coupled with incest or gross cruelty (c) continued and complete desertion for two years (d) inability live together of which actual separation from bed and board for one year, and (e) mutual consent.<sup>19</sup>

In case of a Muslim, the divorce is governed by Muslim Marriage and Divorce Act 1951 or Muslim Personal law. It recognizes different grounds of divorce for the husband and the wife. It recognizes fault and non-fault based grounds. Rights and duties are determined based on the sect the person follows.<sup>20</sup>

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<sup>17</sup>Section 19 of the Marriage Registration Ordinance No. 19 of 1907.

<sup>18</sup><http://www.helplinelaw.com/article/sri%20lanka/167>, accessed on 25/07/2014.

<sup>19</sup> Section 32-34, Kandian Marriage and Divorce Act, No.41 of 1975.

<sup>20</sup> Section 27-33, Muslim Marriage and Divorce Act, 1951.

Divorce by the husband is called as Talaq. It means that repudiation of the marital relationship by the unilateral act of the husband. It is done by making a pronouncement that the marriage is terminated. The husband is allowed to pronounce the Talaq without resorting to any prescribed judicial procedures. In addition, such pronouncement no needs to be communicated or made in the presence of the wife. This view is endorsed by the Board of Qazi and the Supreme Court.

A Qazi has a role to play with regard to divorce. Qazi should attempt to reconcile the couple with the assistance of relatives and community leaders.

Dissolution of a marriage by wife is known as fasah. The grounds on which a fasah could be sought are (a) failure or inability of the husband to provide the support; (b) malicious desertion; (c) cruelty and ill-treatment; (d) continued dissension and quarrels; (e) husband's leprosy; (f) husband's insanity and impotence.

Ill-treatment may include mental ill-treatment, slanderous and false accusation of adultery. It is observed that social conditions and actual life situations are considered by the courts when cruelty is assessed. Failure to provide maintenance and desertion are main grounds that lead into fasah divorce. In the process of fasah divorce, notice must be served on the husband and evidence must be upheld by a minimum two witnesses.

Another form of divorce is Kul'u which is initiated by the wife who would pay the husband for her release from the marriage. It would normally suffice if she returns her mahr.

There is another kind of divorce which could be agreed by both parties without involving any monetary payment. This is called mubarrad.

A woman who could be falsely accused of adultery by her husband may divorce her husband on the ground of lian. Meanwhile, Tamils are governed by the Marriage Registration Ordinance and the Civil Procedure Code in relation to matters of divorce.

## **JUDICIAL SEPARATION**

The Civil Procedure Code enables the parties to make a petition demanding separation on any grounds allowed under general law. If the situation becomes worse and it indicates that further cohabitation is impossible or intolerable due to the conduct of either party, the order for separation can be obtainable.<sup>21</sup> This option is not available to those who are married under Kandian Marriage and Divorce Act or Muslim Marriage and Divorce Act. However, under Muslim Personal Law, there are various options to dissolve the matrimonial ties and there is no need for such judicial separation.

## **MAINTAINANCE AND FINANCIAL SUPPORT**

The main legislation in relation to maintenance and financial support for spouses during the subsistence of marriage is the Maintenance Act 1999. The Act enables the spouse who is unable to maintain him/her to demand financial support from the spouse who has

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<sup>21</sup>Section 608, Civil Procedure Code No. 12 1895.

sufficient means. Previous law was requiring only the husband to pay the maintenance. Wife had no such responsibility although she was financially sound. The order for such maintenance is not applicable if the applicant spouse is living in adultery or both are living separately by mutual consent. The applicant spouse has to prove other spouse's financial ability while convincing the court that he/she is in need of financial support.<sup>22</sup> Besides this Act, common law principles also provide for civil action that could be taken for maintenance. Under these principles, maintenance could be continued even during a period of consensual separation. According these principles, either of spouses may demand financial support while action for divorce is pending.

The Kandian Marriage and Divorce Act consists of provisions on maintenance in case of divorce. Husband may be ordered to pay maintenance for wife and children. Husband's financial ability and wife's needs are taken into account when the amount of maintenance is determined.

In case of Muslims, the concept of nafaqa is applicable under which food, clothing and accommodation have to be provided by the husband who has the primary obligation on maintenance even though wife is financially sound. Maintenance after divorce is irrelevant in Muslim personal law. This is consistent with Islamic law in general. However, according to the Muslim Marriage and Divorce Act, divorced wife is entitled to get maintenance during iddat or until delivery if she is expectant.

### **ADOPTION AND CUSTODY OF A CHILD**

The principles of custody are based on the Roman-Dutch laws. However, according to common law principles fathers are given preference to the custody of a child unless there is an assumption that such option is danger to the life, health and morals of a child. Nevertheless, case laws demonstrate that child's welfare is given priority.

The laws relating to custody of children are criticized as they give no proper attention or give a little attention to the best interest of children. The statute does not provide clear criteria on which the custody of a child could be determined. Earlier, courts were concerning on child's mental health and now they are also considering the security of a child as well.

According to the Adoption of Child Ordinance, adoption of a child can be made. Child's welfare, his age, adoptee's wishes are taken into consideration by the courts. Following an amendment to the ordinance in 1992, commercialized adoption that is carried out by foreign parents from wealthy countries has come to an end. The amendment also proscribes the receiving or giving any kind of payment in return to the adoption. Adoption by foreign parents is strictly scrutinized by the courts and it is allowed on exceptional circumstance such as if he/she is not adopted by a local parent.

Under Muslim Personal law mother is given priority in relation to custody of minor children. The School of thought to which parents belong to plays a significant role in this respect. According to shafie sect, a female child will remain with mother till she marries. However, in accordance with the Hanafi sect, she can be with mother until she reaches

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<sup>22</sup>Section 2 of the Maintenance Act No.37 of 1999.

puberty. In case of a male child, it is with mother till he reaches seven years according to the both sects. Under Shafi sect, a male child has an option to choose either to be with mother or father after reaching seven, but it goes to father when he reaches seven years under Hanafi sect. Muslim Personal law does not provide for adoption.

## **PROPERTY RIGHTS**

The governing law on property in Sri Lanka is Roman-Dutch law. Matrimonial property rights are based on the 1923 Married Women's Property Ordinance. The Ordinance enables women to hold, acquire and dispose of any movable property without her consent of her husband.

Meanwhile 1876 Matrimonial Rights and Inheritance Ordinance forms the general law on inheritance rights. Equal rights for male and female spouses have been provided under the Ordinance. In case of either spouse's death surviving spouse is entitled to half of the deceased spouse's property.<sup>23</sup>

Kandian Sinhalese are governed by the 1938 Kandian Law Ordinance in matrimonial property issues. Under this law, women have no equal rights with men. The ordinance entitles legitimate children to get equal shares from the parent's property.

Tamils are governed by the 1911 Matrimonial Rights and Inheritance (Jaffna) Ordinance in relation to matrimonial property matters. This Ordinance enables a woman to maintain her property that was acquired before marriage even after her marriage. However, with respect to the immovable property, a woman must obtain written consent of her husband for disposing it.<sup>24</sup>

Muslims are governed by Muslim personal law that enables a Muslim woman to acquire, hold and dispose with property independently. In case of inheritance, the 1931 Muslim Interstate Succession Ordinance is applicable. Here the sect to which a spouse belongs to plays an important role in inheritance issues. However, according to all sects, female heirs are entitled to lesser share compared to male heirs.

## **CONCLUSION AND SUGGESTIONS**

From forgoing discussion, it clears that there are a number of legislations with regard to matrimonial matters. Altogether nine legislations, namely, General Marriage Ordinance, The 1952 Kandian Marriage and Divorce Act, Muslim Marriage and Divorce Act 1951, The 1931 Muslim Intestate Succession Ordinance, The 1911 Matrimonial Rights and Inheritance Ordinance, The 1923 Married Women's Property Ordinance, The 1938 Kandian Law Ordinance, The 1999 Maintenance Act and Adoption of Children Ordinance govern family matters in Sri Lanka. Besides these legislations, there are many provisions relating to family issues in the civil procedure Code. Although it is appreciated that different society has different legislation based on the respective community's

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<sup>23</sup> Sections 4-12 of Matrimonial Rights and Inheritance, No 15 of 1976.

<sup>24</sup> Jaffna Matrimonial Rights and Inheritance Ordinance No. 1 of 1911.

culture and religious background, it is very complicated to find a right laws pertaining to family issues. Therefore, it is suggested to bring them all under one title “Family Law of Sri Lanka” where different chapters can be allocated for different community. While reforming these laws, law can also be updated and unnecessary things may be removed from the statute book.

The minimum age of marriage for Muslim can be set based on the practices in Muslim countries as discussed above. The author is of the view that 16 for girl and 18 for boys could be fixed asage of marriage.

The rigidity for obtaining divorce that is seen in the general law must be relaxed in order to ease the process due to the fact that this rigidity does not serve any benefit, but there are many disadvantages. There are some unfortunate incidents took place in the country such as some has killed even his wife to marry a second marriage. In addition, this rigidity is used to revenge the innocent spouse. The legislators may refer to the Muslim family law in this respect to get a flexible view.

Under Muslim law, consent of bride is not obtained in a proper manner. Current practice is that the wali gives consent on behalf of bride. There are occasions where forced marriages have taken place due to this practice. Instead of this practice, the bride may give consent by placing her signature in the marriage certificate with the recommendation of wali.

Finally, the laws discussed here were enacted long ago and it is need of time to review all and replace them with updated legislations that befit to the modern times and needs.

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# POLITICAL, SOCIAL, AND ECONOMIC CAPITAL ANALYSIS TO WINNINGS LOCAL GENERAL ELECTION IN MALANG 2013

Jainuri<sup>1</sup>

## ABSTRACT

Winning a candidate and a contest in the election need to have is equity the political social and of budget, it. Political is Equity is relating to: (1) supprot from a party or coalition of parties; (2) Support from local political social elite, the religious elite and elite society community organisazions. While is the extent to which the candidates have and functioning the network, community and organisations possessed. The next is the Equity of budget; it is how much money they had in sustaining his candidacy. This descriptive study using data collection techniques: documentation, observasion and interview, wants to analyze the ability of six potential partner mayor of Malang in utilizing the tri Equity aforementioned in winning the election in the city of Malang in 2013. The three equity can effect a candidate in obtaining support will be obtained from the communities. The greater the turnover of equity possessed by the candidate the greater support will obtained. Suspected by AJI partner victory in the election of candidates and participate in being able to effectively and effeciently utilize the tri equity. With such assumptions and hypotheses that this research was conducted in the hope of knowing the pragmatic reality of victory by AJI and its partner in effectively and effeciently utilizing political social equity, social equity, and equity of budget.

**Key Words:** Political Equity, Social Equity, Equity of Budget.

## PENDAHULUAN

Perkembangan survey tentang popularitas dan elektabilitas calon wali kota Malang sangat menarik hal ini dikarenakan terjadi dinamika fluktuatif terhadap pilihan-pilihan bakal calon wali kota tersebut. Berdasarkan hasil survey yang dilakukan oleh laboratorium politik dan rekayasa kebijakan (LAPORA) FISIP Universitas Brawijaya (UB) Malang, bulan Juli 2012 dipublikasikan sebagai berikut (Malang pos :5 Agustus 2011)

“PDIP tampaknya masih akan menjadi yang terkuat dalam pemilihan Walikota Malang yang digelar pada 2013 mendatang ...hasilnya menunjukkan bahwa dua wakil PDIP menduduki dua peringkat teratas. Dua bacawali itu adalah istri walikotamalang, HeriPudjiUtami dan anggota DPR RI, srirahayu. Saat ini keduanya masih bersaing guna mendapatkan rekomendasi dari DPP PDIP. Berdasarkan hasil survei, Heripudji Utami mempunyai prosentase tertinggi dari beberapa calon yang lain yakni mengantongi nilai 36,5 persen. Dibawahnya ada bakal calon lain dari PDIP yakni Srirahayu yang meraih 16,3 persen. Dibawahnya, ada bakal calon dari partai Golkar, Sofyan Edi Jarwoko yang hanya mendapat 3,7 persen. Kemudian disusul mantan sekda kota malang ,Bambang DH suyono dengan3,0 persen . sosok ketua DPRD kota Malang yang juga saudara

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presiden SBY yang bakal diusung oleh partai demokrat, Arief Darmawan hanya meraih 1,0 persen. Sementara peringkat terendah diraih oleh Arif Hari Setiawan, calon dari PKS, dengan raihan 0,5 persen”

Sementara hasil survey yang diselenggarakan lima bulan kemudian oleh *House of Administration Science, Technology and Art* (HASTA). Fakultas Ilmu Administrasi Universitas Brawijaya – Direktur Eksekutif HASTA Andi Fepta Wijaya mempublikasikan sebagai berikut ( Antara, 21 November 2012):

“Heri Pudji Utami dinyatakan sebagai calon wali kota yang paling populer diantara calon-calon lain, tingkat kepopuleran istri wali kota tersebut mencapai 64,43 persen dari 846 sampel (responden) di 57 kelurahan. Rahayu (anggota DPR RI) yang mencapai 44,11 persen. Disusul Sofyan Edi Jarwoko (ketua DPD partai Golkar kota Malang) 20,32 persen. Arif HS (anggota DPRD jatim) 20,21 persen, ”katanya. Selain itu juga ada Bambang DH Sunyono (mantan sekda kota Malang) 12,59 persen, Priyatmoko Oetomo (wakil ketua DPRD) 11,32 persen, Arif Darmawan (ketua DPRD) 10,85 persen, Didik suwandi (profesional) 8,31 persen, Sutiaji (anggota DPRD) 7,16 persen serta Ya’qud Ananda Gudbhan (anggota DPRD) 4,27 persen dan lain-lain mencapai 10,05 persen. Selain popularitas, hasil survei elektabilitas juga menunjukkan jika Heri Pudji Utami juga unggul dengan 26,44 persen. Sementara calon lainnya Sri Rahayu 15,01 persen Arif HS 7,62 persen, Sofyan Edi 6,93 persen, Bambang DH Suyono 3 persen, Arif Darmawan 2,89 persen, Didik Suwandi 1,62 persen, sutiaji 1,15 persen, Priyatmoko Oetomo 1,04 persen, Ya’qud Ananda 0,23 persen, lain-lain 1,04 persen dan belum mempunyai pilihan 33,03 persen. Hanya saja, lanjut Andi, meski cukup unggul, tidak menutup kemungkinan ada perubahan sikap para pemilih, apalagi Pilkada masih digelar enam bulan mendatang.”

Dua survei yang terpaut lima bulan dilakukan oleh lembaga yang berbeda, menunjukkan bahwa Bu Heri Puji, Bu Yayuk, Bung Edi memiliki tingkat popularitas yang paling tinggi secara berurutan :

Tabel 1  
Popularitas Calon Walikota Malang tahun 2013  
Berdasarkan Survey LAPORA dan HASTA Universitas Brawijaya

Nama Calon Walikota	LAPORA Juli 2012	HASTA Nop 2012
Heri Pudji Utami	36,5%	64,43%
Sri Rahayu	16,3%	44,11%
Sofyan Edy Jarwoko	3,7%	20,32%
Bambang DH Suyono	3%	12,59%
Arief Darmawan	1%	10,85%

Sumber : Data Skunder yang diolah

Dari data diatas bisa kita simak bahwa popularitas calon dalam lima bulan terakhir prosentasenya semakin meningkat hal ini dikarenakan semua calon berusaha melakukan "kampanye" untuk memperkenalkan diri kepada khalayak dengan berbagai cara misalnya memasang spanduk, baliho, banner, mendatangi acara sosial, politik, budaya, olah raga dan keagamaan dan lain sebagainya, semua itu membuat popularitas calon Walikota Malang meningkat.

Perbandingan popularitas dan elektabilitas hasil survey yang diselenggarakan oleh HASTA menggambarkan hasil sebagai berikut :

**Tabel 2**  
**Popularitas dan Elektabilitas Calon Walikota Malang tahun 2013**  
**Berdasarkan Hasil Survey HASTA Universitas Brawijaya**

<b>Nama Calon Wali Kota</b>	<b>Popularitas Calon</b>	<b>Elektabilitas Calon</b>
HeriPudjiUtami	64,43%	26,44%
Sri Rahayu	44,11%	15,01%
SofyanEdyJarwoko	20,32%	6,93%
Arief HS*	20,21%	7,62%
Bamabang DH Suyono	12,59%	3,00%
Arief Darmawan	10,85%	2,89%

Sumber : Data Skunder yang diolah

Dari tabel diatas bisa disimak bahwa : Pertama, terjadi perbandingan lurus antara popularitas dan elektabilitas calon, maksudnya manakala popularitas calon paling tinggi prosentasenya maka elektabilitas calon juga paling tinggi demikian seterusnya.Kedua, Tingkat popularitas yang tinggi tidak serta merta diikuti oleh elektabilitas yang tinggi, karena terkenal dan populer tak otomatis harus dipilih. Sementara hasil polling yang dilakukan Jawa Pos sampai hari ini senin tanggal 7 Januari 2013 menunjukkan bahwa Pak Moko tidak tergeserkan menduduki urutan pertama dalam jejak pendapat sejak kurang lebih satu bulan yang lalu, ketika polling bakal calon walikota Malang di luncurkan oleh Radar Malang. Adapun urutan 10 besar perolehan suara sebagai berikut :

**Tabel 3**  
**Hasil Polling Radar Malang**  
**Sampai 7 Januari 2013**

Priyatmoko	43,87%	Dwi Cahyono 17,86%
Arina Nurfinahi	10,21%	Iwan Budianto 4,68%

Moh Anton	4,12%	Sutiaji 4,06%
Sofyan Edi Jarawoko	3,48%	Sri Rahayu 3,32%
Heri Pudji Utami	2,60%	Bambang Suyono 1,52

Sumber : Data skunder yang diolah

Apa yang bisa kita cermati dari dua survey dan satu polling diatas adalah: *pertama* survey yang dilakukan oleh Laporan dan Hasta menunjukkan data informasi yang mewakili realitas sesungguhnya terjadi masyarakat kota Malang sementara polling yang dilakukan media massa diatas terkesan “hanya” sebagai media untuk marketing politik dalam rangka mempopulerkan beberapa orang kandidat calon walikota Malang. *Kedua*, survey lebih banyak berangkat dari usaha mencari kebenaran ilmiah sementara polling terkesan dipakai sebagai *Bargaining Position* bagi kandidat tertentu untuk menaikkan citra dan popularitas agar mereka bisa bersanding dengan calon kuat walikota Malang. *Ketiga*, karena berangkat dari mencari kebenaran ilmiah dan motivasi untuk pengembangan kajian akademik maka survey dilakukan secara independen tanpa dorongan untuk mencari popularitas seorang calon walikota, sementara polling nampaknya memiliki motivasi kebalikannya.

Mendekati pemilukada Mei 2013 penelitian ini menjadi penting, penting karena : (1). Sebagai pembanding dari penelitian-penelitian sebelumnya yang selalu menempatkan Bu HeriPudji utama sebagai sosok yang populer dan memiliki tingkat elektabilitas yang paling tinggi dibanding calon-calon lain yang selama ini beredar di masyarakat. (2). Memantau pergerakan politik para calon dalam meraih dukungan dari masyarakat, karena empat bulan sebelum pelaksanaan pemilukada tahun 2013 di kota malang, terdapat dinamika politik yang semakin menarik karena ada calon yang popularitasnya mencapai titik jenuh seperti BU HeriPudji, sementara ada calon yang popularitasnya mulai menanjak yaitu Arief HS dan Abah Anton.(3). Memantau pergerakan politik partai-partai yang mengusung para calon wali kota dan wakil wali kota, kita tahu bahwa di kota Malang partai yang boleh mengusung calon tanpa koalisi adalah Partai Demokrat (12 kursi) dan PDIP (9 kursi), sementara partai-partai yang lain harus berkoalisi untuk mendapatkan tiket pencalonan karena kursi yang dimiliki kurang dari tujuh kursi.

Berdasarkan latar belakang seperti tersebut diatas dalam penelitian ini dirumuskan masalah sebagai berikut : “seberapa besar tingkat popularitas dan tingkat elektabilitas calon wali kota Malang dalam pilkada tahun 2013 ? rumusan masalah ini didasarkan pada kenyataan bahwa calon wali kota Malang yang beredar di masyarakat sudah banyak jumlahnya 13 orang , pasangan yang sudah mantab satu pasangan yakni Abah Anton dan Sutaji yang di usung oleh PKB berkoalisisi dengan Gerinda. Sementara yang lain masih mencari-cari pasangan dan belum ada koalisi yang mantab.

## POPULARITAS DAN ELEKTABILITAS

Dalam kamus bahasa Indonesia, popularitas mengandung makna dikenal dan disukai oleh banyak orang atau tindakan perilaku seseorang dalam mengaktualkan diri untuk dapat terkenal atau dikenal masyarakat. BU Heri Pudji Utami misalnya memasang bendera dihampir setiap pohon di kota Malang, Bu Yayuk melakukan hal yang sama dan memasang baliho-baliho yang besar di jalan-jalan strategis seperti Soekarno Hatta, Bung Edi Jarwo membuat sepanduk dan baliho besar-besar untuk mempopulerkan

keberhasilannya mengangkat pengangguran semua itu dalam rangka memperkenalkan diri untuk supaya dirinya lebih populer.

Menjelang pemilihan umum kepala daerah (Jenedri : 2012, xi) yang makin dekat di kota Malang yang dihelat tanggal 23 mei 2013 nanti, partai-partai politik dan tokoh-tokoh yang berminat untuk maju dalam pemilukada itu sudah mulai intensif melakukan pendekatan guna membangun koalisi (Sigit Pamungkas, 77-85) dalam mengusung pasangan calon wali kota dan calon wakil wali kota. Sebagian sudah ada yang mengarah, sebagian lain baru pasang kuda-kuda, sebagian lain sudah ada yang memperoleh mitra koalisi seperti PKB dan Gerindra untuk mengusung Abah Anton dan Sutaji. Jika diperhatikan dari efektifitas sebuah kampanye, mungkin dapat disebutkan, mereka semua sesungguhnya belum berkampanye , walaupun sudah ada yang mulai turun ke kelurahan-kelurahan, ke RW-RW dan RT-RT atau bahkan ke pasar, ketempat keramaian, pengajian, olah raga namun rasanya mereka belum melakukan marketing politik, karena hanya melemparkan jargon-jargon dan harapan-harapan melalui media massa yang argumentasi dan istilah-istilah yang dipergunakan banyak yang masih sulit dicerna rakyat biasa.

Konstataasi Zaenal Abidin (detik news, 7 Januari 2013) ada benarnya ketika ia menanyakan : "apa yang menjadi tujuan dari kampanye itu?apakah sekedar untuk popularitas dengan sering tampil , atau untuk meningkatkan elektabilitas ? istilah popularitas dan elektabilitas dalam masyarakat memang sering disamaartikan - padahal keduanya mempunyai makna dan konotasi yang berbeda , meskipun keduanya mempunyai kedekatan korelasi yang benar. Popularitas lebih banyak berhubungan dengan dikenalnya seseorang, baik dalam arti positif , atau pun negatif. Sementara elektabilitas berarti kesediaan orang memilihnya untuk jabatan tertentu. Artinya, elektabilitas berkaitan dengan jenis jabatan yg ingin diraih. Elektabilitas untuk menjadi gubernur tidak sama dengan elektabilitas untuk jabatan ketua PSSI".

Bagaimana cara meningkatkan popularitas, untuk kasus di Malang hampir semua calon melakukan hal yang sama antara lain : (1). Pasang spanduk /baliho/banner, (2). Sosialisasi ke masyarakat melalui kegiatan sosial kerja bakti (bangun/rehab mushola), budaya (event kesenian, bersih desa), politik (dialog seminar masalah politik), ekonomi (pemberian santunan, pengentasan kemiskinan, fasilitas pekerjaan pelatihan kerja), olah raga (senam tashes, jalan sehat) sampai mendatang acara keagamaan seperti istigotsah,doa bernama, tahlilan). (3). Kontrak media massa – untuk memuat visi-misi dan aktivitas para calon.

Cara apa yang paling efektif untuk melakukan kampanye (Rozali : 2012, 160) - upaya peningkatan popularitas calon wali kota - jawabnya tidak ada cara yang paling efektif kecuali semua cara dilakukan baik melalui banner, media massa sampai sosialisasi ke masyarakat hampir semua calon seperti bu Heri, bu Yayuk, bung Edi, dan Arief. Mereka melakukan kerja-kerja politik dan kerja sosial seperti tersebut diatas , rumusnya siapa yang paling banyak menyapa masyarakat melalui media-media diatas merekalah yang paling populer di mata masyarakat untuk mensosialisasikan pencalonannya. Semua dilakukan dalam rangka supaya lebih dikenal masyarakat. Namun dari upaya yang dilakukan oleh para kandidat maka yang lebih siap dan lebih banyak diuntungkan adalah apa yang dilakukan oleh bu Heri Pudji Utami. Alasannya disamping Bu Heri Pudji adalah istri wali kota Malang, beliau juga ketua penggerak PKK kota Malang karena itu upaya "internalitas" kegiatan kampanye bisa dilakukan dengan mengemasnya sebagai kegiatan PKK.

Respons masyarakat (Jainuri : 2009,28-36) terhadap usaha calon wali kota dalam meningkatkan popularitas umumnya di bagi menjadi beberapa bagian :1). **Antuas**, masyarakat yang mengidolakan seseorang karena orang yang diidolakan mencalonkan

diri menjadi calon wali kota maka yang bersangkutan senang mendukung .2). **Antipati**, jika orang yang mencalonkan diri berbeda golongan, partai dan lain sebagainya,3). **Apatis dan cenderung membiarkan**,sekarang ini nampaknya masyarakat kota Malang tidak kaget dan cenderung membiarkan manakala ada orang yang tidak jelas sosial politik mencalonkan diri menjadi cawali, masyarakat seperti berpendapat itu adalah hak masing-masing orang untuk di pilih dan memilih

## HUBUNGAN POPULARITAS DAN ELEKTABILITAS

Apa hubungan popularitas dan elektabilitas, apakah orang yang populer pasti akan dipilih atau sebaliknya apa orang yang tidak dikenal bisa dipilih - ini pertanyaan-pertanyaan yang harus dianalisis, Zaenal Abidin membuat konstataasi sebagai berikut :"dalam masyarakat, sering disalah artikan, orang yang populer dianggap mempunyai elektabilitas yang tinggi. Sebaliknya, seorang yang mempunyai elektabilitas tinggi adalah orang yang populer.Memang kedua konstataasi ini ada benarnya.Tapi tidak selalu demikian. Popularitas dan elektabilitas tidak selalu berjalan seiring. Ada kalanya berbalikan.Orang menjadi populer karena sering tampil didepan umum. Sering terlibat dengan persoalan-persoalan publik. Bagaimana dia tampil, merupakan persoalan lanjutan untuk menilai elektabilitasnya. Kalau tampilnya sebagai pelaku kriminal, sebagai koruptor atau karena tindakan yang melanggar etika publik, maka pengaruhnya terhadap elektabilitas tentu saja negatif". (Zaenal Abidin, Detiknews-7 Januari 2013)

Jadi konotasi diatas bisa digaris bawahi sebagai berikut:

- (1). Dimasyarakat sering terjadi simplifikasi bahwa orang yang populer mempunyai elektabilitas yang tinggi. Orang yang memiliki elektabilitas yang tinggi berarti adalah orang yang populer.
- (2). Simplifikasi demikian tidak begitu benar karena popularitas dan elektabilitas tidak selalu berjalan seiring. Ada calon yang populer namun elektabilitasnya Rendah seperti dulu kasus Amien Rais dalam pilpres tahun 2004.
- (3). Orang menjadi populer merupakan persoalan lanjutan untuk menilai elektabilitasnya. Kalau tampilnya negatif seperti korupsi,mengabaikan norma susilapengaruhnya terhadap elektabilitas tentu saja negatif. Jika tampilnya positif seperti Jokowi yang merakyat maka elektabilitasnya tinggi.

Karena itu dalam kaitannya dengan popularitas yang perlu di perhatikan adalah aksioma sebagai berikut :

- (1). Agar memiliki elektabilitas yang tinggi orang harus dikenal baik secara meluas dalam masyarakat.
- (2). Agar supaya dapat dikenal secara luas oleh masyarakat, perlu ada usaha untuk memperkenalkan diri
- (3). Usaha untuk supaya dikenal masyarakat perlu dilakukan publikasi dan kampanye. Karena itu publikasi dan kampanye memegang peran penting.
- (4). Ada orang baik dan lurus, memiliki kinerja yang baik dalam bidang yang ada hubungannya dengan jabatan publik yang ingin dicapai, tapi karena tidak ada yang memperkenalkan maka orang tersebut menjadi tidak elektabel.
- (5). Sebaliknya, ada orang yang berprestasi tinggi dalam bidang yang tidak ada hubungannya dengan jabatan publik, boleh jadi mempunyai elektabilitas tinggi karena ada yang mempopulerkanya secara cepat.
- (6). Dalam masyarakat yang belum berkembang, kecocokan profesi tidak menjadi persoalan. Sementara dalam masyarakat yang relatif maju profesi calon menjadi cukup penting.
- (7). Perlu diingat bahwa, tidak semua kampanye berhasil meningkatkan elektabilitas. Ada kampanye yang menyentuh, ada kampanye yang tidak menyentuh kepentingan rakyat.

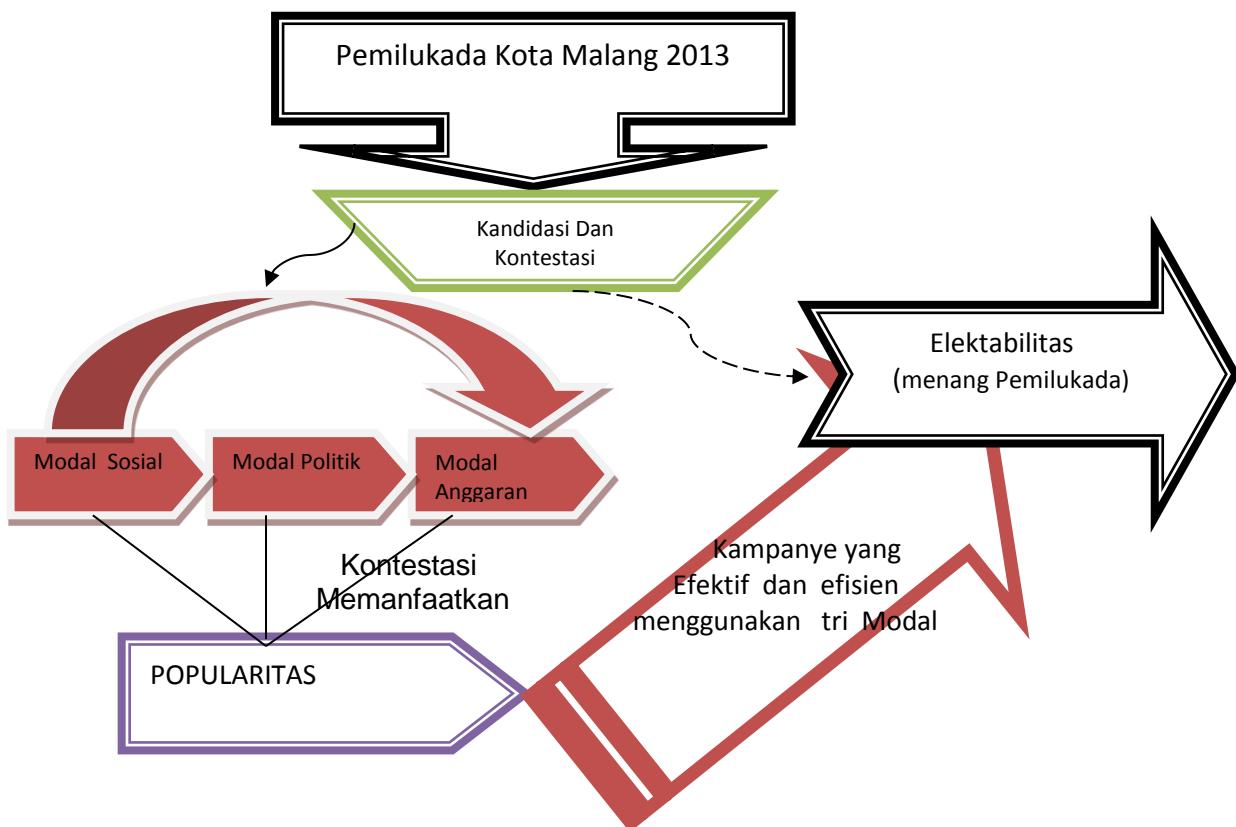
- (8). Kampanye yang menyentuh kepentingan rakyat bisa diharapkan dapat meningkatkan elektabilitas. Tapi kampanye asal kampanye, tanpa menampilkan kinerja tokoh atau menggunakan kata-kata yang tidak relevan atau yang tidak dapat dipahami rakyat.

Jelaslah bahwa dalam pemilukada pasti terdapat kandidasi dan kontestasi beberapa calon kepala daerah dan wakilnya, supaya mereka populer tindakan yang harus dilakukan adalah kontestasi dan kampanye menggunakan modal yang dimiliki : modal sosial, modal politik dan modal anggaran, para kandidat juga tidak terpaku hanya pada popularitas tetapi juga memiliki elektabilitas yang tinggi karena itu yang harus dilakukan adalah kampanye yang menyentuhkan kepentingan masyarakat dalam kata lain kampanye yang dilakukan harus efektif dan efisien terutama dalam menggunakan 3 modal diatas-jika ingin menang dengan elektabilitas tinggi hal-hal itulah yang harus dilakukan.

Untuk memudahkan memahami alur pikir dan alur penelitian berikut ini disajikan kerangka fikir yang diolah dari konsep-konsep yang digunakan dalam tinjauan pustaka diatas :

**Gambar 1**

Kerangka Berfikir



### **MODAL POLITIK : Partai dan Potensi Suara Pengusung Calon**

Seberapa besar potensi calon walikota dan calon wakil walikota Malang dapat memenangkan kontestasi pemilihan tahun 2013 di kota Malang, ini dapat dilihat beberapa hal antara lain : kapasitas pribadi para calon, modal sosial yang dimiliki, jaringan sosial dan jaringan politik yang dimiliki, namun yang tidak kalah penting adalah partai apa yang mendukung dan seberapa sebesar potensi suara partai yang dimilikinya tahun 2009. Secara garis besar para calon harus memiliki tiga hal yaitu : Modal politik, modal sosial dan Modal anggaran.

Dalam perhelatan satu tahun sebelum berlangsungnya pemilihan banyak calon yang mensosialisasikan diri menjadi walikota tercatat menurut hasil survei LAPORA, HASTA, Laboratorium IP-UMM dan Polling Radar Malang lebih dari sepuluh orang mengkampanyekan diri sebagai calon walikota Malang dan tidak ada satupun yang mensosialisasikan diri menjadi calon wali kota Malang. Mereka itu antara lain Heri Puji Utami, Sri Rahayu, Sofyan Edi Jarwoko, Sutiaji, Abah Anton, Arief HS dan lain-lain. Dinamika politik selanjutnya di kota Malang mengharuskan setiap partai melakukan koalisi (Sigit Pamungkas, 75) karena hanya Partai Demokrat dan Partai Demokrasi Indonesia Perjuangan (PDIP) yang bisa mengusung calonnya sendiri. Maka manakala terjadi tawar-menawar diantara elit partai politik yang berlangsung hampir setengah tahun akhirnya bulan Maret 2013 koalisi partai politik dan calon independen mengerucut menghasilkan enam pasangan calon yakni : Dwi-Uddin, DADI, SR-MK, RAJA, DOA dan AJI, yang kemudian mulai direspon terbuka oleh publik kota Malang. Dua pasangan berasal dari jalur independen atau perorangan dan empat pasangan diusung oleh partai atau gabungan partai (Sigit Pamungkas, 76). Berdasarkan partai politik dan jumlah partai politik pengusung, potensi suara yang dimiliki partai hasil pilkada tahun 2009 dan kuantitas pendukung maka dapat diurutkan pasangan bakal calon wali kota dan wakil walikota Malang sebagai berikut :

**Tabel 3**  
**Partai Pengusung dan Potensi suara Pasangan Calon**

No	Pasangan Calon	Partai Pengusung	Perolehan suara Partai 2009 dan Jumlah Kursi	Keterangan
1	Drs. AGUS DONO W. M.Hum & Ir. ARIF HS, MT	Partai Demokrat PKS Partai Hanura PKPB	122.554 suara dan (19 kursi)	Didukung koalisi 4 partai
2	Dra. Hj. HERI PUDJI UTAMI, M.AP & Ir. SOFYAN EDI JARWOKO	P. Golkar, PAN, PBB, PPRN, PKPI, PPD, PPI, P. Republikan, P. Merdeka, PKNU, P. Buruh, P. Pelopor, PBR, PPP, PNUI, P. Patriot)	74.813 suara dan (9 kursi)	Didukung koalisi 16 partai parlemen dan non parlemen

3	Dra. Hj. SRI RAHAYU & Drs. Ec. RB. PRIYATMOKO OETOMO, MM	PDIP	65.385 suara (9 kursi)	Didukung satu partai
4	H. MOCH. ANTON & SUTIAJI	PKB Gerindra	49.798 suara (7 kursi)	Di dukung koalisi 2 partai
5	H. DWI CAHYONO, SE & MUHAMMAD NURUDDIN, SPt	Independen	46.842 Pendukung	Perseorangan yang didukung lebih dari 33.812 orang (4% kali jumlah penduduk)
6	MUJAIS & YUNAR MULYA	independen	39.098 Pendukung	Perseorangan yang didukung lebih dari 33.812 orang (4% kali jumlah penduduk)

Sumber : Data skunder yang diolah

Berdasarkan potensi suara dan partai pengusung pasangan DOA adalah pasangan yang memiliki potensi paling besar untuk menang hal ini karena mereka diusung oleh empat partai seperti : Partai Demokrat, PKS, Partai Hanura dan PKPB - yang jumlah akumulasi suara pileg 2009 sebanyak 122.554 suara dan kursi sebanyak 19 kursi. Normalnya jika tanpa kasus-kasus yang menyertainya setahun terakhir ini seperti ekspose korupsi ditubuh Partai Demokrat dan PKS mereka memiliki potensi menang di pemilukada kota Malang tahun 2013, namun Karena kasus itulah mereka kalah - juga tidak bisa memilih mitra koalisi sejak awal di pemilukada ini dan pasangan Doa adalah pasangan "terpaksa" karena tidak ada lagi partai yang mau berkoalisi dengan partai ini.

Calon kedua yang memiliki *kans* untuk memenangkan pemilukada 2013 adalah pasangan DADI disamping diusung oleh dua partai parlemen yakni PAN dan Golkar, Bunda HP dan Sofyan Edi Jarwoko juga diusung oleh 14 partai non parlemen yang akumulasi suara partai-partai itu berdasarkan hasil pileg 2009 sebesar 74.813 suara dan memiliki 9 kursi di parlemen lokal kota Malang. Besarnya jumlah partai pengusung jika dapat bersinergi dan memanfaatkan efektivitas Jaringan partai untuk menggerakkan mesin partai - sedemikian rupa - koalisi partai ini dapat mendulang suara sebanyak-banyaknya. Namun sebaliknya jika pasangan calon tidak mampu menggerakkan mesin politik maka tidak akan berpengaruh apa-apa terhadap perolehan suara pasangan calon wali dan wawalikota tersebut. Bahkan dalam banyak kasus pemilukada - banyaknya partai pendukung malah bisa mereduksi potensi suara yang dimiliki calon wali/wawali karena konflik kepentingan diantara mereka sendiri, seperti kasus yang terjadi pada pasangan DADI dalam *pemilukada* kota Malang 2013.

Sementara kans calon yang memperoleh suara terbanyak ketiga adalah pasangan SR-MK, pasangan yang diusung PDIP ini memiliki potensi suara sebesar 65.385 suara dan 9 kursi. Meski didahului oleh semacam “perebutan” rekomendasi calon walikota dari DPP-PDIP antara Sri Rahayu dan Bunda HP - konflik ini menyita energy dan menjadi pusat perhatian publik kota Malang, namun masalah konflik internal PDIP ini relatif bisa diselesaikan dengan baik – sehingga PDIP bisa mengusung sendiri calon walikota dan calon wakil walikota Malang yaitu Sri Rahayu dan Moko.

Yang menjadi kuda hitam dalam pemilukada kali ini adalah pasangan AJI, pasangan yang diusung oleh PKB dan Gerindra ini memiliki potensi suara sebanyak 49.789 dan 7 kursi, Abah Anton seorang etnis Cina pengusaha tetes tebu ketua PITI dan Bendahara MPC-NU Kota Malang - adalah orang baru yang terjun di dunia politik namun kiprah sosialnya banyak menarik perhatian masyarakat kota Malang -dipasangkan dengan Sutiaji seorang wakil ketua DPC – PKB kota Malang sungguh mendapatkan respon yang baik dari warga Nahdiyyin. Sementara calon independen pasangan Dwi Uddin dan Raja nampaknya menjadi semacam “pelengkap” dalam pemilukada kali ini.

### **MODAL SOSIAL : Kedekatan Calon Dengan Masyarakat Kota Malang**

Modal sosial dapat didefinisikan sebagai serangkaian nilai dan norma informal yang dimiliki bersama diantara para anggota suatu kelompok masyarakat yang memungkinkan terjadinya kerjasama diantara mereka (Francis Fukuyama, 2002: xii). Tiga unsur utama dalam modal sosial adalah *trust* (kepercayaan), *reciprocal* (timbal balik), dan interaksi sosial. Modal sosial adalah kemampuan orang berhubungan dengan orang lain - menjalin hubungan – membuka jaringan dengan orang atau fihak lain dalam rangka saling memberi manfaat. Fukuyama (2002) menulis bahwa : "Modal sosial (*social capital*) dapat didefinisikan sebagai kemampuan masyarakat untuk bekerja bersama, demi mencapai tujuan-tujuan bersama, di dalam berbagai kelompok". Sementara Mark dan Engle sebagai pelopor - menjelaskan tentang eksistensi modal sosial ini dengan istilah 'keterikatan yang memiliki solidaritas' (*bounded solidarity*). Terminologi *bounded solidarity* menggambarkan tentang kemungkinan munculnya pola hubungan dan kerjasama yang kuat dalam suatu kelompok.

Mereka yang terjun kedunia politik dan ingin duduk menjadi pejabat publik sudah sewajarnya jika yang bersangkutan memiliki modal sosial berupa jaringan sosial, menduduki struktur dalam organisasi sosial kemasyarakatan, memiliki komunitas, bergumul dalam dunia bisnis dan profesi yang dimiliki, karena itu dalam menjelaskan tentang modal sosial para calon walikota dan calon wakil walikota Malang di deskripsikan sebagai berikut : Enam pasangan calon walikota dan wakil walikota memiliki modal sosial sendiri-sendiri jika modal sosial itu digabungkan secara teoritis akan menambah Modal sosial pasangan calon walikota dan wakil walikota Malang.

Dari data yang dilacak dibeberapa media berkaitan dengan modal sosial ada tiga kategori calon pasangan yang memiliki modal sosial sangat dekat bersentuhan dengan kepentingan masyarakat kota Malang – maksudnya dengan aktivitas, jaringan, ketokohan, kepeloporan dan kedekatan dengan masyarakat para calon ini memiliki modal sosial yang tinggi bersentuhan langsung dengan kepentingan masyarakat kota Malang - semakin dekat mereka dengan masyarakat semakin banyak mereka berperan aktif dalam kegiatan-kegiatan masyarakat kota Malang, maka modal sosial ini bisa dijadikan modal politik dalam mencalonkan diri menjadi Walikota atau calon wawali.

Kategori pertama adalah pasangan calon yang memiliki modal sosial “sangat tinggi” bersentuhan langsung dengan kepentingan masyarakat kota Malang, contohnya pasangan DADI dan AJI dua pasangan ini secara pribadi masing-masing sangat dikenal

aktivitasnya di masyarakat kota Malang. Bunda HP misal karena kedudukannya sebagai Ketua Penggerak PKK kota Malang selama dua periode maka aktivitas sosialnya berhubungan langsung dengan kepentingan dan kebutuhan masyarakat. Ia berusaha memajukan Posyandu, kesehatan masyarakat, peningkatan pemberdayaan perempuan, pengelolaan pendidikan usia dini (PAUD) dan lain-lain. Sementara Sofyan Edi Jarwoko seorang legislator 3 periode ketua DPD Golkar kota Malang mau tidak mau harus terjun langsung mengikuti irama pembangunan masyarakat kota Malang kalau tidak - tak mungkin ia menjadi legislator 3 periode dan kalau tidak terjun langsung ke *grass root* - menyapa segala lapisan masyarakat bisa jadi Golkar akan ditinggalkan oleh orang Malang. Berikutnya pasangan yang memiliki modal sosial "sangat tinggi" bersentuhan langsung dengan kepentingan masyarakat adalah pasangan AJI, pasangan ini memiliki peran penting di masyarakat - Abah anton sering menyantuni anak Yatim, kegiatan-kegiatan sosial keagamaan dan taklimnya diikuti oleh orang banyak - sebagai Bendahara NU di kota Malang dia sangat dikenal oleh kalangan Nahdiyyin, sementara sebagai ketua PITI abah Anton memiliki peran penting dikalangan minoritas masyarakat Tionghoa. Abah Anton adalah pengusaha tetes tebu karena itu di komunitasnya ia sangat disegani kalangan pebisnis karena uletnya. Sementara Sutiaji seorang politisi muda PKB yang telah mengenyam banyak pengalaman di kalangan organisasi NU dan PKB mulai dari tingkat kelurahan, kecamatan sampai tingkat kota. Aktivitasnya di Dewan Masjid Indonesia kota Malang juga berpengaruh terhadap modal sosial yang dimilikinya – Sutiaji juga menjadi Koordinator Forum Komunikasi Badan Keswadayaan Masyarakat (BKM) Kota Malang.

Kategori kedua pasangan calon yang memiliki modal sosial "relatif tinggi" bersentuhan langsung dengan kepentingan masyarakat kota Malang yakni pasangan SR-MK. Pak Moko memang beberapa kali menjadi anggota legisltif, kegiatan sosial dan kegiatan politiknya cukup menjamin bahwa yang bersangkutan memiliki komunitas, jaringan, pendukung yang banyak – kepeloporan, ketokohnanya cukup menjadi jaminan yang bersangkutan cukup dikenal masyarakat semua itu adalah modal sosial yang cukup memadai bagi dirinya untuk terjun di dunia politik. Sementara Bu Yayuk lima sepuluh tahun yang lalu kegiatan sosial dan kegiatan politiknya sangat di kenal kota Malang, namun karena yang bersangkutan sekarang menjadi anggota DPR yang kedudukan, aktivitas, menghabiskan banyak waktu di Jakarta - hanya sekali-kali kunjungan atau reses ke Malang maka modal sosialnya agak menurun di banding masa-masa sebelumnya.

Kategori ketiga adalah pasangan yang "kurang memiliki modal sosial yang memadai" di masyarakat kota Malang. Pasangan DOA, RAJA, dan Dwi Uddin aktivitas, jaringan, komunitas yang dilakukan dan dibentuk kurang bersentuhan langsung dengan kepentingan Masyarakat kota Malang. Dono misalnya calon Walikota yang diusung Partai Demokrat dan PKS disamping bukan orang kota Malang, aktivitas, jaringan dan komunitas yang dilakukan dan dibentuk tidak bersentuhan langsung dengan kepentingan masyarakat kota Malang. Sebagai legislator ditingkat propinsi dan sebagai Wakil Ketua kontak Tani Nelayan Andalan Jawa Timur pada tahun 2011 – aktivitasnya itu - tidak bersentuhan langsung dengan kebutuhan masyarakat kota Malang. Demikian juga Arief HS calon wakil Walikota dari PKS ini hanya setahun bersentuhan langsung dengan kepentingan masyarakat kota Malang ketika menjadi Ketua DPD PKS KOTA MALANG (2005 – 2006) minimnya mereka beraktivitas, membentuk jaringan, memiliki komunitas, ketokohan dan kepeloporannya di kota Malang menjadikan pasangan ini adalah pasangan yang "kurang" memiliki modal sosial dalam pilkada kali ini. Begitu juga pasangan Dwi Uddin dan Raja.

### **MODAL ANGGARAN : Kekayaan Pribadi calon Walikota dan Wakil Walikota**

Sebagai calon Walikota dan Wakil Walikota 12 orang ini adalah orang-orang yang harus memiliki kekayaan atau harta benda. Kekayaan tersebut disamping digunakan untuk membiayai proses pencalonan wali/wakil kota Malang juga sebagai persyaratan KPK bahwa setiap calon pejabat publik harus mengumumkan berapa kekayaan yang dimiliki. Ini dimaksudkan untuk memantau pergerakan kekayaan para calon sebelum – ketika menjadi dan pasca menjadi pejabat publik apakah mereka memanfaatkan jabatannya untuk kepentingan diri sendiri dengan cara yang sah atau tidak. Seberapa besar kekayaan para calon wali/wawali kota Malang dapat dilihat tabel berikut ini :

Tabel 4

Daftar Kekayaan Calon Walikota dan Wakil Walikota Malang

No	Nama Cawali	Jumlah Kekayaan	Nama Cawawali	Jumlah Kekayaan
1	Dwi Cahyono	Rp 26.194.037.35	M Nuruddin	Rp 257.400.896 + US\$ 2.666
2	Sri Rahayu	Rp 9.046.913.235	Priyatmoko Oetomo	Rp 6.117.184.731
3	Heri Puji	Rp 7.202.230.350	Sofyan Edi	Rp 6.069.746.360
4	Ahmad Mujaiz	Rp 1.448.753.616	Yunar Mulya	Rp 1.172.199.945
5	Agus Dono	Rp 1.433.354.668	Arif HS	Rp 639.000,000
6	M. Anton	Rp 24.466.707.07	Sutiaji	Rp 372.046.322

Sumber : KPUD kota Malang

Dari daftar diatas diketahui bahwa kekayaan terbesar calon walikota Malang secara berurutan adalah : Dwi Cahyono 26 milyard lebih, Abah Anton 24 Milyard lebih, Sri Rahayu 9 milyard lebih disusul oleh Bunda HP 7 milyard lebih, ahmad Mujais 1 milyard lebih dan terakhir Agus Dono 1 milyard lebih. Kekayaan Calon Wakil Walikota secara berurutan : M. Nuruddin, Priyatmoko, Sofyan Edi memiliki kekayaan 6 milyard lebih, Yunar Mulya 1 milyard lebih, Arif HS 600 juta lebih dan paling kecil kekayaan adalah Sutiaji sebesar 300 juta lebih.

### **Visi Misi Calon**

Pada tanggal telah diadakan pengundian nomor urut calon masing masing diberi kesempatan yang sama untuk mendapatkan nomor yang nanti dipakai sebagai nomor urut pengenal mereka dalam menyampaikan : pesan, informasi, dan kampanye kepada masyarakat, dalam undian itulah pasangan Dwi-Uddin mendapat nomor urut 1, pasangan bunda Heri Pudji dan Sofyan Edi Djawoko mendapat nomor urut 2, pasangan SR-MK mendapat nomor urut 3, pasangan Radja mendapat nomor urut 4, pasangan DOA mendapat nomor Urut 5 dan pasangan AJI mendapat nomor urut 6. Setelah mendapatkan nomor urut masing – masing calon menyampaikan visi-misi, adapun visi misi pasangan calon wali kota dan calon wawali kota Malang adalah sebagai berikut :

Tabel 5  
Visi dan Misi Calon

Nomor Urut	Pasangan Calon	Visi Misi
1	 <p><b>H. DWI CAHYONO, SE &amp; MUHAMMAD NURUDDIN, SPt</b></p>	<p>VISI : MEWUJUDKAN KOTA MALANG SEBAGAI KOTA PENDIDIKAN DAN KOTA WISATA, DENGAN DIDUKUNG OLEH MASYARAKATNYA YANG JUJUR DAN DEMOKRATIS SERTA APARATUR PEMERINTAHAN YANG BERSIH DAN BERWIBAWA, BERDASARKAN KETUHANAN YME DAN BERKEADILAN SOSIAL.</p> <p>MISI</p> <ol style="list-style-type: none"> <li>Memberikan peluang dan hak yang sama kepada seluruh lapisan masyarakat dalam bidang pendidikan.</li> <li>Mengembalikan Kota Malang sebagai tujuan wisata.</li> <li>Menumbuhkembangkan potensi ekonomi Kota Malang.</li> <li>Menyediakan layanan dan jaminan kesehatan bagi seluruh lapisan masyarakat.</li> <li>Mendorong peran serta masyarakat khususnya kaum perempuan dalam pembangunan yang berkelanjutan.</li> <li>Mendorong aparatur pemerintah untuk memberikan layanan optimal kepada masyarakat.</li> <li>Menyediakan ruang bagi kreativitas kaum muda.</li> <li>Menbenahi tata ruang dan investasi lahan dengan menyesuaikan ruang terbuka hijau.</li> <li>Menjamin kerukunan dan kebebasan beragama.</li> </ol>
2	 <p><b>Dra. Hj. HERI PUDJI UTAMI, M.AP &amp; Ir. SOFYAN EDI JARWOKO</b></p>	<p>VISI :</p> <p>TERWUJUDNYA KOTA MALANG SEBAGAI BAROMETER PENDIDIKAN NASIONAL, LINGKUNGAN YANG SEHAT, AMAN, NYAMAN, TERTIB DAN UNGGUL (SANTUN), SERTA EKONOMI KERAKYATAN YANG INOVATIF, KREATIF DAN BERKELANJUTAN.”</p> <p>MISI</p> <p><b>Mewujudkan:</b></p> <p><b>3 TEKAD</b></p>

		<p>(Malang Cerdas, Malang Sehat, Malang Sejahtera)</p> <p><b>3 SERUAN</b> (Ayo Cerdas, Ayo Sehat, Ayo Kerja)</p> <p><b>3 PILAR</b> (Barometer Pendidikan Nasional, Lingkungan yang Santun, dan Ekonomi Kerakyatan yang Kreatif, Inovatif dan Berkelanjutan)</p>
3	 <p><b>Dra. Hj. SRI RAHAYU &amp; Drs. Ec. RB. PRIYATMOKO O OETOMO, MM</b></p>	<p><b>VISI</b></p> <p>“KOTA MALANG NYAMAN DAN BERKEADILAN”</p> <p><b>MISI</b></p> <ol style="list-style-type: none"> <li>1. Mewujudkan tata kelola pemerintahan yang baik dan bersih (good adn clean governance).</li> <li>2. Mewujudkan paradigma pembangunan partisipatoris dan emansipatoris.</li> <li>3. Mewujudkan Kota Malang yang bersih, indah dan tertib.</li> <li>4. Mewujudkan Tri Bina Cita Kota Malang: kota pendidikan, kota industri dan kota pariwisata.</li> <li>5. Mewujudkan masyarakat religius, bermoral, cerdas, sehat, sejahtera dan mandiri.</li> <li>6. Mewujudkan lapangan kerja dan berusaha secara merata dan berkeadilan.</li> </ol>
4	 <p><b>MUJAIS &amp; YUNAR MULYA</b></p>	<p><b>VISI :</b></p> <p>“MEWUJUDKAN KEHIDUPAN YANG SEJAHTERA, BERKEADILAN SOSIAL BERDASARKAN KETUHANAN YANG MAHA ESA DI KOTA MALANG DISEBUT PELANGI PEMBERDAYAAN”</p> <p><b>MISI</b></p> <ol style="list-style-type: none"> <li>1. <b>Mewujudkan Kehidupan yang Berketuhanan Yang Maha Esa</b> Hanya dengan pengokohan tentang paradigma Ketuhanan YME sebagaimana sila pertama Pancasila serta internalisasi dalam setiap pribadi akan membentuk individu dan masyarakat serta bangsa yang berkarakter atau menemukan JATI DIRI. Yaitu berbudi pekerti luhur dan produktif dalam perekonomian.</li> <li>2. <b>Mewujudkan Kehidupan yang Sejahtera.</b> Kondisi dimana pranata kelembagaan sosial ekonomi dapat saling melengkapi/sinergi untuk menjamin ketersediaan segala hal yang</li> </ol>

		<p>dibutuhkan oleh setiap individu dalam memenuhi kebutuhan hidup baik jasmani, ruhani maupun akal secara layak dan seimbang.</p> <p><b>3. Kebutuhan Jasmani</b> Terpenuhinya kebutuhan sandang, pangan, dan papan yang layak, dan secara bertahap berkelanjutan mengalami peningkatan kualitas melalui penguatan Ekonomi Pancasia/Ekonomi Marhein/ Ekonomi Islam/ Ekonomi Kerakyatan dalam bentuk Jejaring Usaha baik Produksi, Distribusi dan Konsumsi yang diintermediasi/ ditata kelola oleh Koperasi sebagai baitul maal atau lumbung RW didasarkan semangat saling percaya dan gotong royong (tanpa agunan dan skim bagi hasil)</p>
5	 <b>Drs. AGUS DONO W. M.Hum &amp; Ir. ARIF HS, MT</b>	<p style="text-align: center;">VISI</p> <p>“TERWIJUDNYA KOTA MALANG BERMARTABAT, SEJAHTERA DAN MAJU (MALANG BERSATU)”</p> <p style="text-align: center;">MISI</p> <ol style="list-style-type: none"> <li>1. Peningkatan kualitas sumberdaya manusia (SDM) yang profesional, berkualitas dan berbudaya.</li> <li>2. Menciptakan kehidupan sosial beragama yang kondusif.</li> <li>3. Meningkatkan pertumbuhan ekonomi dan pemerataan pendapatan.</li> <li>4. Meningkatkan sarana dan prasarana Kota Malang.</li> <li>5. Mewujudkan tata kelola dan pengembangan infrastruktur yang berwawasan lingkungan dan konsep pembangunan berkelanjutan.</li> <li>6. Mewujudkan tata pemerintahan yang bersih, efektif dan efisien.</li> </ol>
6	 <b>H. MOCH. ANTON &amp; SUTIAJI</b>	<p style="text-align: center;">VISI</p> <p>MENJADIKAN KOTA MALANG BERMARTABAT BERDASARKAN TRI BINA CITA KOTA MALANG YANG DIIDAMIKAN</p> <p style="text-align: center;">MISI</p> <ol style="list-style-type: none"> <li>1. Meningkatkan kualitas dan pelayanan public yang terukur dan akuntabel.</li> <li>2. Meningkatkan kualitas dan pelayanan pendidikan masyarakat Kota Malang sehingga bisa bersaing dalam era global yang kompetitif.</li> </ol>

		<p>3. Meningkatkan kualitas kesehatan masyarakat Kota Malang baik fisik, mental maupun spiritual untuk menjadi masyarakat yang produktif.</p> <p>4. Membuat blue print dan membangun Kota Malang untuk menjadi kota tujuan wisata yang aman, nyaman, berbudaya dan kondusif.</p> <p>5. Menggali sumberdaya manusia (SDM) daerah yang potensial untuk digerakkan dan dikembangkan secara masif dan sistematis.</p> <p>6. Mendorong dan menstimulir pelaku ekonomi agar lebih produktif dan kompetitif.</p>
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Sumber : KPUD Kota Malang

#### **POPULARITAS DAN ELEKTABILITAS CALON WALIKOTA MALANG SEBELUM TERBENTUKNYA PASANGAN CALON.**

Laboratorium Ilmu Pemerintahan Universitas Muhammadiyah Malang menyelenggarakan survey terhadap calon walikota Malang pada pertengahan Januari 2013- tepatnya tanggal 1 Januari sd 15 Januari 2013 dengan melibatkan mahasiswa sebanyak 57 orang yang diterjunkan ke 57 kelurahan di lima kecamatan di kota Malang dengan mengambil sampel secara acak setiap kelurahan 10 orang, hasilnya memperoleh beberapa calon Walikota dengan tingkat popularitas sebagai berikut :

Tabel 6  
Popularitas Calon Walikota Malang 2013

DP 1 sd 5 Nama Calon	Kedung Kandan g	Sukun	Klojen	Lowok Waru	Blimbin g	Jumlah
Bunda HP	41,37%	32,73%	38,54%	37,46%	15,09%	33,04%
S. Edi Jarwoko	20,52%	37,09%	22,02%	18,18%	22,84%	24,13%
Sri Rahayu	13,12%	13,82%	16,38%	17,29%	32,15%	18,55%
Abah Anton	8,62%	4,61%	11,38%	11,11%	9,30%	8,96%
Arif HS	7,12%	8,16%	3,17%	9,34%	5,52%	6,66%
Moko	5,40%	3,82%		4,11%	4,50%	3,56%
Sutiaji	1,25%	1,53%		1,00%	2,50%	1,25%
Lain-lain						3,85%
Jumlah Responden	120	110	110	110	120	570

Sumber data : Skunder yang diolah

Dari data diatas dapat dianalisis sebagai berikut : (1). Popularitas calon yang tertinggi dipegang oleh Bu Heri Puji Utami sebesar 33,04%, kedua Sofyan Edi Jarwoko sebesar 24,13%, ketiga Bu Yayuk sebesar 18,55%, Keempat Abah Anton sebesar 8,96%. Kelima Arif HS sebesar 6,66%, keenam Pak Moko sebesar 3,56% dan ketujuh sutiaji 1,25%. (2). Ada tiga calon walikota yang masuk dalam penjaringan survey ini popularitasnya kisaran antara 2% yakni : Bambang DH Suyono, Didik Suwandi, dan Loch Mahfudz namun untuk selanjutnya nama-nama ini tidak masuk dalam bursa calon walikota dan calon wakil walikota Malang. (3). Pada pertengahan bulan Januari 2013 nama-nama seperti ; Agus Dono, Dwi , Uddin, Zanuar belum masuk dalam bursa calon Walikota dan wakil walikota Malang. (4). Popularitas Bunda HP di masing-masing kecamatan rata-rata diatas 30% hanya di Blimbings 15% disini kalah dari bu Yayuk karena Blimbings adalah basisnya Bu Yayuk dengan popularitas sebesar 32% dan di Sukun bunda HP popularitasnya sebesar 32,37% kalah dari Sofyan Edi Jarwoko yang memperoleh popularitas sebesar 37,09% karena disini adalah domisili politisi Golkar tersebut. (5). Popularitas Abah Anton dipertengahan Bulan Januari 2013 masih dibawah 10% namun lamat-lamat popularitasnya mulai naik selaras dengan kemampuannya mengintroduksir ziarah Wali Limo secara gratis dengan target 1000 bis secara bertahap direspon positif oleh masyarakat kota Malang.

Sementara Tingkat keterpilihan calon walikota Malang periode 2013 sd 2018 pertengah Januari 2013 sebagai berikut :

Tabel 7  
Elektabilitas Calon Walikota Malang 2013 Sebelum Terbentuk Pasangan

DP 1 sd 5 Nama Calon	Kedung Kandan g	Sukun	Klojen	Lowok Waru	Blimbin g	Jumlah
Bunda HP	39,87%	34,57%	40,03%	32,97%	15,58%	32,60%
S. Edi Jarwoko	13,13%	34,91%	14,46%	14,28%	15,81%	18,52%
Sri Rahayu	12,75%	17,45%	17,03%	13,19%	31,90%	18,42%
Abah Anton	7,87%	6,58%	11,47%	20,88%	5,54%	10,47%
Arif HS	6,25%	1,75%	4,76%	7,69%	6,51%	5,39%
Moko	3,50%	2,63%	1,53%	3,30%	5,51%	3,29%
Sutiaji			1,49%	3,30%	3,27%	1,61%
Lain-lain						9,70%
Jumlah Responden	120	110	110	110	120	570

Sumber data : Skunder yang diolah

Dari data tersebut diatas dapat diurai sebagai berikut : (1). Elektabilitas tertinggi pada pertengahan Januari 2013 diraih oleh Bunda HP rata-rata sebesar 32,60%, berikutnya Edi Jarwoko sebesar 18,52% selanjutnya bu Yayuk sebesar 18,42%, Anah Anton masih dalam kisaran 10,47%, Arif HS sebesar 5,39%, Moko 3,29% dan terakhir Sutiaji sebesar 1,61%. (2). Di domisili daerah pemilihan masing-masing para calon memiliki elektabilitas yang tinggi seperti Bunda HP Domisili di Klojen maka di daerah ini elektabilitasnya 40,09% sementara di DP lain rata-rata dibawah 39%, Bu Yayuk di domisilinya Blimming di daerah elektabilitasnya sebesar 31,90% sementara di 4 DP lainnya elektabilitasnya dibawah 18%, Sofyan Edi Jarwoko domiinya di daerah Sukun, karena itu di DP ini elektabilitasnya sebesar 34,91% sementara di 4 DP lainnya dibawah 18%, Abah Anton domisili di daerah Lowokwaru di Dapil ini elektabilitasnya sebesar 20,88% sementara di 4 Dapil lainelektabilitasnya sebesar 11%. (3). Masyarakat yang belum punya pilihan - Swing voter sebesar 9,70%.

Perbandingan popularitas dan Elektabilitas calon walikota Malang periode 2013 sd 2018 sebagai berikut :

Tabel 8  
Perbandingan Popularitas Dan Elektabilitas Calon Walikota Malang 2013

Popularitas	Nama Calon	Elektabilitas
33,04%	Bunda HP	32,60%
24,13%	S. Edi Jarwoko	18,52%
18,55%	Sri Rahayu	18,42%
8,96%	Abah Anton	10,47%
6,66%	Arif HS	5,39%
3,56%	Moko	3,29%
1,25%	Sutiaji	1,61%
3,85%	Lain-lain	9,70%
570	Jumlah Responden	570

Sumber data : Skunder yang diolah

Dari data diatas dapat disimpulkan bahwa antara popularitas calon wali kota dan elektabilitas calon wali kota berbanding lurus artinya jika popularitasnya tinggi maka elektabilitasnya tinggi pula, manakala popularitas calon walikota rendah maka elektabilitas calon juga rendah.

### **DINAMIKA POPULARITAS PASANGAN CALON WALIKOTA DAN WAWALIKOTA MALANG**

Dikenal masyarakat atau populer adalah salah satu kunci – yang membawa orang untuk dipilih menjadi calon pejabat publik atau pejabat politik. Popularitas menjadi penting manakala orang ingin menduduki jabatan walikota – karena itu wajar kalau ada orang

menggunakan sarana-sarana tertentu untuk popular karena popularitas adalah tiket untuk dipilih menjadi pejabat publik.

### **Pasangan AJI - Popularitas semakin Meroket**

Pasangan yang diusung oleh Gerindra dan PKB ini pada awalnya kurang diperhitungkan, dengan hanya modal sebanyak 49.798 suara mereka mampu menarik perhatian para pemilih di kota Malang. Gerakan ziarah wali limo telah memberikan semacam "Giroh" atau semangat dikalangan Nahdiyyin dan Abangan untuk bermunajad kepada Allah SWT. Abah Anton faham dengan karakter warga Nahdiyyin - inilah yang mampu di eksploitasi oleh Abah Anton untuk memberangkatkan secara gratis masyarakat kota Malang berziarah ke wali Limo. Gerakan ziarah wali limo ini sangat monumental sehingga popularitas Abah Anton terangkat. Berangkat dari popularitas yang semakin meningkat inilah Gerindra dan PKB memberanikan diri untuk memasangkan Abah Anton dan Sutiaji untuk ditawarkan kepada masyarakat- menjadi calon Walikota dan calon wakil walikota Malang.

Selaras dengan dinamika politik di kota Malang Abah Anton yang pada awal Juli s/d Nopember 2012 belum dikenal dalam hasil survei LAPORA dan HASTA pada awal Januari 2013 polling Radar Malang menempatkan orang etnis Cina-NU ini sebagai calon yang popularitasnya nomor 5 dan mencapai prosentase sebanyak 4,12 %. Pertengahan bulan Januari Mahasiswa IP UMM dibawah lembaga Laboratorium Ilmu Pemerintahan menyelenggarakan survei menghasilkan data bahwa tingkat popularitas Abah Anton mencapai : Lowokwaru 11,11%, Blimbing 9,30%, Klojen 11,38%, Sukun 4,61% dan Kedungkandang mencapai 8,62 %, jika di rata-rata tingkat popularitas sebesar 8,96%. Ada kecenderungan bahwa angka popularitas Abah Anton maningkat bahkan Akhir bulan mei 2013 Survei LaPoRa FISIP UB menyebutkan, pasangan Moch Anton-Sutiaji (AJI) memperoleh suara 41,4 persen.

Ada beberapa faktor yang menyebabkan popularitas Abah Anton kemudian berpasangan dengan Sutiaji (AJI) melesat melebihi calon-calon lain : *Pertama*, eksploitasi ziarah Wali Limo seperti yang dikemukakan diatas yang melibatkan seribu bis – hampir saja program ini diusulkan untuk masuk Musiun Muri. *Kedua*, mengidentifikasi diri memperjuangkan kepentingan "wong cilik" jargon ini biasanya milik PDIP manakala PDIP pecah dan kurang konsentrasi terhadap program ini AJI mampu mengeksploitasinya dan program ini adalah program kerakyatan dan mendekatkan diri kepada rakyat. *Ketiga*, Efek NU-PKB solid, kali ini berbeda dengan pemilu-pemilukada yang lalu kalangan Nahdiyyin dari elit, politisi, legislative, Kyai, Ustadz, Jami'ah, NU dan PKB bersatu mendukung AJI karena itu mereka populer dan menang. *Keempat*, Perpecahan di tubuh PDIP dari elit sampai massa terpolarisasi mendukung pasangan SR-MK atau pasangan DADI. *Kelima*, Abah Anton Simbul perubahan- sudah sepuluh tahun kota Malang dipimpin oleh PDIP-Peni Suparto, warga Malang nampaknya jenuh dengan model kepemimpinan statusquo. Karena itu mereka ingin orang yang berbeda dan komunitas yang berbeda pula. Meski Bunda HP adalah orang yang populer namun masyarakat menjatuhkan pilihan kepada Abah Anton dan pasangan AJI karena mereka tidak setuju dengan statusquo dan menolak politik dinasti.

### **Dilema Popularitas Sri Rahayu-Moko : Perpecahan Ditingkat Elit berinbas pada Grassroot Partai**

Berdasarkan polling yang diselenggarakan oleh Radar Malang Moko adalah Calon walikota yang paling populer sampai tanggal 7 Januari 2013 sebesar 43, 87% sementara menurut survei LAPORA bulan Juli 2012 (16,3%) dan HASTA bulan Nopember 2012 (44,11%). Sri Rahayu adalah Calon walikota Malang yang popular

nomor tiga setelah Bunda HP dan Sofyan Edi Jarwoko. Menurut survey yang diselenggarakan Laboratorium IP pertengahan bulan Januari 2013 popularitas Bu Yayuk dikisaran 18,55%, nampaknya Bu Yayuk dan Pak Moko adalah orang yang berusaha keras untuk mendapatkan rekom dari DPP-PDIP menyaangi usaha yang dilakukan oleh Pak Peni yang mendorong istrinya maju menjadi walikota Malang untuk mengantikannya. Ketiga-tiganya : Moko, Bunda HP, Bu Yayuk berusaha keras untuk populer, Moko dengan mengeksplorasi polling Radar Malang, Bunda HP dengan menggunakan media apa saja seperti Baliho Banner, spanduk, bendera, fasilitasi dan internalisasi kegiatan PKK semua dilakukan untuk populer. Sementara Bu Yayuk disamping menyelenggarakan kegiatan seperti Bunda HP dan Pak Moko ia juga berusaha keras melakukan pendekatan-Lobying- kepada elit PDIP terutama Bu Mega, Puan Maharani dan sekjen PDIP Cahyo Kumolo.

DPP-PDIP justru ingin memastikan bahwa mereka mengusung kadernya sendiri untuk menjadi calon Walikota dan Wakil walikota Malang. Karena itu popularitas Moko melalui Polling Jawa Pos – Radar Malang dan usaha keras bu Yayuk menyaangi popularitas bunda HP melalui media diatas dan lobby terhadap elit PDIP- berujung pada keluarnya Rekom dari DPP yang mengusung Bu Yayuk dan Moko sebagai pasangan calon walikota dan wakil walikota Malang. Dilema yang dihadapi oleh pasangan ini adalah sebagian besar sekitar 30% sd 40% *grass root* – masih setia kepada Bunda HP. Karena itu dalam beberapa survei popularitas pasangan ini masih dibawah bayangan pasangan DADI. Dan keretakan ditubuh elit PDIP kota Malang merambah kekalangan massa sehingga dibawah kelihatannya saling menagaskan – akibatnya popularitas SR-MK terhambat karena sebagian besar massa PDIP – justru menghalang usaha-usaha memajukan popularitas pasangan SR-MK.

### **Memudarnya Popularitas Bunda HP – Antiklimaks Pasangan DADI**

Sekitar bulan Januari 2013 Bunda HP adalah calon walikota Malang yang paling populer di kota Malang, hal ini bisa dicermati dari tiga sarana yakni : berita Media massa, hasil survei lembaga survei, dan kemampuan Bunda HP mensosialisasikan dirinya di masyarakat. Pertama, sebagai istri walikota Malang dan Ketua penggerak PKK kota Malang Bunda HP banyak dikerubuti oleh media massa lokal, regional maupun maupun nasional – manakala yang bersangkutan mencalonkan diri sebagai walikota Malang media massa banyak yang berkepentingan untuk mencari informasi, meliput bahkan memberitakan aktivitas apa saja yang dilakukan oleh Bu Peni keseharian dalam kaitannya dengan tugas pendamping walikota maupun kegiatan sosial kemasyarakatannya di kota Malang. Media massa berperan penting dalam mempopulerkan seseorang menjadi calon pejabat publik dan pejabat politik contohnya Heri Pudji Utami yang di gadang-gadang oleh DPC – PDIP kota Malang menjadi satu-satunya calon walikota Malang (notabene ketua DPC – Pak Peni adalah suaminya).

Kedua, beberapa lembaga survei seperti : (1). Laboratorium Politik dan rekayasa kebijakan (LAPORA) FISIP Universitas Brawijaya (UB) Malang, bulan Juli 2012 menempatkan Heri Pudji Utami sebagai calon walikota terpopuler dengan angka mencapai 36,5%. (2). Lima bulan kemudian , House of Administration science, Technology and Art (HASTA). Fakultas Ilmu administrasi Universitas Brawijaya – yang disampaikan oleh Direktur Eksekutif HASTA AndiFeita Wijaya mempublikasikan bahwa Heri Pudji Utami adalah orang atau calon Walikota yang terpopuler di kota Malang disbanding calon yang lain dengan angka mencapai 64,43% ( Antara, 21 November 2012). Sementara Laaboratorium IP-UMM juga melakukan survei pada pertengah bulan Januari hasilnya Bunda HP terpopuler dengan angka kisaran 33%. Peningkatan prosentase popularitas Bunda HP ini selaras dengan kemampuannya melakukan sosialisasi diri melalui berbagai media.



Gambar 2 : Red Army

Ketiga, Sosialisasi diri melalui berbagai media seperti Baliho, Banner, Bendera, spanduk, stiker dan lain-lain di penghujung tahun 2012 dan awal tahun 2013 “rasanya” tidak ada pohon di kota Malang ini yang tidak ada gambarnya bunda HP. Tempat parkir, tempat ojek, beberapa rumah makan, cuci mobil gang-gang kampong semua ada gambar bunda HP. Calon walikota dari DPC-PDIP ini memiliki kemampuan sosialisasi (bukan kampanye karena belum waktunya) yang “tak terbatas” – sehingga hampir media apa saja bisa digunakan untuk memperkenalkan diri sebagai calon walikota periode 2013 -2018. Bunda HP juga Menggunakan PKK sebagai sarana memperkenalkan diri, melalui program



Gambar 3 : Kegiatan Red Army

posyandu, kesehatan masyarakat, pemberdayaan perempuan, fasilitasi pendidikan anak usia dini, karena itu sampai bulan Pebruari 2013 rasanya tidak ada calon walikota di kota Malang ini yang menandingi popularitas Heri Puji Utami. Namun, selaras dengan perjalanan waktu ternyata popularitas bunda HP mulai meredup hal ini dikarenakan beberapa hal :

(1). Konflik – Rekomendasi calon walikota Dari DPP PDIP. DPP PDIP ternyata tidak selaras dengan kemauan DPC-PDIP kota Malang dalam Mengusung calon Walikota, DPP justru merekomendasi Sri Rahayu – Moko sebagai calon walikota dan wakilnya - mereka dianggap pilihan tepat dibanding Heri Pujdi Utami – sejak saat itu Peni dan Heri Puji utami tersingkir dari struktur DPC PDIP bahkan dipecat sebagai anggota

PDIP, pupuslah harapan mengusung Bunda HP sebagai calon Walikota melalui tiket DPC – PDIP kota Malang.

(2). Terbelahnya massa PDIP. Massa PDIP terbelah menjadi dua – menurut perkiraan orang dekat Bunda HP sebagian besar (40%) ikut Bunda HP dan Pak Peni, sebagian besar lagi (60%) ikut Sri Rahayu-Moko yang mendapat rekomendasi dari DPP dengan dipimpin oleh Edi Rumpoko sebagai Pejabat Ketua DPC – PDIP kota Malang. Mereka yang tersingkir dari PDIP – Edi Rumpoko-Moko menyusun kekuatan dengan membentuk organisasi yang bernama Red Army - keuatannya berada di kelurahan-kelurahan dan kecamatan-kecamatan untuk menopang pencalonan Bunda HP melalui koalisi partai parlemen GOLKAR – PAN dan 14 partai non parlemen. Sementara tentang terbentuknya Red army media memberitakan sebagai berikut:

Terbentuknya Red Army kota Malang tidak bisa dilepaskan dari dinamika kota Malang pada awal tahun 2013, dimana pada saat itu kota sedang ramainya persiapan Pemilu Walikota Periode 2013-2018. Pada waktu itu DPC PDI Perjuangan sedang dipimpin oleh Drs. Peni Suparto, M.AP (Walikota 2 Periode) dan menjagokan Kader PDIP Kota untuk maju bertarung dalam Pilkada, yaitu Dra.Hj.Heri Pudji Utami, M.AP sebagai tindak lanjut dari musyawarah tingkat Ranting dan Cabang. Tapi ternyata DPP PDI Perjuangan justru memberikan rekom kepada Dra. Sri Rahayu (anggota DPR RI). Maka konflik pun pecah. Ketua DPC, Peni Suparto bersama mayoritas Pengurus DPC dan ribuan kader menentang rekom DPP, puncaknya tetap maju bertarung meskipun melalui kendaraan Partai Lain. Saat itu gerbong pecahan PDIP ini maju lewat Koalisi Partai Non Parlemen (KMB), PAN dan GOLKAR.

(3). Konflik kepentingan partai koalisi Pengusung Bunda HP. Dalam mengusung calon walikota Heri Pudji Utami dan Calon Wakil Wali kota Sofyan Edi Jarwoko - golkar sudah mendapat tiket calon wakil walikota, sementara PAN dalam perjanjiannya dengan Bunda HP jika menang dijanjikan untuk diajak berunding dalam menentukan kepala dinas dan difasilitasi untuk mendapatkan kursi di masing-masing Daerah Pemilihan (5 DP) pemilu legislative 2014. Sementara Partai non parlemen ketika mereka bergabung mendukung Bu Heri Puji Utami masing-masing partai mendapat dana sebesar 25 juta. Dalam perjalanan proses penguatan pencalonan Bunda HP dan Edi Jarwoko sebagai Walikota dan Wawalikota Malang – mereka para pimpinan partai koalisi berjalan sendiri-sendiri dan terkesan mencari keuntungan sendiri akibatnya mesin partai tidak berjalan sebagaimana semestinya. Rofiq Awali Sekretaris Pemenangan DADI kepada peneliti mengatakan : “partai partai yang tergabung dalam koalisi berjalan sendiri-sendiri, mereka nampaknya ingin saling paling menonjol dalam mendukung DADI akibatnya kebersamaan dan kerjasama kurang tercipta dengan baik dalam mengkampanyekan pasangan DADI”. (komunikasi pribadi tanggal 27 April 2013)

(4). Penolakan masyarakat kota Malang terhadap statusquo dan politik Dinasti. Peni Soeprapto telah menduduki jabatan walikota selama dua periode, manakala istrinya juga mencalonkan diri sebagai calon walikota sebenarnya terjadi proses personalisasi institusi dan statusquoisasi, masyarakat kota Malang sebenar sudah agak jemu dengan model pemerintahan yang digawangi oleh Pesi Soeprapto karena itu ketika Peni ingin istrinya menggantikannya sebagai walikota Malang sebenarnya juga terjadi proses politik dinasti – sebagian besar masyarakat Malang yang terdidik tentu enggan mendukung politik dinasti – karena itulah segmen masyarakat ini lebih tertarik kepada figure baru yang terbuka, merakyat dan dikenal dekat dengan masyarakat.

(5). Menguatnya popularitas Abah Anton. Abah Anton seorang etnis tionghoa, ketua PITI, Bendahara MWC-NU kota Malang, pengusaha tetes tebu mulai merambah popularitasnya. Ia yang mengagas dan membiayai ziarah “wali limo” mendapat respons yang luar biasa dari masyarakat kota Malang. Ziarah Wali yang biasa dilakukan oleh para jamaah Nahdiyyin – begitu luar biasa mendapat sambutan baik dari masyarakat Nahdiyyin maupun masyarakat abangan. Karena program inilah Abah Anton popularitasnya meroket mengalahkan popularitas Bunda HP. Lima hal itulah yang menyebabkan popularitas Heri Puji Utami merosot dan akhirnya kalah dengan calon yang diusung oleh PKB Gerindra AJI.

### **Pasangan DOA : Start Terlambat Dan Popularitas Yang Tersandra**

Start terlambat begitulah istilah yang bisa kita sodorkan pada pasangan DOA, Pasangan Dono dan Arif HS adalah calon walikota dan wakil walikota diusung oleh Partai Demokrat dan PKS, dilihat dari modal politik pasangan ini sesungguhnya adalah pasangan yang memiliki modal suara paling banyak di kota Malang dan didukung partai besar, namun modal politik ini kurang dapat dimanfaatkan maksimal. Sampai Bulan Januari 2013 Dono (Partai Demokrat) belum dikenal, Sementara menurut Survei Lab IPUMM nama Arif sudah muncul dengan popularitas 6,66%, menurut HASTA Arif HS memiliki tingkat popularitas sebesar 20,21%. Identifikasi pasangan calon walikota dan Wakil walikota Malang DOA :

(1). **Tidak ada Alternatif pilihan**, pasangan DOA adalah pasangan calon walikota dan wakil walikota terakhir setelah lima pasangan yang lain terbentuk, Arif HS kurang memiliki modal sosial yang kuat di kota Malang, disamping hanya setahun dia menjadi Ketua DPD PKS (periode 2005-2006) di kota Malang. Aktivitas-aktivitas politik, sosial, keagamaan kurang dirasakan langsung manfaatnya oleh masyarakat kota Malang. Berkoalisi dengan Partai Demokrat, itupun Partai ini tidak mencalonkan Arif Darmawan – Ketua DPD Partai Demokrat yang telah lama mensosialisasikan diri menjadi calon walikota, yang di sodorkan justru Dono seorang politisi Partai Demokrat anggota legislatif Jawa Timur yang berasal dari DAU Kabupaten Malang. Dono kurang memiliki modal sosial yang berarti dikota Malang karena itu kurang di kenal bahkan asing di mata pemilih kota Malang.

(2). **Tersandra kasus korupsi**, PKS dan Partai Demokrat mengalami nasib yang sama, sepanjang tahun 2013 ekspose tentang korupsi yang dilakukan oleh elit PKS dan Partai Demokrat mengemuka di hampir semua media massa, dan itu sangat berpengaruh terhadap pencalonan Dono (PD) dan Arif HS (PKS) – karena itu wajarlah kalau dikatakan bahwa popularitas DOA dalam meraih kekuasaan di kota Malang tersandra oleh kasus – kasus korpsi yang terjadi di elit dua partai tersebut di Jakarta. (3). **Gamang Dalam Bertindak**, jaringan, Struktur, Kader PKS dan PD – Gamang, manakala mereka mengkampa nyekan pasangan DOA mereka harus melawan cemoohan dari masyarakat, karena itu mereka enggan melakukan kampanye. Tidak seperti biasanya kader-kader PKS dengan pedenya berani masuk rumah ke rumah warga - kali ini atau dalam pilkada ini mereka tidak bisa bergerak leluasa akibatnya popularitas Arif HS dan Dono tidak bisa di dongkrak.

### **Pasangan Dwi - Uddin : Popularitas Tak Cukup Hanya Mengandalkan Malang Tempo Dulu**

Pasangan Dwi – Uddin adalah pasangan yang berangkat dari jalur independen modal suara ketika disahkan KPUD kota Malang sebesar 46.842 pendukung, pasangan ini memiliki modal anggaran paling banyak dibandingkan lima pasangan calon lainnya. Namun modal politik dan modal anggaran tidak mampu dikembangkan sedemikian rupa

sehingga popularitas yang diharapkan semakin membesar nampaknya sulit terjadi. Ditiga lembaga survei Lapora, Hasta, dan Lan IP-UMM bulan Januari 2013 nama Udin belum dikenal hanya dalam polling Radar Malang ia dikenal dengan popularitas sebesar 17,86% nomor dua setelah Pak moko. Dwi Penggagas "Malang Tempo Dulu" butuh talenta lain untuk dikenal masyarakat, misalnya :

(1). mengembangkan modal sosial berupa : jaringan sosial, jaringan bisnis, komunitas sosial, komunitas keagamaan, komunitas bisnis. Menjadi pelopor dan tokoh masyarakat yang mengembangkan diri dan komunitasnya menjadi dikenal masyarakat.

(2). Mengembangkan Modal Politik, menjadi tokoh partai politik, masuk dalam struktur partai besar ditingkat daerah, atau menjadi salah satu pimpinan partai politik yang memiliki kemampuan untuk membesarkan diri seperti Gerindra. Dengan masuk ke partai maka memiliki modal politik berupa : jaringan, komunitas dan mesin politik yang bisa digerakkan ketika menghadapi pemilu dan pemilukada. Memang menjadi tokoh independen dan mengusung diri menjadi calon walikota independen juga bisa namun tanpa partai politik dan organisasi sosial sulit rasanya menggerakkan mesin politik.

(3). Pemanfaatan Modal anggaran, Dwi-Uddin adalah pasangan yang memiliki modal anggaran paling besar seperti yang diulas diatas, namun seperti hasil survey PP Otoda Unibraw, pasangan ini adalah pasangan yang menggunakan anggaran relatif kecil sampai bulan Januari 2013 dari anggaran yang dimiliki sebesar 26 Milyard lebih dibelanjakan untuk popularitas diri dan calon walikota hanya keluar dana sebanyak 189 juta bandingkan dengan apa yang dilakukan oleh Bunda HP, Bung Edi dan Abah Anton mereka sudah mengeluarkan anggaran diatas tiga milyard. Karena itu popularitas Dwi terhambat karena minimnya anggaran yang dikeluarkan untuk mempopulerkan dirinya di media massa maupun melalui media yang lain. Sementara pasangannya Uddin sampai bulan Januari 2013 belum banyak dikenal masyarakat kota Malang meskipun memiliki modal anggaran banyak agaknya ragu-ragu memperkenalkan diri sebagai calon walikota atau wakil walikota Malang, karena itu ketika bulan Januari 2013 belum start memperkenalkan diri maka mereka ditinggalkan oleh calon-calon walikota yang lain.

### **Pasangan RAJA : Popularitas dari mana mereka memulai**

Sampai bulan Januari 2013 nama MUJAIS dan YUNAR MULYA dalam survei LAPORA, HASTA dan Lab IP UMM tidak dikenal, kedua-duanya tidak masuk dalam penjaringan survey-survey tersebut sebagai calon walikota dan calon wakil walikota Malang. Modal sosial, modal politik dan modal anggaran pasangan ini kurang mendapat eksplorasi sedemikian pula sehingga popularitas pasangan RAJA tidak terdongkrak karena ketiga hal tersebut. Modal politik, Ekspektasi terhadap pemilih dengan membawa LSM, komunitas masyarakat sipil ternyata kurang direspon positif oleh masyarakat kota Malang. Jalur independen yang di beberapa daerah mendapat ekspektasi, attensi dan respons yang baik dari masyarakat namun di kota Malang tidak demikian – masyarakat lebih tertarik dan lebih suka pasangan yang diusung oleh partai politik atau koalisi partai politik. Modal Sosial, keterbatasan jaringan, komunitas, organisasi yang menjadi asal dari pasangan ini membuat mereka juga didukung masyarakat yang terbatas. Kepeloporan dan ketekunan Mujais dan Yunar di kota Malang terhadap dinamika sosial, politik, keagamaan dan bisnis relative terbatas sehingga mereka kurang direspon positif oleh berbagai kalangan masyarakat di kota Malang. Modal Anggaran – anggaran sebagaimana dilaporkan ke KPUD kota Malang, pasangan ini diatas 2,5 miliar namun

sampai bulan Januari menurut laporan PP Otoda Unibraw pasangan ini membelanjakan dana untuk mempopulerkan diri paling kecil diantara pasangan calon yang ada sekitar 184 juta. Keengganannya mengeluarkan dana bagi kampanye dirinya membuat Mujais dan kemudian berpasangan dengan Yunar kurang dikenal oleh masyarakat kota Malang. Pada kasus yang sama bandingkan apa yang dikeluarkan oleh Mujais di komparasikan dengan Abah Anton, Sri Rahayu, Bunda HP, Abah Anton, Arif ST, Bung Edi Jarwoko keenamnya pada bulan itu telah mengeluarkan anggaran diatas 3 milyar rupiah.

Intinya pasangan ini kurang bisa memanfaatkan modal politik, modal sosial dan modal anggaran untuk kepentingan mengenalkan dan mempopulerkan dirinya berkaitan dengan cita-cita yang hendak dibangun, visi misi dan program-program yang akan dicanangkan ketika mereka ini menjadi walikota dan wakil walikota Malang.

### **PENGGUNAAN ANGGARAN UNTUK MENAIKKAN POPULARITAS CALON**

Kepemilikan harta ini penting karena tanpa kekayaan pribadi dari mana mereka membiayai pencalonan sebagai calon walikota dan wakil walikota Malang. Pencermatan PP Otoda universitas Brawijaya menggambarkan berapa jumlah uang yang dikeluarkan calon dalam rangka peningkatan popularitas mereka, medio Januari 2012 s/d Januari 2013 dikabarkan sebagai berikut :

“riset PP Otoda. Ongkos untuk peningkatan popularitas tertinggi dikeluarkan Heri Pudji Utami (Bunda HP). Untuk pemasangan iklan, reklame, dan kegiatan dalam masyarakat, istri wali kota Malang Peni Suparto itu dianalisa sudah menghabiskan Rp 4,9miliar. Sedangkan untuk peringkat kedua yang mengeluarkan biaya besar adalah Sofyan Edi Jarwoko. Pria yang menjadi ketua DPD Partai Golkar tersebut sudah merogoh kocek Rp 3,8 miliar agar dirinya dikenal masyarakat.Bacawali dari PKS Arif HS. menempati posisi ketiga dengan total biaya Rp 3,7 miliar. Sedangkan Sri “Yayuk” Rahayu menghabiskan Rp 3,5 miliar, disusul Mochammad Anton yang sudah membelanjakan Rp 3,1 miliar, Priyatmoko Oetomo mengeluarkan Rp 1,4 miliar, Sutiaji Rp 594 juta, Bambang DH. Suyono Rp 493 juta, Arif Darmawan Rp 346 juta, Dwi Cahyono Rp 189 juta, Ahmad Mujais Suhud Rp 184 juta, dan Ya’qud Ananda Gudban Rp119 juta.”

Dari hasil Riset PP Otoda Unibraw jelaslah bahwa modal anggaran memegang peranan penting dalam mempopulerkan calon walikota dan wakil walikota Malang 2013–2018. Seberapa besar jumlah uang yang digunakan meningkatkan popularitas calon dibandingkan modal anggaran yang dimiliki para calon ditabulasi sebagai berikut :

Tabel 9  
Perbandingan Kekayaan Calon Walikota dan Wakil Walikota Malang  
Dengan Dana yang sudah Dipergunakan Medio Januari 2012 sd Januari 2013

No	Nama Cawali	Jumlah Kekayaan	Dana yang sudah digunakan*	
1	Dwi Cahyono	Rp 26.194.037.352	Rp. 189.000.000	
2	Sri Rahayu	Rp 9.046.913.235	Rp. 3.500.000.000	
3	Heri Puji	Rp 7.202.230.350	Rp. 4.900.000.000	
4	Ahmad Mujaiz	Rp 1.448.753.616	Rp. 184.000.000	

5	M. Anton	Rp 24.466.707.074	Rp. 3.100.000.000	
7	Sofyan Edi Jarwoko	Rp 6.069.746.360	Rp. 3.800.000.000	
8	Arif HS	Rp 639.000.000	Rp. 3.700.000.000	
9	Priyatmoko Oetomo	Rp 6.117.184.731	Rp. 1.400.000.000	
10	Sutiaji	Rp 372.046.322	Rp. 594.000.000	

Sumber : Data Skunder yang diolah

Keterangan : \* Hasil penelitian PP Otoda UB, dimasukkan mereka yang akhirnya benar-benar menjadi calon Walikota dan Wakil Walikota

Dalam rangka meningkatkan popularitas calon, dari tabel diatas dapat dianalisis sebagai berikut :

- (1). Calon-calon walikota dan wakil walikota yang telah mengeluarkan uang banyak diatas 3 milyard dan dianggap “sangat wajar” karena memiliki dana pribadi diatas 6 miliar secara berurutan adalah : Heri Puji Utami, Sofyan Edi Jarwoko, Sri Rahayu, Abah Anton.
- (2). Calon walikota dan wakil walikota yang mengeluarkan dana kisaran kurang lebih 1,5 miliar dianggap “wajar” karena memiki dana pribadi diatas 6 Milyar.
- (3). Calon-calon walikota dan wakil walikota yang telah mengeluarkan uang kisaran 200 juta dan dianggap “kurang wajar” karena memiliki dana pribadi diatas 1 miliar bahkan 26 miliar seperti Dwi Cahyono dan ahmad Mujais. Diang kurang wajar karena terlalu pelit untuk mengeluarkan sosialisasi bagi dirinya untuk popular menjadi calon walikota atau wakil walikota Malang.
- (4). Calon walikota dan wakil walikota yang memiliki dana pribadi dibawah dana kampanye yang sudah untuk mempopulerkan diri dan itu dianggap “tidak wajar” seperti yang terjadi pada Arif MT dan Sutiaji. Dianggap tidak wajar karena kasus seperti Arif dana yang dimilikisebesar 600 juta dana yang sudah dikelurakan untuk sosialisasi sebesar 3,7 miliar, dan Sutiaji dana pribadi yang dimiliki sebesar 370 juta lebih dana yang sudah dikeluarkan sebanyak 590 juta lebih.

Ada dua kesimpulan dalam komparasi antara dana pribadi dan dana kampanye yang sudah dikeluarkan : *pertama*, PP Otoda Universitas Brawijaya salah perhitungan dalam mengkalkulasi anggaran kampanye tersebut terutama milik Arif MT dan Sutiaji. *Kedua*, apa yang di publikasikan oleh PP Otoda Unibraw benar-sehingga yang perlu dicermati darimana dana kampanye Arif MT dan Sutiaji, keduanya tentu bisa berkilah bahwa dana kampanye tersebut berasal dari sumbangan masyarakat dan sumbangan partai.

### **PROBABILITAS MENANG - SIAPA PASANGAN CALON YANG UNGGUL ?**

Dengan menggunakan skala likert mengukur pengukur tingkat kesiapan calon dari tiga hal : *pertama*, dukungan partai atau koalisi partai politik dan besarnya modal suara yang dimiliki hasil pileg 2009, jumlah kursi yang ada di parlemen. Atau kalau calon independen berapa jumlah dukungan masyarakat yang tandai dengan adanya foto copy KTP.( disebut Modal politik). *Kedua*, seberapa besar calon dikenal oleh masyarakat kota Malang, kemampuan menjalin hubungan dengan masyarakat kota Malang, berperan aktif dalam kegiatan-kegiatan yang dilakukan oleh masyarakat kota Malang, membentuk dan menjadi anggota asosiasi- asosiasi masyarakat, komunitas-komunitas yang ada dikota Malang, menjadi pimpinan asosiasi masyarakat di Kota Malang, menjadi tokoh dalam event tertentu itu semua disebut modal sosial. *Ketiga*, berkenaan dengan modal

keuangan seberapa besar calon walikota dan wakil walikota memiliki anggaran untuk membiayai pencalonannya – sebab menjadi calon pejabat public sekarang ini harus memiliki modal keuangan - tanpa itu rasanya tidak mungkin, kecuali orang tersebut memiliki kapasitas dan warga mau membiayai. Dengan simulasi seperti diatas maka calon Walikota dapat diidentifikasi sebagai berikut :

Tabel 10  
Probabilitas Kemenangan Calon Walikota Malang  
Berdasarkan Simulasi Modal sosial, Modal Politik dan Modal Anggaran

Nomor Urut	Pasangan Calon	Modal Sosial (Skala 1sd 5)	Modal politik (skala 1sd 5)	Modal Dana (skala 1sd 5)	Nilai
1	<b>H. DWI CAHYONO, SE &amp; MUHAMMAD NURUDDIN, SPt</b>	2	2	5	9
2	<b>Dra. Hj. HERI PUDJI UTAMI, M.AP &amp; Ir. SOFYAN EDI JARWOKO</b>	5	4	4	13
3	<b>Dra. Hj. SRI RAHAYU &amp; Drs. Ec. RB. PRIYATMOKO OETOMO, MM</b>	4	4	4	12
4	<b>MUJAIS &amp; YUNAR MULYA</b>	2	2	3	7
5	<b>Drs. AGUS DONO W. M.Hum &amp; Ir. ARIF HS, MT</b>	2	5	3	10
6	<b>H. MOCH. ANTON &amp; SUTIAJI</b>	5	3	5	13

Sumber : data Primer Yang diolah

Dari Matrik diatas berdasarkan kekuatan-kekuatan yang dimiliki oleh calon meliputi : Modal sosial, modal politik, dan Modal Anggaran maka harusnya pasangan

AJI memiliki *kans* untuk menang diikuti oleh pasangan Dadi, pasangan SR-MK, pasangan DOA, pasangan Dwi Uddin dan Pasangan RAJA. Namun dalam realitasnya meski pasangan AJI tetap nomor satu urutan berikutnya berbeda yakni : Pasangan SR-MK, Pasangan Dadi, Pasangan Dwi-Uddin, Pasangan DOA dan Pasangan RAJA.

### **ELEKTABILITAS PASANGAN CALON WALIKOTA DAN WAWALIKOTA MALANG**

Berikut ini diurai tentang elektabilitas calon berdasarkan hitung cepat beberapa lembaga survey yang dilakukan pada hari pelaksanaan pemilukada tanggal 23 Mei 2013 dan hasil perhitungan riil perolehan suara yang dilakukan oleh KPUD kota Malang pada tanggal 29 Mei 2013.

#### **Elektabilitas Calon Berdasarkan Hitung Cepat**

Dalam penelitian ini disampaikan hasil survei lembaga LSI Danny JA, Lembaga Survei FISIP UMM, dan lembaga survei AveMedia. Tingkat elektabilitas calon berdasarkan hasil hitung cepat beberapa lembaga survey pada hari pelaksanaan Pilkada kota Malang tanggal 23 Mei 2013 sebagai berikut

Tabel 11  
Hasil Quick Count Pemilukada Kota Malang 23 Mei 2013

Nomor Urut Pasangan calon Lembaga Survey	1 Dwi-Uddin	2 SR-MK	3 DADI	4 RAJA	5 DOA	6 AJI
LSI	5.69%	21.61%	18.14%	2.44%	3.97%	48.15%
FISIP UMM	5.44%	21.61%	18.09%	2.39%	3.64%	48.83%
AveMedia	5.43%	23.51%	17.12%	2.48%	3.71%	47.75%

*Sumber : diolah dari berbagai sumber*

Dari tabel diatas dapat diketahui sebagai berikut:

- (1). Pasangan AJI menduduki urutan pertama dengan prosentase elektabilitas : LSI (48,15% suara), AveMedia 47,75% suara, sementara FISIP-UMM 48,83%.
- (2). Pasangan SR-MK menduduki ranking kedua pada pemilukada kali ini dengan prosentase tingkat elektabilitas : LSI = 21,61%, AveMedia = 23,51% dan FISIP UMM sebesar 21,61%.

(3). Ranking ketiga perolehan suara dalam pemilukada kali ini diduduki oleh pasangan DADI dengan elektabilitas sebesar : LSI = 18,14%, AveMedia = 17,12%, dan FISIP – UMM = 18,09%.

(4). Ranking ke empat perolehan suara dalam pemilukada 2013 di kota Malang diduduki oleh pasangan Dwi-Uddin dengan tingkat elektabilitas : LSI = 5,69%, AveMedia = 5,43% dan FISIP-UMM 5,44%.

(5). Ranking kelima didukti oleh pasangan DOA dengan perolehan suara sebesar : LSI= 3,97%, Avemedia = 3,71% dan FISIP-UMM =3,46%.

(6). Terakhir pasangan yang mendapat suara ranking ke enam adalah pasangan RAJA dengan perolehan suara sebanyak : LSI = 2,44%, AveMedia = 2,48% dan FISIP UMM sebesar = 2,39%.

Berdasarkan wawancara peneliti dengan sekretaris kemenangan pasangan DADI saudara Rofiq Awali ia mengatakan : “Kemenangan Abah Anton Atas bunda HP karena istri walikota itu banyak mengeluarkan uang untuk meningkatkan popularitas dan elektabilitas sepanjang pertengahan 2012 sampai 2013 dan dianggap kurang efektif dan efisien, sementara Abah Anton mengeluarkan anggaran secara efektif dan efisien awal Pebruari sampai Mei 2013 sehingga bisa menang”(komuniasi pribadi 25 Mei 2013)

#### **Elektabilitas Calon bedasarkan Perhitungan Riel**

KPUD kota Malang telah menyelenggarakan perhitungan suara hasil Pilkada kota Malang pada tanggal 29 Mei 2013 hasilnya pasangan Aji yang di usung oleh PKB dan Gerindra memangkan pemilikada ini dalam satu kali putaran, adapun data perolehan suara pasangan calon walikota dan wakil walikota Malang sebagai berikut :

Tabel 12  
Elektabilitas Calon Walikota Malang Berdasarkan Hasil Perhitungan  
KPUD kota Malang

Nomor Urut	Pasangan Calon	Partai Pengusung	Perolehan suara Pemilukada	Prosentase
1	 <b>H. DWI CAHYONO, SE &amp; MUHAMMAD NURUDDIN, SPt</b>	Perseorangan	22.158 suara	5,83%
2	 <b>Dra. Hj. HERI PUDJI UTAMI, M.AP</b>	P. Golkar, PAN, PBB, PPRN, PKPI, PPD, PPI, P. Republikan, P. Merdeka, PKNU,	68.971 suara	18,16%

	& <b>Ir. SOFYAN EDI JARWOKO</b>	P. Buruh, P. Pelopor, PBR, PPP, PNUI, P. Patriot)		
3	 <b>Dra. Hj. SRI RAHAYU &amp; Drs. Ec. RB. PRIYATMOKO OETOMO, MM</b>	PDIP	84.477 suara	22,24%
4	 <b>MUJAIS &amp; YUNAR MULYA</b>	Perseorangan	9.518 suara	2,51%
5	 <b>Drs. AGUS DONO W. M.Hum &amp; Ir. ARIF HS, MT</b>	Partai Demokrat PKS Partai Hanura PKPB	14.849 suara	3,91%
6	 <b>H. MOCH. ANTON &amp; SUTIAJI</b>	PKB Gerindra	179.675 suara	47,30%

Sumber : Data primer yang diolah

#### **Elektabilitas Calon : Akurasi Quick Count Dibanding Real Count**

Jika dibandingkan tiga lembaga survey dibawah ini -mana yang memiliki tingkat akurasi mendekati hasil real count, berikut ini diuraikan kemampuan, kompetensi, dan, tingkat akurasi lembaga survey :

Tabel 13

Hasil Perhitungan Pemilukada 2013  
Berdasarkan Quick count dan Real Count

Nomor Urut Lembaga Survey	1 Dwi-Uddin	2 SR-MK	3 DADI	4 RAJA	5 DOA	6 AJI
LSI	5.69%	21.61%	18.14%	2.44%	3.97%	48.15%
FISIP UMM	5.44%	21.61%	18.09%	2.39%	3.64%	48.83%
AveMedia	5.43%	23.51%	17.12%	2.48%	3.71%	47.75%
Real Count KPUD Kota Malang	5,83%	22,24	18,16	2,51	3,91	47,30

Sumber : Data skunder yang diolah

Dalam mengolah data elektabilitas calon walikota dan wakil walikota Malang pada tanggal 23 Mei 2013 - lembaga yang memiliki tingkat akurasi yang paling tinggi - dekat dengan hasil perhitungan perolehan suara riel KPUD adalah LSI disusul FISIP UMM dan ketiga adalah AveMedia. Tingkat akurasi lembaga dihasilkan dari ketepatan penggunaan metodologi, pengalaman dalam mensurvei dan kompetensi lembaga survey tersebut.

#### Perbandingan Modal suara partai dan Elektabilitas Calon

Berikut ini di bandingkan antara modal suara partai yang diproleh pada tahun 2009 dengan elektabilitas pasangan calon walikota dan Walikota Malang :

Tabel 14  
Perbandingan Modal suara dan hasil perolehan suara

Nomor Urut	Pasangan Calon	Partai Pengusung	Perolehan suara Partai Pengusung tahun 2009	Perolehan suara Dalam Pemilukada 2013	Bias Suara
1	 <b>H. DWI CAHYONO, SE &amp;</b>	Perseorangan	46.842 Pendukung.	22.158 suara	(-) 24.684 suara

	<b>MUHAMMAD NURUDDIN, SPt</b>				
2	 <b>Dra. Hj. HERI PUDJI UTAMI, M.AP &amp; Ir. SOFYAN EDI JARWOKO</b>	P. Golkar, PAN, PBB, PPRN, PKPI, PPD, PPI, P. Republikan, P. Merdeka, PKNU, P. Buruh, P. Pelopor, PBR, PPP, PNUI, P. Patriot)	74.813 suara	68.971 suara	(-) 5.842 suara
3	 <b>Dra. Hj. SRI RAHAYU &amp; Drs. Ec. RB. PRIYATMOKO O OETOMO, MM</b>	PDIP	65.385 suara	84.477 suara	(+) 19.092 suara
4	 <b>MUJAIS &amp; YUNAR MULYA</b>	Perseorangan	39.098 Pendukung	9.518 suara	(-) 29.580 suara
5	 <b>Drs. AGUS DONO W. M.Hum &amp; Ir. ARIF HS, MT</b>	Partai Demokrat PKS Partai Hanura PKPB	122.554 suara	14.849 suara	(-) 107.705 suara
6		PKB Gerindra	49.798 suara	179.675 suara	(+) 129.877 suara

	<b>H. MOCH. ANTON &amp; SUTIAJI</b>			
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Sumber : Data skunder yang diolah

Dari tabel diatas dapat dianalisis sebagai berikut : (1). Pasangan Dwi – Uddin bias dukungan atau kehilangan dukungan sebesar 24.684 suara karena dalam pencalonan yang bersangkutan mencantumkan dukungan sebanyak 46.842 kenyataanya dalam pemilukada 23 Mei 2013 perolehan suara pasangan ini hanya sebesar 22.158. (2). Pasangan DADI dukungan suara koalisi partai pendukungnya sebanyak 74.813 suara dalam pemilukada 23 Mei 2013 memperoleh suara sebanyak 68.971 suara kehingga kehilangan suara atau penyempitan suara sebanyak 5.842 suara. (3). Sementara pasangan yang diusung oleh PDIP SR-MK mendapat perluasan suara sebanyak 19.092 karena dalam pemilukada kali ini mendapat suara sebanyak 84.477 suara, dari modal suara partai tahun 2009 pendukungnya sebanyak 65.385 suara. (4). Pasangan RAJA mengalami penyempitan suara yang sangat banyak sebesar 29.580, pasangan ini didukung atau pendukungnya sebanyak 39.098 suara namun dalam pilkadasung kali ini hanya mendapat suara sebanyak 9.518 suara. (5). Pasangan DOA yang diusung oleh Partai Demokrat dan PKS dengan modal suara sebanyak 122.554 suara, dalam pemilukada tanggal 23 Mei 2013 kali ini hanya mendapat suara sebanyak 14.849 dan terjadi penyempitan suara sebanyak 107.705 suara. (6). Pasangan AJI yang diusung oleh Gerindra dan PKB memiliki modal suara sebanyak 49.798 suara dalam pemilukada kali ini mendapat perluasan suara luar biasa sehingga dalam pilwali ini mendapat suara sebanyak 179.675 suara sehingga mendapat perluasan suara sebanyak 129.877 suara.

Kesimpulan, (1). Pasangan Aji adalah pasangan yang mampu memanfaatkan : kapasitas diri, mesin partai, tim sukses, sarana prasarana termasuk anggaran dana, dan menggunakan strategi politik yang jitu sehingga mereka direspon positif oleh masyarakat kota Malang – pasangan ini mendapat attensi yang sangat luar biasa dari masyarakat kota dan menang satu putaran dengan perolehan suara sebanyak 47,30%. (2). Pasangan SR-MK mendapat respon yang baik dari masyarakat dan mendapat attensi yang baik dari masyarakat kota Malang sehingga perolehan suaranya melebihi modal suara yang dimiliki partai pengusung, pasangan ini mendapat suara sebanyak 22,24%. (3). Pasangan DADI adalah pasangan yang direspon cukup baik dan mendapat attensi yang cukup baik dari masyarakat kota Malang sehingga dipilih masyarakat dengan perolehan suara sebanyak 18,16%. (4). Pasangan Dwi – Uddin adalah pasangan yang direspon masyarakat kurang baik dan mendapat attensi yang kurang baik pula dari masyarakat kota Malang, perolehan suaranya hanya sebesar 5,83%. (5). Sementara pasangan DOA dan RADJA adalah pasangan yang mendapat respon yang tidak baik dari masyarakat kota Malang sehingga mendapat attensi yang tidak baik dari masyarakat, perolehan suaranya masing-masing sebesar : 3,91% dan 2,51%.

## **KESIMPULAN: TRI MODAL YANG MENENTUKAN**

Pasangan Aji yang diusung oleh Gerindra dan PKB dari hari ke hari mulai bulan Februari 2013 sampai menjelang Pemilukada memperoleh respon dan attensi yang sbaik dari masyarakat kota Malang - sehingga popularitasnya semakin lama semakin meningkat, hal ini dikarenakan : berusaha keras merakyat , mengeksplorasi ziarah wali limo . Sementara dua Sriandi PDIP Bunda HP dan Sri Rahayu karerna rebutan rekomendasi DPP meski kemudian rekomendasi jatuh ke Yayuk berpasangan dengan Moko sementara Bunda HP diusung PAN Golkar dan 14 partai non parlemen popularitasnya tidak semakin meningkat keduapasangan ini justru semakin menurun tingkat

popularitasnya. Berbeda dengan pasangan DOA Meski diusung oleh Partai besar dan memiliki potensi suara yang paling besar pasangan ini popularitasnya tidak beranjak semakin meningkat justru sebaliknya popularitas sulit dinaikkan karena memang tidak popular. Dua pasangan independen Dwi-Uddin dan RAJA sejak awal proses pemilukada berlangsung sampai menjelang pencoblosan popularitasnya tidak pernah meningkat.

Berdasarkan Quick Count lembaga survey seperti LSI, FISIP UMM dan AveMedia maupun Real Count yang dilakukan oleh KPUD pasangan Aji memenangkan Pilkada Kota Malang dalam Satu putaran dengan elektabilitas suara diatas 47%. Perolehan suara terbesar kedua di Menangkan oleh pasangan SR-MK dengan elektabilitas pada kisaran 22%. Sementara perolehan suara terbesar ketiga disandang oleh pasangan DADI dengan tingkat elektabilitas pada kisaran 18%. Pemenang keempat diraih oleh pasangan Dwi-Uddin dengan tingkat elektabilitas pada kisaran 5%. Berikutnya pasangan DOA dengan elektabilitas 3% dan terakhir pasangan RAJA dengan tingkat elektabilitas pada kisaran 2%.

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# HISTORY AND EFFECTS OF MINIMUM WAGES IN MALAYSIA

Vally Senasi<sup>1</sup>

## ABSTRACT

This paper focused on history of labor practices and wage system in Malaysia. Free market system and labor policy has changed and improved real wages since colonial era in Malaysia. Moreover, introduction of minimum wages by government is believed to impact many aspects of workers and labor system in Malaysia. Therefore, this paper then specifically analyzes the effects of minimum wages on workers in manufacturing industry in Malaysia. Prominent effects of minimum wages detected in unemployment, poverty and quality of life of developed and developing countries. However, direct impacts of minimum wage to the workers and their employers still unidentified in Malaysia. Thus, this paper interested to discuss the effect of minimum wages on labor productivity and fringe benefits of the workers and their respected employers. Labor productivity is an indicator of workers achievement in competitive world. The effects of minimum wages on worker's fringe benefits such as health insurance, training and allowances also discussed in detail. Data was gathered from survey and interviews with manufacturing workers and their employers in electrical and electronics companies in Malaysia. Malaysian Trade Union Congress (MTUC) and Malaysian Employers Federation (MEF) found to play a vital roles in setting minimum wages in Malaysia.

**Keywords:** minimum wages, low skill, labor, labor productivity, fringe benefits

## HISTORY OF LABOR PRACTICES IN MALAYSIA

Labor policies in the colonial era of Malaya were aimed for cheap and abundant labor force supply for capital accumulation (Jomo, 1988). For instance, Corvee labour or forced levy labor used to serve the ruling class and work in the paddy field. Moreover, in the capitalist society labors are paid lesser wages than the actual surplus or profit by their employers. In fact, workers did not receive the full value of the wealth created by their work as their wage (Blyton & Jenkins, 2007). Although, the labor create surplus value, but in return they are discriminates in share of that surplus value which is equivalent to their contribution.

In 1922, a committee was set up to determine fair wage rates for Indian immigrant labors. Later, conditions of works and wage rates generally improved as Malaya better organized the workers. Later, in matter of fact, decline in unemployment and improvement in the bargaining position of labor induced to the improvement of real wage especially in manufacturing sector in early 1980s (Jomo, 1990). Furthermore, the changes of Malaysia's development strategy from import-substitution to export orientation also appears to have had important impacts on wages (Jomo, 1990). As such, being in a fast growing economy, with its export oriented industries, Malaysia considered to be governed by free markets. Thus, labors wages are mostly determined

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by market forces without any government intervention. Saying that, in such monopolistic labor market, employers have greater power in setting wages than the employees (Card and Kruger, 1995). Thus, most employees paid less than their marginal value and standard market wages. Discrimination and unfair wages practices makes many workers and unions expressed their concern on this issue. Moreover, such practices restricted the labors opportunity to uplift their socioeconomic status in society and perform better in their job. Labor markets determines over 80 percent of income as Smith (1999) argues the peculiarities of employees very important. Therefore, workers need to be compensated financially and non-financially.

Today, labor is not a mere commodity or exclusive individual property anymore. Labor is often referred as a human life which their skills exerted to sustain human society through mutual exchange of works and services by means of money-wages. Wages also plays an important role in ensure workers and businesses works in efficiently and effectively. Thus, raising the minimum wage to standard to all low wage workers believes to equalize the standard of average living among the society (Jelley, 1969). In fact, Smith in the *Wealth of Nations* has been emphasized economic growth of nations important in determine the bargaining power of labor. Thus, rise in wage of labor absolutely an important factor to turn Malaysia to high income nation by year 2020.

### **PROMINENT EFFECTS OF MINIMUM WAGES**

Minimum wage issue has been deeply investigated by many researchers. Past studies have especially focused on minimum wage effects on employment. For example, Clark (1913) and Pollin & Luce (1998) argued raising minimum wages will lessen the numbers of workers employed. In contrast, labor economists such as Card and Kruger (1995) founds that raised the earnings of low wage workers does not leads to unemployment.

However, Filene (1923) and Rebitzer & Taylor (1995) states that raising wages would increase consumer's purchasing power, thereby boosting aggregate demand and raising purchasing power of the household sector. Thus, they argued that quality of life of low skill workers can be improved in longer run through the introduction of minimum wage policy. In longer run, minimum wages may enable a family below the poverty line to break out poverty and inequality in future (Lemos, 2007). If the head of family able to earn livable wage, it may possible for his children to remain in school long enough to gain sufficient skills to move into higher wage jobs. In this case, the economy will benefit from the better skilled personnel in the long term rather than low skilled workers.

Improvement on quality of life is another major effects detected since the introduction of minimum wages. As Finkel and Tarascio (1971) notes increases in real wage might provide strong incentive on the part of low wage earner to obtain employment. Thus, once having tasted economic security through minimum wage, individuals will motivated to move up to the higher economic ladder and not prefer return to welfare or unemployment compensation, which would represent a relatively low standard of living. In long term, financial incentives will motivate the workers to improve their skills and knowledge on the job and career.

Overall, most of the formal studies identified that minimum wage effects on unemployment, poverty and quality of life. However, they fails to focused on the wage distribution effects from the perspectives of labor workers and their employers. In addition, there is insufficient information about the wage policy implications, in particular whether such wage increases motivate the productivity of the low skill workers which the policy intended to help. Moreover, this study also interested to investigates the

employers reaction in complying with the implementation of minimum wages in Malaysia. Finally, this research will examines the effects of minimum wages on workers wellbeing.

### **Minimum Wages Effects On Labor Productivity**

Malaysia has a higher productivity growth compared with the other Asian countries. As such, maintaining the productivity growth is one of the great challenges for Malaysia in achieving the status of developed nation by the year 2020. Saying that, significant productivity growth which invests in human development are important in Malaysia. Thus, minimum wage seen as one of the factor leads to the greater productivity.

Productivity can be referred as a ratio of amount of quantity or output produced versus quantity of labor costs including capital, land, labor other resources or input used in the production. Thus, it is important to address that production is expressed in total units produced whereas productivity expresses the units produced per man hour. For assembly line workers, productivity is measured thorough work efforts and it also relates with the efficiency and effectiveness uses of resources usage such as people, tools, knowledge and energy produce goods and services in an industry setting (Levitin & Werneke, 1984; Shamzaeffa, *et al.* 2006).

Productivity plays an important role in most economic issues too. For example, during the periods of rising prices, productivity relates with wages and costs while during the economic slowdown it is relates with employment (Bureau of Labor Statistics, 1977). In order to address the level of productivity of low skilled workers, several other measurements also suggested to be addressed such as comparison of Malaysia's Growth National Products (GNP) from 1990 until now, the Malaysians standard of living compare with other nation, specifically industry employees contributions to Malaysia's economy and the effectiveness of introducing minimum wage policy.

Most researchers recommends that financial incentives as a fundamental input of work, whereby workers sell their labor power in return for a wage or salary. Employers are often driven to search for monetary incentives that can be used to motivate their workers. According to Vough & Asbell (1979) and Blyton & Jenkins (2007) pay is a central factor in motivating workers to achieve greater productivity besides status and job satisfaction. Furthermore, pay regard as source of pride, security, and satisfaction for the entire family. Thus, good pay enlists the support of important allies. Therefore, fair treatment and diligent system and operation needed to achieve the goal of an organization. Moreover, labor wage standards such minimum wages expected to have efficiency and effectiveness impacts in motivating and retaining the labor (James *et. al.*, 2003).

Many scholars expressed their positive opinion and extensive discussion on minimum wage effects on the labor productivity. Minimum wage believed to motivates the labor to increase work effort. As such, labor productivity believed to rise from productive effort of workers (effort intensification) from the wages or incentives given to them (Forth, *et al.*, 2002). Todorova (2012) postulates minimum wage provides better pay and greater space for workplace learning opportunities for low skill workers along with other employees. Thus, positive moves from the employers with better salary and flexible environment would encourages the morale of the individual worker to perform better at work, thus increasing productivity (Productivity Report, 2013).

Positive changes in labor policies also believed to impact the labor productivity. Minimum wage believed to induce labor productivity and attracting productive employees (Dey & Flinn, 2005, Lazear & Oyer, 2009). For instance, once workers received a minimum wage, they will practice productive and disciplined work. In addition, Dilts *et al.* (2005)

argues the basic concept applying minimum wage standard is fairness. Thus, more compensation required for productive workers with more responsibilities and risk. In addition, high value and creative products only can be derived from the most productive workers. Thus, better compensation would help in creating more productive and skilled workers.

Most important, increase in productivity resembles better pay and standard of life of the workers. It also works as anti-inflation agent in retaining the current wages of workers and goods prices. In addition, greater productivity or increases in productivity including increase expectations of employees, have been utilized by arbitrators in deciding that wage increases are appropriate.

When workers standards of living are as low as they are in developing countries, the result of a wage increase must be reflected in some improvement in health, efficiency and economic performance. When wages are higher, wage earners will have more incentive to keep their jobs. With greater commitment, attendance and time keeping will probably improve, and wage earners may well be prepared to work harder (International Labor Organization, 1968). Thus, workers productivity also will increase in tandem along with greater commitment to the firm that they worked (Ehrenberg & Smith, 2012). Thus, it will maximize the efficiency of labor usage and reduce country dependency on foreign workers (Leonard, 2003).

In addition, many studies positively supports close connection between the wages and productivity in the developed and developing economies (Wakeford, 2004; Montuenga-Go'mez et al., 2007; Narayan and Smyth, 2009). Gift exchange model, Fair Wage model and efficiency wages too discussed extensively about the connection between the minimum wages and productivity.

The time allocation and trade-off theories confirms that the introduction of minimum wages would motivate the workers to be productive and willing to substitute the leisure time to work. While, in a longer run when the wages at the higher than average level, workers would begin to be less productive since they have high income and can afford more leisure with the current wage level.

However, Becker (1965) proposed that real wages have no effects on labor productivity in the non-monotonic or higher income labor force setting. In contrast, Hondroyannis and Papapetrou (1997) and Gneezy and Rustichini (2000) found that the higher wages did not always motivate and induces labor productivity. Similarly, Foon Tang (2012) argued that real wage increases not simultaneously increases the labor productivity. Therefore, employers suggested to applied dual strategy by offering better wages to increase the labor productivity and invests on training and development activities to improve the workers skills. As such, talented and competitive group of workers can be generated which will helps in the long-term productivity growth in Malaysia.

In addition, study on job tenure and productivity by Rebitzer's (1987) found that long tenure tends to reduce the wage effects on productivity. Long tenure make workers to receive high pay and other benefits compare with flexible workers (Michie and Sheehan, 2000). Hence, in a productivity equation it might be the case that the existence of long term employment relations weakens the effectiveness wages have on influencing productivity. This does not necessarily mean that efficiency wages are ineffective. However, it might be the case that industry sectors dominated by long-term employment relations need to offer higher wages than average efficiency wages in order to compensate for the effect of job security provisions which consequently leads to higher labor productivity.

Labor productivity seen as a positive development for an economy and nation. Once the productivity growth is strong, thus it will improves the living standard and helps to boost the economy (Powell, 2010). For example, labor contribution in Korea proved in increasing labor productivity and rise the GDP per capita. In a nutshell, higher productivity rates generates profit and increase workers wages and creates harmonious nation subsequently (Malaysia Productivity Corporation, 2013).

### **Minimum Wages Effects On Fringe Benefit**

Minimum wage also effect on worker's fringe benefits. Implementation of minimum wages seems most of the employers complied with the law, however causes a firm to substitute away the other inputs or resources of the worker in the firm. Although most of the employers complied to pay minimum wages to their workers, there has been few changes made by the employers in the workers fringe benefits as a substitution for the minimum wages.

Fringe benefits includes flexible work hours, productive work environment, healthcare benefits and training provision. For example, On-the-Job Training (OJT) is an essential tool in enhancing the productivity and earning capacity for the low skilled workers. Typically, non-wage benefits are about 20%-30% of wage benefits (Sappey, et. al., 2006). This varies by industry, occupation and pay. Benefits typically accrue with the longer service provided or job, the greater the extent of the accrued entitlements. The accrues may entitlements include, long service leave, redundancy pay, accrued holiday leave and sickness leave. However, this study only will focused on the medical insurance, training provision and workers allowances in brief.

First, medical or health insurance is a healthcare based fringe benefits provided by the employer in the workplace. In many condition, employees pay the medical insurance with the employer in the form of wage reduction (O'Brien, 2003). Health insurance covered most of the physical and mental health conditions of the workers depending on the insurance policy selected by the employers too. In this case, contractual relationship between employer and private insurance companies involves certain amount of package or premium to sustain the insurance policies. Consequently, employees will receive medical care which are covered by agreed terms with the insurance policies.

As an education is pertinent in upgrade the workers skill, health insurance also equally crucial to improve the productivity and firm performance. Workers regard health insurance as an important factor in attracting or retaining a job (Duchon et al. 2000; Salisbury & Ostuw, 2000). Health insurance ensure the workers maintain their health condition to perform a job function efficiently. As such, good health induce productivity and increase firm performance in long term. Moreover, Burton, et al. (2001) agrees that workers preferably consumed medication are far more productive than non medication workers.

Second, training, particularly on the job training regarded as the primary means through which workers develop their skills. To the employer, unstable labor force with poor work habits is a poor investment. Therefore, the firms would not establish trainings and tend to adapt its technology to a largely unskilled labor force. Study by Arulampalam et al. (2002) shows that the effect of a new minimum wages on the training provision depends on the labor market environment. Certainly, minimum wages seen as less function in the competitive labor market by employing unskilled workers. However, in the non competitive labor market the firm would recruit and retain the worker and would improve the employee productivity by giving training to them.

As Hashimoto (1981) argues increased wages mandated by law (minimum wages) may lead the employers cutting back various nonwage benefits of the labors. Many other studies also indicates that minimum wages indeed reduce fringe benefits of the workers. For instance, Hashimoto (1981) and Neumark & Wascher (2001) agrees that some employers respond to the increased wages by cutting back on training programs which intended to improve skills and knowledge on the current job. However, Denvir and Loukas (2006) found there are changes in training provision either in the amount or level of training and targeted employees. Overall, minimum wage expected to affect and reduce the human capital accumulation and restricts the expansion of labor skills and knowledge on the job. Moreover, Colistete (2007) agrees low wages, poor conditions and limited training for workers impacts the improvements in industrial process and organizational structure.

However, Simon and Kaestner (2004) and Lemos (2007) concludes that minimum wage has no detrimental effects on workers fringe benefits. For instance, the private employers do not fire their employees or reduce their working hours while implementing the minimum wages policy. Similarly, empirical evidence by Fairris and Pedace (2004) postulates that no relationship between minimum wages and training hours received by the employees in USA. However, contrary to the conventional assumptions, Morris et al. (2005) discern that employers significantly correlated the new minimum wages with retain free training (on the job training) as a employers benefit packages to the employees.

## **MINIMUM WAGES AND ROLES OF MALAYSIAN TRADE UNION CONGRESS (MTUC) & MALAYSIAN EMPLOYERS FEDERATION (MEF)**

### **Malaysian Trade Union Congress (MTUC)**

Unions are typically supports increases minimum wages for the worker groups that they represent. For instance, former president of MTUC, Zainal Rampak has been stated;

"Now is the time to begin the process, by introducing a minimum wage scheme and for the government to call on multinationals corporations to pay better wages. Government must also put an end to exploitation of Malaysian labour by foreign employees".

(Suara Buruh, Vol. 35, 1991)

In the general meeting on 26th August 1996, MTUC firmly suggested to set up RM600 as a monthly minimum wages for workers should be considered before any agreement achieved on collective bargaining with the employers. MTUC believes that the proposed minimum wage would be a starting point towards a minimum wage claim and National Minimum Wage Policy (Zainal Rampak, 1996). However, the government not agreed because of concern that higher costs could drive firms out of Malaysia.

The government however agrees to adopted several measures such as increasing extra-legal labor immigration, primarily from Indonesia, Southern Thailand and Southern Philippines to offset the pressure of wages and overcome the labor shortages. It is estimated from half to a million immigrant workers in Malaysia in 1980s (Jomo, 1990). The increase of illegal immigrant labor and contract labor has further weakened labour and depressed real wages. For example, the former MTUC General secretary is convinced the government deliberately flooding the country with foreign workers in order

to suppress and weaken unions' influences on wage negotiations (Rajasekaran, 2008). For example, the Minister of Human Resources estimates the number of the migrant workers accounting for 25 per cent of the workforce. Hence, hosting such huge number of foreign workers feared to reduce competitiveness of economy and industry of firms (Kuhan and Celestine, 2007).

In addition, MTUC argues that the minimum wages needed to avoid exploitation on local workers. Unions realized that with higher wages, low wage workers can have more purchasing power with less dependence on welfare benefits. Conversely, Malaysian government prefer the labors wages decided by the free market system. For instance, in 1980s, import substitution and export orientation policy with cheap unskilled workers clearly attracted the foreign direct investment (FDI) in Malaysia.

According to Malaysian Trade Union Congress (MTUC), minimum wage policy has been introduced in Malaysia after three years of careful analysis and assessment. Thus, MTUC supports the implementation of the policy although there is many objections from various parties. Nevertheless, foreign investors and Small Medium Enterprises (SMEs) seen minimum wage policy as obstacles that would harm their businesses in Malaysia. Some even decided to relocates their businesses or companies to other countries which have cheap labor and low production and market costs. Former Minister of Human Resources, Dato Dr. Subramaniam also mentioned some feared that the cost of operations (offering low wages) will be passed to consumers which will increase the price of products or services and consequently reduce the competitiveness in attracting foreign investment into this country.

### **Malaysian Employers Federation (MEF)**

Introduction of minimum wages in Malaysia welcomed and criticized by various interest groups. For example, Malaysian Employers Federation (MEF) argues that minimum wages might increase production costs for employers and impacts the firm competitiveness in longer run. In addition, MEF warns that minimum wages might cause unemployment due to employers failure to absorb extra production costs thus it will impacts on nation competitiveness.

### **CONCLUSION**

The minimum wages plays an crucial roles in a workers life which impacts the standard of life practices the most such as employment, poverty and inequality. However, many unrealized that labor's productivity is an important effects that minimum wages have on workers. Indeed, labors productivity is an indicator of workers achievement in an competitive world. While, minimum wages impacts the workers most, employers adjustment and reaction on this issue also should given equal attention. Thus, the effects on nonwage benefits received by the workers since the implementation of minimum wages also discussed briefly. Needless to say here, minimum wages is an long wait award for most low skilled workers to improve their standard of life.

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# **DEMOCRACY AND RURAL DEVELOPMENT IN NIGERIA: CHALLENGES AND PROSPECTS**

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## **ABSTRACT**

Nigeria's return to democratically elected government in 1999; after decades of Military rule and dictatorship since independence in 1960 has placed the country's agenda on an agreed target by all and sundry, and this was accompanied by hopes, aspirations and expectations, due to the fact that, the countries development remains inadequate, most especially at the rural level which is regarded as most deprived and undeveloped. This paper therefore, attempts to examine the challenges and prospects of democracy on rural development in Nigeria from 1999-2014. The methodologies adopted in obtaining data for the paper are purely empirical and secondary. The paper contends that, democratic performance to bringing the desired changes and development in Nigeria remained abysmal and insignificant. It was concluded that for democracy to be meaningful; rural folk that accounted for the bulk of the country's population must be developed otherwise the counties strides to been among one of the developednations will remain a mirage and unattained.

**Keywords:** Democracy, rural development, Nigeria, challenges & prospects

## **INTRODUCTION**

Democratic system of government is now becoming a household name in Africa and Nigeria in particular. This is in the sense that, many African states are now becoming democratic and indeed a republic, contrary to militarization of the governmental structures in most of the African states particularly from 60's and 70s, although to 90s. Perhaps, this is as a result of its perceived principle which is said to be the government that represents peoples' interest; that is, "the government of the people by the people and for the people". It is also seems to have been perceived to be the system of government that appeals to all and sundry. Nigeria is one of these countries that practices democratic system and this was successfully enthroned in 1999. Nigeria's successful transfer of power from dictatorial military rule to an elected civilian government in 1999 becomes a watershed that placed democracy on a challenging agenda; agreed by all, and this was accompanied by hopes, aspirations and expectations, due to the fact that, the countries development remains inadequate, most especially at the rural level, which is regarded as most deprived and undeveloped.

Studies in human settlements distribution in Nigeria show that, majority of the Nigerian populace; over 60% live in the rural areas with attendants' socio-economic problems.

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This is corroborated by Otaki (2005) in which he argues that, it is estimated that about seventy per cent (70%) of the population of Nigeria and other underdeveloped countries live in rural areas. From these therefore, suffice it to say that, every responsible government most especially the democratically enthroned one should be responsive to meet the yearnings and aspirations of the teaming rural-folks. Yet, in spite of these however; rural studies have shown that, the rural areas in Nigeria had suffered many years of neglect. The little that has been put in place by successive governments in terms of infrastructural facilities was mostly in favour of the urban centres to the neglect of the rural areas. It is in this light that (Ezeah, 2005) observes;

Rural areas in Nigerian are neglected, even though social services are also not adequate in some urban areas. The situation in the rural communities is far worse than many communities lack basic amenities.....

This paper therefore, discusses democracy and rural development in Nigeria with a view to expose some of the challenges of democracy in Nigeria to achieving effective rural development and proffering some of the likely prospects.

## **CONCEPTUAL DEFINITIONS**

### **Different Perception of Democracy in Developing Country**

Democracy is a concept that suffers from conceptual interrogation, because many scholars and researchers have attempted defining it differently on different perspectives. Bello, (2011) maintained that most of the components of modern democracy were founded in ancient Greece and further argues that, it seems to have been perceived to be the system of government that appeals to peoples interest and will in both the advanced countries as well as the underdeveloped ones. This could be as a result of free hands it gives to people to participation in the restoration, operation and sustenance of government. From a theoretical focus democracy according to Yusif, (2009) can be summed up to be a system that emphasizes on collective engagements to accomplishing the citizen's aspirations according to the rules of the game for their common goal. It is also essentially fundamental that democracy allows people partake in selecting their representatives to make rules that enables the political system grow, and ensure fairness, equity as well as other goals they share in common between different ethnic and social groups.

Otive, (2011) on his own part says, democracy is only meaningful if it delivers in bringing socio-economic development to the nation. It was further argued that the political freedom which forms the basis of democracy remained insignificant without commensurate socio-economic development that will uplift people from hunger, deprivations and degradations. Hence, the need for people to elect their leaders in order to respond to their myriads of problems bedevilling them.

The above reveals that, democracy entails to be a system with adequate institutional capacity and structures that allows for broader sovereignty to the people and guarantee them human rights with dignity. Unfortunately, this conception of democracy is narrow on its focus as it only emphasized on political aspect and process of democracy without commensurate socio-economic considerations that betters human existence. However, in spite of the democratic practices in Africa, and Nigeria in particular poverty and deprivations of necessities of lives particularly to the vulnerable rural people often prevents many from showcasing and harnessing their political and civic rights while the concentration of wealth in the hands of a few, gives the economically advantaged and the elites, unchallenged and unrestricted political influence.

Viewing from different perspective, Ternande, (2003) sees democracy as the political and economic empowerment of the majority of the ordinary people to participate in the decisions that has bearings to their individual and collective rights and generally their lives within the society. This is in contrast to the practical democracy been practiced in Nigeria. This was corroborated by Victor and Allen (2009) that democracy in Nigeria is far away from people's welfare; as citizens were neglected from its benefits. This shows the high level of irresponsibility of any government; to talk of the democratic system of government. The system that was correctly described by Okeke, (2014) as "ceremonial democracy". This seems to be so as leaders are only elected to fill the public offices without commensurate performance to meeting the yearnings and aspirations of the people.

### **Rural Development from the Sociological Perspectives**

Over the years rural development has been considered a veritable tool for enhancing development; particularly in the developing and undeveloped societies. It is basically, concerns about a review and assessment of the improvement in the quality of life of rural people; which is broadly measured with the sufficient provision of health and social services, good living conditions and bridging of income inequalities amongst others. These leads to universal concerns that, rural development rests upon the improvement of quality of life of the rural populace.

Idris, (2011) sees rural development as a continued set of actions by government agencies, NGO's and the rural populace to improving the living conditions of the rural people and also as a process which lead to series of changes within the confine of a given rural setting and which eventually result in the improvement in the general conditions of the rural dwellers. The changes in living conditions depend on a variety of factors such as improvement in education, health, water supply, feeder road networks, electrification amongst others. Provision of these means democratic dividends in the Nigerian democracy. This is because, they all constitutes campaign promises and political manifestos of elections campaigns in Nigeria.

Rural development is a comprehensive mode of social transformation, a socio-economic change seeking to bring about better equality in the allocation and distribution of resources within people in the society, and a veritable acceptance of the principle of growth from below. This emphasized on the need to ensure socio-economic balance and equitable distribution of wealth and resources among people and among the rural populace. Failure to do so makes an economy yet underdeveloped. Nigeria for example experienced an unprecedented economic growth in recent times; but without commensurate development. Currently, (2014) World Bank rated Nigeria as the biggest economy in Africa but yet, among the poorest countries globally. This proves the claims that although the country is rich and the economy is growing, still majority of its population are poor. These pose a great challenge to the managers and drivers to the economy. The only way is to ensure equitable distribution among people and among the sectors and ensure that the growth witnessed by the economy is all inclusive. In the real sense of things, failure to involve the rural populace in carrying out developmental projects in their localities in the name of rural development usually leads such projects to become a wasted effort and this happens not only in Nigeria, but in other countries both developed and third world countries.

Looking at it from different perspective, Ndangra, (2005) maintains that, rural development is broadly seen as an integrated process involving the implementation of sectoral programmes and provision of social services under the surveillance and the full participation of the major relevant stakeholders. That, it is also, an educational process

which seeks to create opportunities for rural people to satisfy their human, economic, social and psychic needs. This shows that, the success of rural development lies in implementation of the programmes and policies initiated. This has been the problem in Nigeria; in the sense that successive government came up with various programmes that were laudable but marred with implementation problems which left rural communities undeveloped.

### **Democracy and Rural development in Nigeria: Challenges and Prospects**

Nigeria is structured into 36 states and Federal Capital Territory, Six Geo-political zones and 774 Local Government Areas. Most of these states experienced most critical challenges on issues of development. It is also said that many particularly states at Northern region are most rural, and underdeveloped which placed them below in terms of all developmental index and measure; thereby becoming the most vulnerable that requires serious attention most especially under current democratic arrangements.

Rural development is that aspect of development concerned with an improvement on the living conditions and welfare of the rural populace. Democracy remains the system of government that responds to the yearnings, living conditions and welfare of the citizenry. This indicates that, for democracy to be meaningful, considerable attention must be paid in bringing development especially at rural level. Although, rural sub-sector in Nigeria had witnessed considerable attention in terms of policy pronouncement and commitments by successive government over times. But still marred with numerous challenges and problems in terms of its development. This paper found some of the following challenges of democracy to rural development in Nigeria:

**Challenges of High Rate Poverty:** According to the Department for International Development (2014) Nigeria represents a quarter of Africa's extreme poverty; about 100 million of its 174 million people are living on less than £1 a day. The incidence of poverty in Nigeria is quite alarming that an average man finds it difficult to eat in at least three square meals a day. The Northern zones has the most significant challenge in that respect, in the sense that recent statistical survey conducted by the National Bureau of Statistics (2012) indicated that, North-Central zone recorded 59.5%; North-East 69%, North-West 70% with people that are absolutely poor, and most of them were drawn from the rural communities with attendant socio-economic problems, and this is quite alarming as compared for instance to its counterpart in the southern zones that recorded as follows; South-East 58%, South-South 55.9% and South-West 49% poverty level respectively. The incidence of poverty in the country in terms of human settlement is 33.9% urban and 66.1% rural. This shows that Nigerian democracy has a great challenges of tackling this ugly menace and emancipate its people from the shackles of being absolutely poor to a happy and wealthier society.

**Inadequate Rural Roads:** The country has enormous economic potentials, most especially in agriculture and other mineral resources, which are mostly located and found in rural areas. Nevertheless, these abundant resources have not been accessed and fully harnessed due to inadequate and absence of rural roads. Most of the communities are left unconnected, in limbo, agony and terrible conditions. Rural roads need to be provided and properly connected so that the agricultural and other mineral resources be extracted and exploited to bring meaningful development not only to the communities but to the nation at large. This poses a serious challenge on democratically enthroned government.

**High Rate of Illiteracy:** Illiteracy is one of the major problems of Nigeria, due to the fact that, many people especially children are out of school and leaving many states with a

very low school enrolments. For example; based on the National literacy survey of National Bureau of Statistics (2010) the youth literacy rate who are regarded as bedrock of any society goes as follows according to the English and any other language respectively in percentage in atleast sample of six (6) states in the North two each from each of the zones and Sample of one (1) state in each of the southern zones clearly show as follows: NE, Bauchi 39.5; Gombe 45.6 and 69.8; NW, Katsina 55.1 and 63.6; Kebbi 52.3 and 71.1, NC, Nasarawa 62.9 and 66, Niger 58.3 and 63.9 while, In the southern part samples of for example, SW, Lagos; 95.1 and 96.5, Ogun; 90.4 and 93.8, SE, Imo; 95.5 and 96.1, Ebonyi; 91.9 and 92, SS, Edo; 89.7 and 89.9, Bayelsa; 93.8 and 93.8.

Generally, according to BTI (2014) in Nigeria, the education index is 0.422 and the literacy rate is put at 60%. Inadequate education is reflected by very poor scores of just 0.648 and by a school enrolment of 53%, although government expenditure on education is 10% of the current annual budget. The threatening north-south dichotomy in all social and economic sectors is significantly illustrated by the current state of this sector. Interestingly, school enrolment in the south gets to some 70%, while in the poverty-stricken north only some 30% go to school. It is important to note that, illiteracy is more pronounced at the rural areas in Nigeria. These; calls for urgent attention and concern.

**Challenges of Corruption in Governance:** The challenge of Corruption is one of the factors behind the endemic social challenges in Nigeria. According to the Transparency International (2013) Nigeria is ranked as one of the most corrupt countries in the world; 144 of 177countries with a score of 25 out of 100. The political leaders in Nigeria always take the advantage of their political power and loot government treasuries at the expense of developmental programmes. This is prevalent at all levels of government. This is in line with Persson's (2014) statement that 'Corrupt practices are thus prevalent throughout Nigeria, from the highest political level to local government officials. For examples a lot of monies were earmarked either by the government or international rural intervention agencies on various programs aimed at solving rural problems but the said monies were said to be diverted for private gains. It is in this light that, Persson further says'Underdevelopment, lack of education and health services and malfunctioningservice delivery in general are closely interconnected with the widespreadcorruption in Nigeria. These posea serious challenge to democracy in Nigeria.

**Policy Inconsistency and Poor Implementations:** Rural development in Nigeria has suffered from persistent policy summersault and changes by successive governments. Successive governments came up with different policies and programmes, which usually ends at the expiration of their regimes without continuity. In most cases, the policies initiated are not properly implemented without making any impact. It is in this light that, Ugwuanyi and Chukwuemeka(2013) says:

Nigeria has over the years, developed various policies to enhance the development of the rural areas. Realizing the development of those policies and programs has, however, been constrained by the pattern and nature of their implementation which was characterized by ineffectiveness and inefficiency.

The above challenge constitutes a serious one for any serious and responsible government. This is in the sense that, whatever laudable a program or a policy, without been consistently pursued and properly implemented yield no impact. It is said that, the success of policies begins and ends in its implementation.

**Unpopular Government and Imposition of Leaders:** Democracy is all about people. The leaders should therefore be elected by the people to represent them in government. That makes the government popular and thereby enjoyed absolute loyalty from the electorates. In Nigeria however, it is observed that, most of the leaders in government under the current democratic dispensation are not elected by the people but rather been imposed by the political leadership either because they are from the ruling party or because of their economic status. These affect the delivery by leaders in terms of development and leave especially the rural populace in serious states of underdevelopment. For example, after 2007 general election that brought the then YarAdua/Goodluck administration, International election observers frowned that the election was marred with sorts of irregularities. This was confirmed by the YarAdua himself at his acceptance speech in National broadcast.

The imposition of leaders on people in Nigeria is more pronounced especially at the grassroots democracy. This is in the sense that, many states government in Nigeria finds it difficult to conduct Local government elections(to produce the government that is usually at the rural areas and at grassroots levels). The appointments of representatives of local people are usually been done by the state Governors (which is unconstitutional); in which the Local Government Chairperson's and Councillors are appointed as caretakers by the state Governors and the appointed Chairmen nominates his/her supervisory councillors. Where elections are conducted, the ruling party in that states (whether ruing party or opposition) usually produced all the elected officers through rigging, and other electoral malpractices. All these affect effective delivery of services at the rural level of Nigeria.

### **Prospects of Nigerian Democracy on Rural Development**

It was clearly shown from the above analysis that, the democratic practice in Nigeria is faced with numerous challenges against rural development; yet this paper is still optimistic that all hopes are not lost.The following may be a prospect in Nigerian democracy to foster development in rural areas:

**Public/Community Awareness and Consciousness on their rights:** The ever increasing consciousness and awareness of Nigerian people on their rights and understanding the tenets of democracy may serve as prospect to rural development in Nigeria. It is observed that, in Nigeria many people and communities are becoming conscious and aware of their rights and the roles expected of government on the electorates and start putting more pressures on government to act accordingly. This is usually done through community Based Organizations (CBOs), enlightened individuals and other pressure groups. This is the development in the right direction, as it will gradually continue to have impact on drawing leaders attention to acts on community and rural demands, thereby bringing development.

**Global calls for Transparency and Accountability in Governance:** Nigeria has the potential of becoming one of the developed countries in the world, but corruption and other factors held the country's economy to ransom; as highlighted earlier. However, with the adoption of democracy, more is expected from the elected leaders to be accountable and transparent, which serves as the major indicators of good governance. The Nigerian government also, in order to respond to that establishes agencies and enact some enabling laws to checkmates abuses in government and ensure transparency and accountability. For example, the Bureau for Public Procurement (BPP) was established, Code of Conduct Bureau (CCB), and anti-graft agencies like the Economic and Financial Crimes Commissions (EFCC), Independent Corrupt Practices and other Related Offences (ICPC) and other enabling laws and Acts like Freedom of Information Act (Fol)

and Public Procurement Act (PPA) e.t.c. While at the International level the Transparency International and other leading Institutions emphasised on all these for transparent and accountable governments across the globe.

**Building of Strong Opposition Party and Calls for Free and Fair Elections:** Democracy in Nigeria is becoming stable with strong opposition base. Recently, Nigeria recorded an unprecedented merger of mega opposition parties meant to challenge the rorts and decayed in Nigeria's democratic process and service delivery. About four leading opposition parties; Action Congress of Nigeria(ACN), All Nigerian PeoplesParty (ANPP), All Progressive Peoples Grand Alliance (APGA) and Congress for Progressive Change (CPC) were merged; the first of its kind in the history of Nigerian politics. Pundits and academics sees this development as a victory for democracy as it will strengthened governance and calls for more transparency that will usher in development.

More ever, the strong calls for free and fair elections in Nigeria is another issue of concern by not only the opposition parties but the general public as well. In recent elections, people developed some concepts of voting and protecting the votes cast in Nigeria especially in the Northern parts of the country as the result of incessant rigging and declaring unpopular candidates in power. The slogans in Hausa language 'A kasa, a tsare, a raka' literarily meaning 'Cast your votes, protect your votes and accompany it' was developed and taken seriously by the electorates. This is the practice that may make the leaders understand that, the masses are now aware of their right and need honest, accountable, and transparent leaders to be voted in order to respond to their myriads needs especially rural needs.

**Proliferations of Non-governmental Organizations and International Agencies:** The government commitments in partnering with the private sectors, Non-governmental organizations and International agencies and ever increasing presence and role been played by them in rural development is another development in the right direction. This will complements the government efforts in development of rural communities in Nigeria in the future.

## **CONCLUSION**

It was established that, rural folk constitutes bulk of Nigeria's population and required greater attention from the democratic government in meeting its myriads problems. This is evident from the fact that, democratic governance stands for people. The paper confirms that, democratic performance to bringing the desired changes and development in rural Nigeria remained abysmal and insignificant and found amongst others that, rural poverty, illiteracy and corruption in governance and policy inconsistency and implementation remains the major challenges on democracy to bringing the desired transformation and rural development in Nigeria. It is concluded that for democracy to be meaningful; rural folk must be developed otherwise the counties strides to be among one of the developed nations will remain a mirage and unattained.

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# **IDE, PEMBELAJARAN, DAN PERUBAHAN KEBIJAKAN DESENTRALISASI DI INDONESIA: SEBUAH KERANGKA PERUBAHAN KEBIJAKAN DI ERA GOVERNANCE**

Dyah Estu Kurniawati<sup>1</sup>

## **ABSTRAK**

Since 1999 we have witnessed a big bang policy change towards Indonesia decentralization policy. Seemingly due influences from the newly emerged globalization process that activated links across international and domestic subsystems and thereby triggered policy change. This paper presents an analytical framework that considers the different structural aspects of policy subsystems that could encourage the use of ideas role from epistemic community members and thus learning. It is being argued that analysts need to look beyond the domestic matter of policy change and also consider transnational actors beliefs. The first part of the paper introduces established approaches to policy change process – from government to governance tradition. The second part discusses methodological implications for the study of policy change and learning. The final part summaries several statements and propositions that address the linkage between international and domestic subsystem structure of policy change and the use of research outputs from the intermestic approach. The proposition are being developed as a part of a PhD thesis, which is based at Universitas Gadjah Mada – Dept. Political Science.

**Keywords:** learning, policy change, intermestic, governance era

## **PENDAHULUAN**

Pada awalnya, perubahan kebijakan sering dipahami sebagai wujud dari rasionalitas elit (*state-centric*) maupun sebagai tuntutan publik domestik (*society-centric*) yang sarat dengan kepentingan tertentu. Namun dengan perubahan struktur kekuasaan di era globalisasi yang bersifat transnasional, proses perubahan kebijakan negara sangatlah sulit jika hanya dipahami sebagai aktivitas politik domestik saja, tanpa memperhitungkan pengaruh internasional baik dalam bentuk tekanan maupun *learning*. Apalagi terdapat banyak kemiripan waktu dan karakter kebijakan di banyak negara. Studi kebijakan pun telah berubah dari tradisi *government* menjadi *governance*. Fenomena inilah yang menjelaskan pentingnya pembahasan tentang pengaruh internasional dan domestik (intermestic) dalam proses perubahan kebijakan suatu negara.

Tulisan ini akan menjelaskan tentang sebuah kerangka analitis yang dapat digunakan untuk menjelaskan proses perubahan kebijakan desentralisasi di Indonesia tahun 1999 yang sangat fundamental, namun memiliki karakter yang mirip dengan perubahan kebijakan di banyak negara pada era itu. Kerangka analitis ini menitikberatkan pada proses *learning* yang melibatkan ide dan actor transnasional. Untuk itu tulisan ini diawali dengan pemaparan tentang berbagai pendekatan dalam proses perubahan kebijakan,

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kemudian menawarkan sebuah kerangka analitis yang penulis sebut sebagai *intermestic framework*.

### **Studi Kebijakan: dari Tradisi *Government* ke *Governance***

Menurut Mark Turner (1997), terdapat dua perspektif yang bisa digunakan untuk menjelaskan proses kebijakan, yaitu perspektif yang berpusat pada negara (*state centric*) dan perspektif yang berorientasi pada masyarakat (*society centric*). Perspektif yang berpusat pada negara berpandangan bahwa kebijakan sama sekali tidak terpengaruh oleh kepentingan-kepentingan sosial. Dalam perspektif ini persepsi dan interaksi para elit kebijakan dan besarnya peran negara dalam proses kebijakan tergantung pada pilihan-pilihan pemerintah sendiri. Studi kebijakan menjadi identik dengan studi tentang perilaku negara dalam mengambil keputusan, sehingga kebijakan publik (*public policy*) merupakan apapun yang dipilih oleh pemerintah (*government*) untuk dilakukan atau tidak dilakukan (Dye, 1981). Sedangkan pendekatan yang berorientasi pada masyarakat (*society centric*) berpandangan bahwa sebab-sebab sebuah kebijakan diadopsi, dilanjutkan, ataupun diubah tergantung pada hubungan kekuasaan dan kompetisi yang terjadi pada individu-individu, kelompok-kelompok, atau antar kelas yang ada dalam masyarakat di luar elit, dan bukan oleh elit. Studi kebijakan menjadi bersifat konflikual karena melibatkan banyak aktor sehingga kebijakan publik (*public policy*) merupakan hasil kompromi dari pihak-pihak yang terkait.

Dari dua perspektif ini, muncul beberapa model pembuatan kebijakan antara lain: (a) model institusional, (b) model elit, (c) model rasional, (d) model analisis kelas, (e) model kelompok, dan (f) model pluralis. Model institusional, menjelaskan kebijakan sebagai hasil dari aktifitas lembaga pemerintahan, seperti lembaga eksekutif, legislatif, yudikatif, partai politik, dll (Isaak, 1981; Apter, 1985). Dalam pendekatan ini kebijakan dilihat sebagai kebijakan yang secara otoritatif ditentukan, dilaksanakan, dan dipaksakan oleh lembaga-lembaga tersebut. Terdapat hubungan yang erat antara kebijakan publik dengan ilmu politik, karena suatu kebijakan belum bersifat publik sebelum diadopsi oleh lembaga pemerintahan. Kebijakan publik merupakan sarana otoritatif pemerintah untuk mengatur seluruh lapisan masyarakatnya, baik individu maupun kelompok. Kelemahan pendekatan institusional tidak menjelaskan kaitan antara struktur lembaga pemerintah dengan isi kebijakan dan seringkali dikatakan sebagai Model Westminster.

Model elit, menjelaskan kebijakan sebagai preferensi elit. Orang banyak dianggap bersifat aparatik dan kurang informasi yang tepat tentang kebijakan publik sehingga elitlah yang mengarahkan opini masyarakat. Yang dimaksud elit adalah sekelompok kecil orang yang mempunyai kekuasaan dan memiliki otoritas untuk mengalokasikan nilai-nilai kepada masyarakat. Kebijakan publik bukan merupakan representasi tuntutan publik melainkan nilai-nilai yang dianut elit sehingga perubahan tidak bersifat revolusioner. Pengaruh mengalir dari elit ke massa, tidak sebaliknya dari massa ke elit.

Model rasional, menjelaskan kebijakan sebagai pencapaian keuntungan secara maksimal. Kebijakan dibuat berdasarkan kalkulasi untung rugi, alternatif pilihan yang mendatangkan keuntungan terbesar akan dipilih sebagai kebijakan. Model rasional dapat dilakukan ketika pembuat kebijakan mengetahui apa keinginan dan kebutuhan masyarakat, mengetahui seluruh alternatif kebijakan dan konsekuensinya, serta memilih alternatif kebijakan yang paling efisien. Kelemahannya, rasionalitas seringkali bersifat subyektif, dimana rasional menurut aktor politik yang satu belum tentu untuk yang lain.

Model analisis kelas, menjelaskan bahwa sumber-sumber kebijakan dan perubahan kebijakan berada dalam hubungan kekuasaan dan dominasi diantara kelas-kelas sosial. Dalam formulasi Marxis, fungsi utama dari negara adalah memberi jaminan aspek

legalistik, kelembagaan, dan hegemoni ideologi dari kelas yang dominan atau aliansi kelas yang dominan terhadap kelas-kelas yang tidak berkuasa. Di dalam suatu kondisi yang normal, negara merupakan instrumen dominasi yang merefleksikan struktur hubungan antar kelas. Dengan kata lain, negara pada hakikatnya bertindak sebagai organisasi pelindung dari kelas yang berkuasa vis a vis kelas-kelas subordinasinya. Elit tidak bersifat otonom, dan perubahan kebijakan dapat diperjelas oleh perubahan komposisi pada kelas yang dominan atau aliansi kelas. Namun, ketika tindakan para pembuat kebijakan tidak secara total ditekan oleh basis kelas dari otoritas politik, elit mempunyai kebebasan relatif untuk menentukan isi kebijakan.

Model kelompok, menjelaskan kebijakan sebagai perimbangan kekuatan antar kelompok di level domestik. Teori kelompok berasal dari preposisi bahwa interaksi antar kelompok dalam masyarakat merupakan fakta politik. Para individu yang mempunyai kepentingan yang sama mengikatkan diri secara formal maupun non-formal dalam suatu kelompok dan meluncurkan tuntutan-tuntutan kepada pemerintah. Kelompok ini biasa disebut kelompok kepentingan (*interest group*). Kelompok kepentingan menjadi bersifat politis jika melakukan tuntutan kepada lembaga-lembaga pemerintah. Pembuat keputusan akan merespon tekanan-tekanan kelompok kepentingan dengan melakukan *bargaining*, negosiasi, maupun kompromi.

Model pluralis, menjelaskan kebijakan adalah hasil dari konflik, bargaining, dan formasi koalisi dari berbagai organisasi/kelompok yang ada dalam masyarakat luas dalam memperjuangkan kepentingan mereka. Kepentingan utama dalam model ini, negara dipandang sebagai arena netral bagi konflik dan kompetisi kepentingan dalam membentuk hasil-hasil kebijakan, dan dalam situasi ini setiap kelompok mempunyai akses yang sama terhadap pembuat kebijakan (Dahl, 1994).

Dari berbagai model pendekatan diatas, terdapat ciri umum yang melekat pada studi kebijakan. Kosakata yang seringkali muncul adalah negara (*state*), pemerintah (*government*), kekuasaan (*power*), otoritas (*authority*), loyalitas (*loyality*), kedaulatan (*sovereignty*), partisipasi (*participation*), dan kelompok kepentingan (*interest groups*). Namun sejak akhir tahun 1980-an atau awal 1990-an terdapat perubahan yang sangat signifikan dalam studi kebijakan publik. Perkembangan analisis kebijakan publik ditandai dengan adanya perubahan kosakata yang mendominasi penjelasan dan perdebatan. Muncul istilah-istilah *governance*, *institutional capacity*, *networks*, *complexity*, *trust*, *deliberation*, *transnasional*, dan *interdependence*, menggeser term-term yang dominan sebelumnya (Maarten hajer dan Hendrik Wagenaar, 2003).

Perubahan kosakata menggambarkan perubahan praktek politik baru sekaligus perubahan tema kajian dalam studi kebijakan publik (Castell, 1996). Praktek politik baru dikenal sebagai proses globalisasi yang mengaburkan batas negara, sehingga proses pembuatan kebijakan publik tidak lagi terjadi hanya dalam ruang lingkup domestik negara namun melibatkan hubungan antar negara maupun non negara yang membentuk *network society* diluar "entitas" negara. Inilah yang kemudian disebut sebagai transnasionalisme. Individu dan organisasi berhubungan lintas batas negara dengan didukung oleh kemajuan teknologi komunikasi maupun transportasi. Hasilnya transformasi idea dan kebijakan dari berbagai aktor pun bersifat transnasional. Dalam ilmu kebijakan fenomena ini menghasilkan model *differentiated polity* (Rhodes 1997) yang merefleksikan era *governance*.

Model *differentiated polity*, yang dihasilkan dari pengamatan Rhodes terhadap sistem politik Inggris tahun 1980-an, menggambarkan bahwa proses pembuatan kebijakan melibatkan banyak aktor, baik di level nasional, sub nasional, maupun supra nasional. Pemerintah (*government*) meskipun masih penting tapi bukan satu-satunya aktor yang

berperan dalam pembuatan kebijakan. Proses pembuatan kebijakan bisa dibayangkan sebagai proses *sharing* dan negosiasi diantara banyak aktor dengan banyak kepentingan. Hal ini sangat berbeda dengan model sebelumnya yang menempatkan pemerintah (*government*) sebagai aktor utama dalam pembuatan kebijakan dan kekuasaanya bersifat *top-down*.

Munculnya *networks* bukan berarti berakhirnya otoritas negara (*state authority*) tetapi terjadi proses redefinisi sehingga negara dicirikan lebih terbuka dalam menghadapi perbedaan dan dalam melakukan eksperimentasi kebijakan (Rhodes 2000, Heritier 1993, Kickert, Klijn and Koppenjan 1997). Dengan model *networks*, analisis pembuatan kebijakan dan politik mendapat tantangan karena ada ruang baru dalam politik. Pemerintah dalam skope nasional berhadapan dengan entitas lain yang berada dalam lingkup lokal maupun internasional dan ruang politik terhubung dengan sistem ini (Dryzek 1999, Held 1995). Politik bergerak dalam *multi-level governance, regimes*, atau konstruksi wacana kebijakan transnasional (*transnational policy discourses*) (Hajer 2000).

Model *policy network* menghasilkan gaya arsitektur baru dalam studi pembuatan kebijakan di tahun 1990-an. Jika mengacu pada model pembuatan kebijakan pada konteks domestik yang meliputi agenda setting, formulasi kebijakan, implementasi kebijakan, dan evaluasi kebijakan, maka terjadi perubahan yang cukup signifikan. Dalam fase *agenda setting*, di era ini tidak ada ketentuan siapa yang bertanggung jawab, siapa yang memiliki otoritas, dan harapan siapa yang akan diwujudkan melalui kebijakan. Semua terjadi dalam proses politik yang kompetitif (March and Olsen 1995). Proses formulasi kebijakan diwarnai adanya *policy transfer* (Stone, 1999) maupun *social learning* (Hall, 1993) yang melibatkan *transnational advocacy networks* (Keck dan Sikkink, 1998) maupun *epistemic community* (Haas, 1999) sebagai “pengirim pesan”. Implementasi kebijakan membutuhkan koordinasi antar negara, berbagai institusi, maupun *global civil society* karena kemiripan konsern atau isu, dan proses evaluasi kebijakan melibatkan berbagai pihak, termasuk lembaga finansial internasional maupun organisasi-organisasi profesional yang lintas batas negara.

Jika dikaitkan dengan perspektif tentang proses kebijakan seperti yang disebutkan di awal, maka proses pembuatan kebijakan di era ini tidak lagi berpusat pada negara (*state centric*) ataupun berorientasi pada masyarakat (*society centric*), namun interaksi antar keduanya (*state-society centric*) yang bersifat transnasional.

### **Kerangka *Intermestic*: Peran Koalisi Advokasi Transnasional dan *Epistemic Community***

Ketika proses perubahan kebijakan melibatkan actor dan ide yang bergerak secara transnasional, bagaimana proses perubahan kebijakan bisa dijelaskan? Meminjam model *Advocacy Coalition Framework* dari Sabatier & Jenkins (1993) yang menggambarkan bahwa proses pembuatan kebijakan adalah *learning* antar koalisi advokasi dalam sebuah sub-sistem, dimana masing-masing koalisi advokasi memiliki ide atau *policy beliefs* dan strategi kebijakan yang sama, maka hubungan berbagai aktor yang terlibat dalam proses kebijakan yang lintas batas negara pun dapat dibayangkan sebagai *network* antar koalisi advokasi yang ada di luar negara (ranah internasional) maupun di dalam negara (ranah domestik) yang seakan menyatu (ranah intermestic) karena mengaburnya batas negara. Dengan demikian, proses perubahan kebijakan di suatu negara tidak bisa dipisahkan dari pengaruh internasional maupun domestik dan proses kebijakan tersebut menggambarkan pertarungan ide sekaligus kepentingan dari aktor-aktor di ranah internasional maupun domestik. *Interplay* antara ranah internasional dan domestik adalah relasi antara dua atau lebih koalisi advokasi transnasional yang

memiliki *beliefs system* yang biasanya saling bertentangan. Perubahan kebijakan terjadi karena proses *learning* yang dilakukan oleh para pembuat kebijakan dalam posisi ketidakmenentuan proses perubahan kebijakan.

Dalam situasi ini Peter Haas dkk (1992) dengan *epistemic community*-nya berkontribusi untuk memperkuat kerangka analitik yang ditawarkan dalam tulisan ini. Karena isu kebijakan jangkauannya luas dan kompleks sementara pemahaman terbatas, para pembuat kebijakan membutuhkan bantuan untuk memahami permasalahan yang sedang dihadapi dan untuk memahami kemungkinan yang mungkin muncul di masa depan melalui informasi dan pengetahuan yang dimiliki oleh *epistemic community* sehingga sebagai pihak yang memiliki informasi dan pengetahuan di bidangnya mereka dianggap mampu menyediakan informasi dan pengetahuan yang kredibel yang dibutuhkan untuk mengambil keputusan dalam proses kebijakan.

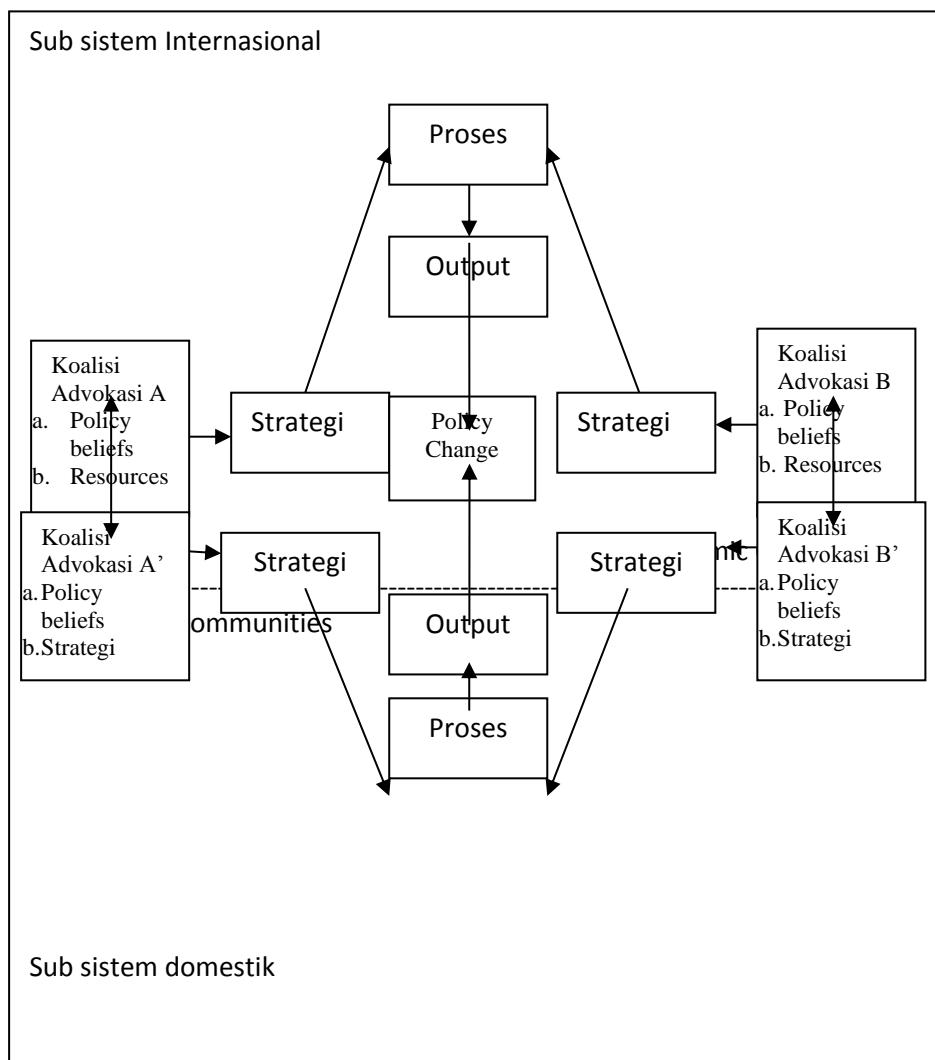
*Epistemic community* memainkan peran penting sebagai pemberi informasi dan *adviser* yang dapat membantu para pembuat kebijakan untuk menemukan solusi yang sesuai agar bisa melakukan antisipasi terhadap kemungkinan-kemungkinan yang terjadi. *Epistemic Community* sebagai pihak yang menyediakan informasi dan pengetahuan yang kredibel mengusulkan alternatif dan pilihan-pilihan untuk menghadapi isu kebijakan. Informasi yang disediakan bisa berupa data maupun analisis, yang kemudian dengan data ini secara teknis dapat diperkirakan solusi yang bisa diambil. Dengan demikian peran *epistemic community* yang memiliki jaringan bersifat transnasional ini secara langsung dapat mempengaruhi proses penentuan kepentingan negara, dan secara tidak langsung dapat mempengaruhi proses penentuan prioritas kebijakan negara.

Mekanisme yang digunakan oleh *epistemic communities* dalam mempengaruhi proses kebijakan adalah melalui proses difusi informasi dan *learning*, yang bisa berdampak pada perubahan pola kebijakan negara. Apa yang dilakukan oleh *epistemic community* dapat dijelaskan dalam beberapa tahap sebagai berikut:

1. mempengaruhi *framing* isu pada tahap inovasi kebijakan (*policy innovation*) yaitu berupa suplai informasi yang mencukupi, yaitu dengan memberikan kerangka dalam masalah-masalah kontroversial, mendefinisikan kepentingan negara dan menciptakan standard operasional (SOP).
2. dapat berperan sebagai agen untuk menyebarkan gagasan alternatif kebijakan (*policy diffusion*). Hal ini seperti yang dilakukan *epistemic communities* di AS yang berusaha meyakinkan komunitas-komunitas lain pada level internasional.
3. menggunakan pengaruhnya ketika memasuki seleksi kebijakan (*policy selection*) yang biasanya kental dengan nuansa politik.
4. memainkan peran kunci dalam rangka pemeliharaan rezim (*regime persistence*), dengan menggunakan rezim yang ada untuk mengatasi berbagai persoalan.

Pengambil kebijakan mungkin telah memiliki beberapa pilihan kebijakan, walaupun sekabur apapun, bahkan bisa jadi bertentangan dengan tawaran-tawaran yang diberikan oleh *epistemic communities*. Menurut Thomas Risse-Kappen (1994), berhasil tidaknya *epistemic communities* mempengaruhi proses kebijakan sangat ditentukan oleh keberhasilannya untuk masuk ke dalam struktur politik domestik negara, dan membangun koalisi dengan kekuatan-kekuatan domestik sehingga terwujud hubungan *state-society* yang kondusif untuk proses tranmisi pengetahuan dan ide yang diyakininya sebagai sebuah kebenaran.

**Gambar 1. Intermestic Framework**



Sumber: diadaptasi dari Sabatier dan jenkin-Smith, 1993.

Dengan kerangka intermestik inilah proses perubahan kebijakan bisa dilihat bukan hanya sebagai proses politik semata namun juga merupakan proses *learning* yang melibatkan actor-aktor transnasional yang saling berkoalisi berdasarkan *belief system*-nya dan berusaha mempengaruhi proses kebijakan sehingga sesuai dengan ide kebijakannya.

### Proses Learning Perubahan Kebijakan Desentralisasi di Indonesia

Desentralisasi vs sentralisasi, merupakan salah satu ide besar yang mewarnai perdebatan dalam proses politik sepanjang masa (Gie, 1967).<sup>2</sup> Kebijakan desentralisasi

<sup>2</sup> Terdapat 5 (lima) ide besar yang mewarnai perdebatan dalam proses politik sepanjang masa, yaitu: (1) *The coverage of citizenship: Is it exclusive or all-inclusive?* (2) *The function of state: Is the sphere of state activity limited or unlimited?* (3) *The source of authority: Does this originate in the people or the government?* (4) *The organization of authority: Is power concentrated or dispersed?* and (5) *The magnitude of the state and the external relations: what unit of government is preferable and operable? What interstate exists?* (Lipson, 1960) dalam (Gie, 1967).

di Indonesia memasuki arah baru pasca reformasi tahun 1999 (Said, 2005), karena terjadi perubahan kebijakan yang sangat fundamental secara sekaligus. Seluruh kewenangan diserahkan kepada daerah kecuali 6 bidang, yaitu politik luar negeri, pertahanan, fiskal, moneter, hukum, dan agama. Dalam menjalankan kewenangannya daerah mempunyai kewenangan untuk menentukan peraturan daerah, membentuk organisasi perangkat daerah, dan mengelola keuangan sendiri sesuai dengan kebutuhan daerahnya. Dengan demikian peran pemerintah pusat menjadi jauh lebih berkurang dari sebelumnya, dan ini sangat berbeda dengan model sentralisasi di era Orde Baru.

Bagaimana proses perubahan kebijakan desentralisasi di Indonesia tahun 1999 bisa dijelaskan? Sesungguhnya, terdapat tiga gelombang desentralisasi secara global yaitu tahun 1950-an, 1970-an, dan 1990-an (Conyers, 1994). Eksplasi perkembangan gelombang desentralisasi ketiga di era 1990-an menjadi yang terluas karena meningkatnya peran lembaga-lembaga donor internasional dan semakin meningkatnya aktivitas NGO dan INGO yang intas batas Negara.. Ide desentralisasi sendiri merupakan hasil dari Revolusi Perancis 1789 yang secara umum merupakan pragmatisme pembangunan yang diterapkan oleh negara-negara maju untuk mempromosikan pertumbuhan ekonomi dan demokrasi.

Secara global, ide desentralisasi ini didasarkan kepada adanya perhatian yang semakin besar untuk memberikan keleluasaan bagi pemerintah daerah dalam kewenangan perencanaan, pengambilan keputusan dan administrasi dengan didorong oleh tiga hal kekuatan sebagai berikut: Pertama, melihat kenyataan hasil yang tidak memuaskan akibat perencanaan pembangunan dan kontrol administrasi secara terpusat yang berjalan sekitar tahun 1950 dan 1960-an; Kedua, melihat perlunya dikembangkan cara-cara baru dalam mengelola program dan proyek serta administrasi pembangunan yang meliputi strategi pertumbuhan dan pemerataan yang dijalankan selama tahun 1970-an; Ketiga, melihat kenyataan kehidupan masyarakat semakin kompleks, kegiatan pemerintahan semakin meluas, sehingga semakin sulit untuk mencapai efisiensi dan efektifitas apabila semua perencanaan dan kegiatan pembangunan dipusatkan pada pemerintah pusat. Hal-hal inilah yang

Namun dalam berbagai tulisan disebutkan bahwa perubahan kebijakan desentralisasi di Indonesia tahun 1999 lebih merupakan dinamika politik domestik yang seolah-olah tidak ada kaitannya dengan ide global yang telah diterapkan diberbagai negara di dunia (Barkan & Chege, 1989; Ghai, 1998; Rasyid, 2002; Pratikno, 2003, Zuhro, 2000, 2012). System pemerintahan menjadi desentralistik lebih dilihat sebagai rasionalitas pemerintah yang mempertimbangkan adanya berbagai aksi dari daerah-daerah kaya yang ingin memisahkan diri sebagai aksi protes terhadap sentralitas orde baru yang tidak memberi rasa keadilan bagi daerah dalam bagi hasil sumber daya alam. Juga sebagai rasionalitas Presiden Habibie yang ingin dianggap reformis dan demokratis sehingga memiliki corak kebijakan yang berbeda dengan Presiden sebelumnya.

Menurut penulis, proses perubahan kebijakan desentralisasi di Indonesia diwarnai oleh proses *learning* tentang ide-ide desentralisasi vs sentralisasi yang bergerak lintas batas Negara dan diusung oleh koalisi advokasi transnasional yang terdiri atas kalangan akademisi, NGO/INGO, lembaga-lembaga donor seperti Bank Dunia, USAID, AUSAID, UNDP, GTZ, dll. Karakter learning proses perubahan tahun 1999 terjadi di awal transisi menuju demokrasi yang dipicu oleh krisis multidimensi di dalam negeri dan menguatnya ide desentralisasi di aras global. Sedangkan proses revisi kebijakan tahun 2004 lebih diwarnai oleh proses *learning* tentang kadar desentralisasi yang lebih sesuai untuk

diterapkan di Indonesia. Umpan balik ide antar advokasi koalisi bertumpu pada seluas apakah kewenangan otonomi pemerintah daerah dan di level mana otonomi perlu di berikan.

Ide desentralisasi yang menjadi *trend* di berbagai penjuru dunia membuat elemen-elemen negara yang semula menerima gagasan sentralistik dan totalitarian banyak yang mempelajari konsep ini. Apalagi gagasan desentralisasi ditopang oleh lembaga-lembaga donor internasional yang menawarkan konsep pengurangan peran pemerintah pusat akibat kegagalannya dalam mewujudkan efisiensi pelayanan publik dan upaya mengurangi tingkat kemiskinan (World bank, 2004). Advokasi yang dilakukan oleh lembaga-lembaga donor internasional ini pun diperkuat dengan argumentasi-argumentasi ilmiah yang diajukan oleh *epistemic community* serta para aktifis gerakan pro demokrasi di tingkat local, nasional, maupun internasional sehingga opini tentang keunggulan desentralisasi dibandingkan dengan sentralisasi bisa lebih meyakinkan (Nick Devas, 2005)<sup>3</sup>. Diantara potensi keuntungan yang diperoleh, desentralisasi dipandang sebagai strategi penting dalam rangka memperkuat demokratisasi karena demokratisasi tidak akan efektif jika tidak disertai dengan desentralisasi kekuasaan yang efektif pula.

## PENUTUP

Di era globalisasi, proses kebijakan yang *state centric* maupun *society centric* terbukti kurang cukup digunakan untuk mengkaji kompleksitas proses perubahan kebijakan yang melibatkan ide dan actor yang lintas batas Negara. Era *government* telah berganti menjadi era *governance* dimana jaringan ide dan actor memainkan peran yang sangat penting dalam proses perubahan kebijakan. Untuk itu, kerangka analisis yang bisa memetakan kompleksitas tersebut sangatlah dibutuhkan. Termasuk untuk mengkaji proses perubahan kebijakan desentralisasi di Indonesia tahun 1999 yang sangat fundamental.

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<sup>3</sup> Desentralisasi dipercaya mampu membawa “*the policy making unit closer to the people*” dengan tujuan untuk membuka peluang partisipasi warga yang lebih luas dalam proses-proses politik, dan sekaligus memasukkan preferensi masyarakat yang lebih luas ke dalam proses perumusan kebijakan (Heller, 2001). Dengan kata lain, desentralisasi mendorong partisipasi masyarakat di luar pemilu. Satu hal yang penting di sini adalah bahwa partisipasi masyarakat itu tidak hanya sekedar melaksanakan program pemerintah, tetapi juga proses pembuatan keputusan menyangkut anggaran dan program (Abers 1996). Dengan demikian, peningkatan partisipasi masyarakat pada level lokal dapat memperbaiki kinerja demokratik dari institusi politik, dan karenanya memiliki dampak positif terhadap konsolidasi demokrasi negara secara keseluruhan (Schonwalder 1998).

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# **THE IMPACT OF GLOBALISATION ON THE TRADITIONAL CONCEPT OF NATION STATE**

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## **Abstract**

The purpose of this paper is to look at a few of the ways that the globalisation process has affected the institution of the nation-state, in particular its ability to autonomously manage its own social and economic policies. Although the nation-state as an institution will not die out in the near future because of globalisation process but its control of power has been greatly undermined, and its hold on populations has been significantly minimized. The nation-state has become just one of several world organisational structures. Sovereignty - presuming such a thing ever really existed in the past. I shall attempt to place globalisation impacts upon the nation-state, national sovereignty, and culture, and the implications of these impacts upon the nation-state of the future.

**Keywords:** Globalisation, institution, nation-state, national sovereignty

## **INTRODUCTION**

With the fast changing circumstances in the wake of globalization that has been facilitated with the hitherto unimaginable communication network, certain serious challenges have emerged before the international community about the sanctity of traditional norms that have so far regulated the relations between states. Of the cardinal principles, which though frequently violated yet considered most sacred ones, are the sovereign independent status of nations and the preservation of territorial integrity. In principle, the situation still remains unchanged and both continue to be the fundamentals of the United Nations Organization. However, in practice the situation is just the reverse, though its dimensions have changed.

The transformation of politics which has followed in the wake of the growing interconnectedness of states and Societies and increasing intensity of international networks requires a re-examination of political theory as fundamental in form and scope as the shift which brought about the conceptual and institutional innovations of the modern state itself.<sup>2</sup>

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<sup>2</sup>David Held , ( 1995) Democracy and The Global Order — From the Modern State to Cosmopolitan Governance, Polity Press, first published in 1995. P.143

## THE EMERGENCE OF NATION STATE AND ITS IMPLICATIONS – AN OVERVIEW

‘Nationalism is an infantile sickness. It is the measles of human race.’<sup>3</sup>  
(Albert Einstein)

The emergence of the nation-state with the well-demarcated boundaries and a definite concept of loyalty within those limits have had many implications, especially for the role of the religion in the matters of the government. In other words, though no definite definition could still be given regarding the real significance and meaning of the whole concept of the nation-state, yet what is certain is the fact that its emergence basically heralded the birth of secular politics which kept itself away from any particular religious ideology. Meaning thereby that if the religion was allowed to have its impact on the political set-up or if the political status was to be determined in the light of a particular religion, the future of the nation slate was totally bleak as the religion cannot be confined to some geographical limits.

‘So regarded, nationalism is comparatively a new force in history, for in its aspiration to statehood it can hardly be dated earlier than the first partition of Poland. The suppression of a national state almost synchronised with the assertion of national independence in America and national sovereignty in France.’<sup>4</sup>

As Richard King has observed; “In post—Enlightenment Europe the rise of nation—states and the distinction between public and private on which they were premised allowed for religion and the mystical to be confined to the private realm (thereby marginalizing both by depriving them of social and political status.)’<sup>5</sup>

The birth of the modern European states-system is often dated to the Peace of Westphalia of 1648. Westphalia established many of the principles characterising the modern, global states-system .These include non-intervention in the domestic affairs of a sovereign state, mutual recognition of sovereign equality as the basis of relations between states and the territorial integrity of the states.<sup>6</sup> However, it is clear that when we fix a particular event as the starting point for the concept of the nation-state, we never mean that prior to that the very idea of the state was alien. While states have always been in existence in concrete shape, the idea of the nation-state as a concept emerged when the foundation of the ‘state’ was made to stand on certain basic characteristics such as ‘nationality’ ‘sovereignty’ etc.

The observations of David Held are very relevant to mention on this point. “Modern states developed as nation- states - political apparatuses, distinct from both ruler and ruled, with supreme jurisdiction over a demarcated territorial area, backed by a claim to a monopoly of coercive power, and enjoying legitimacy as a result of a minimum level of support or loyalty from their citizens.’<sup>7</sup>

Whatever the characteristics of a nation state may be enumerated and their conceptual aspects elaborated, the only point marking the distinction between the traditional

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<sup>3</sup> Albert Einstein (1879-1955) ,The Hutchinson Dictionary of Ideas’ — All major ideas that have shaped the world- 1994. p.370

<sup>4</sup> Harold J.Laski, (1982)A Grammar of Politics, George Allen and Unwin Ltd. Eleventh Impression ,p221-222

<sup>5</sup> Richard Kine, (1999) Orientalism and Religion ( Post-Colonial theory India and the mystic East), Routledge-London and New York, p.31

<sup>6</sup> John Williams (1996) Nothing Succeeds Like success- Legitimacy and International Relations by in ‘The Ethical Dimensions Of Global Change’. Edited by Barry Holden, Macmillan Press Ltd First Published in Great Britain .p.42

<sup>7</sup> David Held. (1995) Democracy and The Global Order -From the Modern State to Cosmopolitan Governance, Polity Press, first published in 1995. P.48

definition of the state' and its new secular and democratic incarnation 'nation-state' consists in only theoretical propositions. Geographical demarcation of the boundaries notwithstanding, if the principles which primarily constitute the basis of the state are associated with certain ideological beliefs that may be confined to those boundaries, and those beliefs are strong enough to elicit from the members a considerable amount of loyalty, it may conveniently be termed as the 'nation-state'. On the contrary, it may lose its character if the dominant ideological beliefs are as ubiquitous as to have its pervasive influence on the conscience of the persons well beyond the geographical boundaries.

The real character of nationality around which revolves the whole structure of the nation-state has always kept the opinions divided amongst the jurists, because despite all the voluminous writings on the subject, no precise legal formulations have so far come forth. Some consider the shared feelings of oneness between the members of a community that is called a nation-state as spiritual in character while others think that they are purely political. Amongst the modern jurists perhaps Harold J.Laski has touched upon the various aspects of nation-state in a most exhaustive manner.

'Broadly speaking, in fact the idea of nationality is, as Renan insisted in a famous essay; essentially spiritual in character. It implies the sense of a special unity which marks off those who share in it from the rest of mankind. That unit is the outcome of a common history, of victories won and traditions created by corporate effort. There grows up a sense of kinship which binds men into oneness. They recognise their likeness and emphasize their difference from other men.'<sup>8</sup>Nationalism as a quality making for this separateness is builded, doubtless upon the basis of gregariousness.<sup>9</sup>It will claim to settle its own frontiers ,its own tariffs, the privileges it will accord to such minorities as dwell within its boundaries the strangers it will admit , the beliefs it will exclude the form of the government it desires.<sup>10</sup>

Moralist and idealistic assertions regarding the ultimate shape of the world apart, the reality cannot be ignored that the idea of the nation-state was in existence since the time the institution of the state itself came into being, no matter at whichever stage of the history it might have been. People at that point of time would not have been aware of the fact as to which form of the society they were having. If for a moment it is assumed that the emancipation of the secular politics from the control of the clergy and religious institutions was the main instrument behind the emergence of the nation state, that argument may be nullified by the existence of different national boundaries and national identities within the particular conglomeration of the states that were being governed by the same religious beliefs. Laski writes;

'I have argued that the emphatically territorial character of the sovereign - nation state enables a small section of its members to utilise its power for their own ends, even against the interests of their fellow citizens. Against such dangers the international government represents the most solid protection we have. But there is another aspect of importance to which attention must be directed. The assumption of statehood by the nation obscures the urgent fact that the state is only one however important of the various groups into which society is divided.'<sup>11</sup>

He further argues, 'The nation-state is not the final unit of social organisation. Its power as a sovereign body represents a phase only of historic experience, and the pressure of

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<sup>8</sup> Harold J.Laski (1982) A Grammar of Politics.George Allen and Unwin Ltd., Eleventh Impression.,p219

<sup>9</sup> Ibid p.220

<sup>10</sup> Ibid p.221

<sup>11</sup> Ibid pages 234-235

world forces has already made its sovereignty absolute for any creative purpose.<sup>12</sup> When we know how a nation state dispenses justice, we know with some exactness, the moral character to which it can pretend.<sup>13</sup>

The national honour, ‘moves in the realm of magic, and touches the frontiers of religion.’<sup>14</sup> For no one seriously believes that an outraged corporate personality is made whole again by any of the ways involved in the code of diplomatic procedure.<sup>15</sup>

Citing the examples of the nation-states during the present times, Raymond Plant observes; there may be nation—states with a strong sense of community — Iran and Japan might be examples which spring to mind. Equally, however, the opposite seems to be the case with regard to other states in which there are substantial cleavages.<sup>16</sup>

While the reality of the nation-states is well-established and it can never witness its full disappearance, but it is also beyond doubt the fast growing onslaught of globalization has changed the shape of the world radically, so much so that the traditional notions of sovereignty and nationality can no longer preserve their pristine glory. Even though a single world government and the dissolution of all the national identities are the wildest dreams of mad idealists, yet the cosmopolitan nature of world politics has begun to take a concrete shape. For the time being at least one development is taking place, i.e. the sovereignty of the weaker and economically developing and under-developed countries has got confined to their national boundaries whereas in the external world it has remained no more than a juristic farce. Writing about this new world phenomenon, Michael Saward observes, ‘Among theorists and commentators, the issue of political unit has most recently been raised in connection with the perceived decline of the nation-state, pressures and trends towards globalization’, and the increasing salience of issues (such as global warming) which by their nature cannot be dealt with effectively by individual nation-states, acting in isolation. Democracy within a single community and democratic relations among communities are deeply interconnected.<sup>17</sup> And hence there is a growing erosion of the sovereignty of different states.

‘As the most powerful state, the U.S.A. makes its own laws, conducting economic warfare at will. And also threatens sanctions against countries that do not abide by its conveniently flexible notions of free trade’.<sup>18</sup>

## A MARCH TOWARDS CENTRALIZED STATE - NATIONAL IDENTITY AND ITS DIFFUSION

In the recent times, the instances are rare when one state captures another state with the expressed desire and declaration of expanding its geographical boundaries. Such an action has come to be treated as the most despicable infringement of national sovereignty and a flagrant violation of international law, the verbal adherence to which is still considered a pious international obligation. On the contrary, the worst forms of hegemonic designs have dominated the international politics and they are achieved

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<sup>12</sup> Ibid p 285

<sup>13</sup> Ibid p 542

<sup>14</sup> Veblen Thorstein, (1917) An Inquiry Into The Nature Of Peace And The Terms Of Its Perpetuation , New York: The Macmillan Company (1917) reprint- Transaction Publishers (1997) p29

<sup>15</sup> Ibid p601

<sup>16</sup> Raymond Plant,(1999) Modern Political Thought,Basil Blackwell, pp367-68

<sup>17</sup> Michael Saward, (1998), The Terms of Democracy, Polity Press , pp. 124 , 237 -38

<sup>18</sup> Noam Chomsky (1998) The United Nations and the Challenge of Relativity' in Human Rights Fifty years on- a reappraisal, Edited by Tony Evans. Manchester University Press, p.47

after a strong nation creates the circumstances for the weaker ones under which the latter have but to capitulate to the ambitions of the former.

The following observations of Barry Holden in this context are quite relevant:

'Already there is developing a theory of 'Cosmopolitan democracy' (D.Held, From City States to a Cosmopolitan Order?). To sum up, one could say that the core idea of democracy, rule by the people, needs — and is starting — to be rethought because of the changes in the world that may be rendering obsolete received notions of the 'rule' and of 'the people'. The traditional idea of democracy centers on the state. The state gives content to 'rule by the people'. It does this by specifying 'rule' as 'that which is done by the state', 'the people' as 'those who are citizens of the state' and accordingly 'rule by the people' as control of the state by its citizens'. Now changes are afoot that are undermining this account... For various reasons states are becoming less pivotal but the key point here is that 'rule' is perhaps ceasing to be confined to what is done by states. And who constitutes the 'the people' is ceasing to be specified only by the citizenship of a state'.<sup>19</sup>

The emergence of this new phenomenon is attributable mainly to the economic domination of a few countries which make continued attempts to scuttle the free voice of the weaker states, sometimes under the garb of human rights and sometimes on the pretext of eliminating terrorism. Peter John, while analysing public policy in the new context says:

'The variability of policy-making challenges the unitary character of modern states, an assumption upon which much of the political science rests, particularly in Europe with its strong national governing structures. Once the notion of a singular political system is abandoned, the variety of the political processes that surrounds each policy area can be observed in all its complexity. The issues, the pattern of bargains and structures of opportunities and constraints in each policy sector create a particular type of politics that may or may not resemble that suggested by national political traditions and constitutional norms.'<sup>20</sup> He further argues; 'The policy implications of the globalisation thesis are stark. The autonomy nation states once had over economic policy diminishes in the face of global processes. Nation states become like municipal governments competing for capital and adjusting their policies to suit the needs of multi-national companies. As with regulation theory, the thesis provides an explanation for policy change since the 1980s. Deregulation, privatization and cutting back welfare derive from globalization....'<sup>21</sup>

In view of the recent changes that were beyond the expectations of humanity hardly two or three decades back, the hitherto most utopian postulate of a single world citizenship, described so far as the expressions of some frustrated idealists, are entering into the realm of realism. Kimberly Hutchings, who while quoting Linklater, says 'Linklater points to Doyle's work on the interrelation of liberal democratic states as substantiating Kant's point that there are certain kinds of state which will promote interstate cooperation and thereby forward the cosmopolitan / universalist dimension of international citizenship.'<sup>22</sup> He further concludes; in the end of sovereignty Camilleri and

<sup>19</sup> Barry Holden (1996) Democratic Theory and The Problem of Global Warming', in 'The Ethical Dimensions Of Global Change'. Edited by Bary\_Holden. Macmillan Press Ltd. First Published in Great Britain ,pp138-39

<sup>20</sup> Peter John. Analysing Public Policy, Pinter -London and New York, p5

<sup>21</sup> Ibid p.103

<sup>22</sup> Linklater (1993) What is a Good International Citizen?,p38:M.Doyle, Liberalism and International Relations: in R. Beiner and W.J.Bóoth(eds) Kant and Political Philosophy( New Haven, Conn: Yale university Press' also see 'The Idea of International Citizenship', by Kimberly Hutchings in 'The Ethical Dimensions Of

Falk explore the ways in which contemporary world politics can no longer be adequately described in terms of the centrality of sovereign political authorities.<sup>23</sup>

If they persist, the twin trends of globalization and its corollary, domestic fragmentation are likely to weaken the conceptual and practical foundations of sovereignty first by challenging the notion that the state authority is exercised exclusively or even primarily within clearly demarcated boundaries secondly by calling into question the claim that within its territory, the state's authority is unlimited and indivisible: thirdly by suggesting a growing disjunction between state and civil society, between political authority and economic organization and between national identification and social cohesion.<sup>24</sup> He continues by saying:

'They suggest that world politics may be moving towards the growing importance of global civil society as the context in which complex, sub-state and trans-state authorities and allegiances overlap and conflict . They also suggest that in this context in which identities are multiply grounded, opportunities may arise for new emancipatory social and political movements which are neither confined to the state nor carried through by the state, in the sense that Linklater's good state citizen carries the requirements of justice forward. This possibility is seen as derived in part from the failure of the state to protect national integrity in the face of a world market and the concomitant development of new forms of solidarity which bypass national identity.'<sup>25</sup>

One possible consequence of such a disjuncture is a gradual transition to a new conception of civil society, a new polity cultivating a renewed sense of wholeness, with no clearly demarcated boundaries set by state territoriality or statist notions of national identity. Civil society may come to acquire a richer meaning grounded in the multiplicity of overlapping allegiances and jurisdictions where the traditional, modern and the postmodern coexist where local, regional and global space qualify the principle of nationality and redefine the context of community. 'The recovery of local and regional identities may encourage new expressions of autonomy and democratic practice and at the same time facilitate the emergence of a cosmopolitan global culture.'<sup>26</sup>

Attention would be focused on the ways in which different political agents within the international arena struggle for the recognition of rights not only by international law or by particular states but by other entities such as international corporations or other individuals.<sup>27</sup>

Effectively, International social movements scramble the distinction between national and international politics that ground the Westphalian system. Their struggle, in short, may be viewed as an active and important refusal to live in a Hobbesian world, a refusal to suffer the consequences of a politics founded on fear, which by definition, is a politics not of participation, but of resignation.<sup>28</sup>

It seems obvious not only that the World is not developing towards an ideal end of history but also that one aspect of responses of international actors to the growing

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Global Change '. Edited by Barry Holden, Macmillan Press Ltd. First Published in Great Britain in 1996, p. 122.

<sup>23</sup> JA Camilleri and J.Falk (1992) The End of Sovereignty', Aldershot: Edward Elgar, pp.254- 55.

<sup>24</sup> Ibid, pp.125-26

<sup>25</sup> Carnilleri and Falk,(1992) 'The End of Sovereignty' Albershot : Edward Elgar, pp. 254-55

<sup>26</sup> Ibid pp125-26

<sup>27</sup> LP.Thiele, (1993) Making Democracy Safe for the World; Social Movements and Global Politics Alternatives 18. p.278

<sup>28</sup> Ibid.,p27

interrelation of the world is a reassertion of particularistic solidarity through the medium of the nation-state.<sup>29</sup>

Richard King traces the history of nation-state in the following words:

'The dividing up of humanity into certain geo-cultural groupings called nations' is a relatively modern development. The roots of nationalism derive from social, economic and political changes in Europe from the sixteenth century onwards, but the notion of a national identity as a consciously unifying factor of people cannot be said to have been an influential social construct in Europe until the eighteenth century ( and in some cases much later) ..... As we have seen, the roots of contemporary academia: institutionalized in the modern, western university system. are established in the soil of Enlightenment. The term ' Enlightenment' suggests a differential and negative appraisal of the previous era the Dark Ages) . This reflects two aspects of the Enlightenment enterprise (I) the modern myth of progress, and (2) modernity's self-conscious rupture with what preceded it, sometimes polarized as 'traditional versus modern'.<sup>30</sup>

It is true that some writers, while painting the future picture of the world in the wake of globalization, have gone to the extent of impracticable extreme, while predicting that the whole structure of national sovereignty will be reduced to a myth and the state boundaries will disappear for all the time to come. National sovereignty and frontiers, however vulnerable to international vicissitudes they become, will remain in existence and there will never come a time for a single world government.

Making a realistic appraisal of the international relations in the foreseeable future,Tony Evans writes, 'Globalisation makes it tempting to conclude that the state is in terminal decline, although such a conclusion is rejected by most writers on globalisation. Instead, globalisation assumes that the state continues to play an integral role as an administrative tin it for creating and orchestrating the conditions of globalisation.'<sup>31</sup>

Fiona Robinson is a great critic of the 'rights-based ethical theory'. She observes that if we have to make human rights as the central point of the consensus of humanity, we will have to become more vigorous, dynamic and pragmatic in our approach and efforts. She observes,

'Rights-based ethical theory is based on untenable assumptions of human rationality and the universality of human nature ; it is an abstract, impersonal; rule- oriented morality which obfuscates the social and political dimensions of global moral problems and which can tell us remarkably little about who or what is responsible for ensuring that the claims of rights-holders are met. It is not surprising that in the light of this, both policy-makers and philosophers are united in their constant lamenting of the gulf between the so-called 'theory' and 'practice' of universal human rights. In spite of their recognition that starvation, torture and genocide remain constant features of global politics despite the existence of Declaration, philosophers (and even some policy- makers) continue to tell and re-tell the same story of universal human rights using the same impersonal, a political, principled moral language. The irony, of course, is that this has always been the

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<sup>29</sup> Ibid.,p128

<sup>30</sup> Richard King, (1999) Orientalism and Religion (Post-Colonial theory. India and the mystic East), Routledge- London and New York, pp 45-46

<sup>31</sup>Tony Evans (1998), Introduction: Power. Hegemony and the Universalisation of Human Rights' in Human Rights fifty years on- a reappraisal, Edited by Tony Eyan, Manchester University Press,p.12

point of the articulation of rights to uphold some universal standards of human dignity... precisely because they are not universally observed, recognized and exercised.<sup>32</sup>

As social relations came to transcend national boundaries, political, social and economic space is prized away from its rootedness in the territorial nation-state. In this respect, globalisation contributes to the de-nationalization of territorial space and so problematizes the modern institution of nation-statehood based upon the principle of exclusive territorial rule.<sup>33</sup> Anthony G. Mc Grew continues to argue;

'A New Sovereign regime' is displacing traditional conceptions of state power as an absolute, indivisible, territorially exclusive and zero-sum form of public power. As Held remarks, Sovereignty itself has to be conceived today as already divided among a number of agencies — national, regional and international - and limited by the very nature of this plurality ( Held. 1991,222)'

Accordingly, sovereignty is best understood as 'less a territorially defined barrier than a bargaining resource for a politics characterized by complex international networks.'( Keohane. 1995,17) In this context the form and functions of the state too are being adopted as governments seek coherent strategies for engaging with a globalizing world.<sup>34</sup> As such, in adapting to the forces of globalization in the coming decades, ' we can expect to see more and more of a different kind of state taking shape in the world arena one that is reconstituting its power at the centre of alliances formed either within or outside the nation-state.( Weiss, 1998, forthcoming)<sup>35</sup>

We are now standing on the threshold of an era when the different governments' treatment of their respective citizens in an arbitrary manner cannot be sheltered under the garb of sovereign independence and the non-intervention in the domestic affairs of a state. Now the opposition to economic liberalization on the pretext of safeguarding the domestic economy may invite the strong world powers to form a powerful conglomerate against the recalcitrant states. The atrocities by a state against its own citizens ( like Libya , Yemen , Syria, China and many )in the name of suppressing the rebellious movements can no longer be considered as the domestic law and order problem but the flagrant violation of human rights may be constituting the ground for the external intervention. The domestic strife, corruption and other mismanagement, if not rectified by the states in time and allowed their repercussions to spill over other parts of the globe, will ultimately pave the way for the formation of the concept of the world citizenship. Making out a strong case for such a development, John Galtung writes, a concept of global citizenship will have to take shape; if the state cannot care for its citizens, then the world will have to care for global citizens with the help of all global actors including what remains of states.<sup>36</sup> He further says,

'The forces from which many powerful actors try to escape in their domestic dealings like organized labour, women or consumer organizations may reappear in a much stronger form at the global level. Globalized human rights , global citizenship and world dialogue over how to reconcile I-cultures and we-cultures may dominate the agenda

<sup>32</sup> Fiona Robinson ,(1998) The Limits Of a Rights-Based Approach To International Ethics', in Human Rights fifty years on- a reappraisal , Edited by Tony Evans, Manchester University Press, p.60

<sup>33</sup> Anthony G. Mc Grew , (1998) Human Rights in a Global Age Coming To Terms With Globalisation' in Human Rights fifty years on- a reappraisal, Edited by Tony Evans Manchester University Press, p.190

<sup>34</sup> Ibid. p192

<sup>35</sup> Ibid.,p.193

<sup>36</sup> John Galtung ,(1998) The Third World And Human Rights in the Post-1989 World Order', in Human Rights fifty years on- a reappraisal, Edited by Tony Evans, Manchester University Press, .p.227

sooner than the First world envisages and sooner or later, a more humane world might even come into being, even under globalization.<sup>37</sup>

## CONCLUSION

Whatever may be the shape of the future world which is presently undergoing transformation and still it is too premature to make an accurate prediction about what it would be like, yet one can say with certainty that if our planet is not destroyed by any apocalyptic nuclear holocaust, the existing picture of our political institutions will witness a radical change. Let me conclude with the following observations of David Held:

'The post-capitalist state would not, therefore, bear any resemblance to liberal parliamentary regime. All state agencies would be brought within the sphere of a single set of directly accountable institutions. Only when this happens will that self-reliance, the freedom which disappeared from earth with the Greeks, and vanished into the blue haze of heaven with Christianity', as young Marx put it gradually be restored( 1844)<sup>38</sup> he further says ;'Territorial boundaries demarcate the basis on which individuals are included in and excluded from participation in decisions affecting their lives ( however limited the participation might be ) but the outcomes of these decisions often stretch beyond national frontiers.'<sup>39</sup>

As substantial areas of human activity are progressively organized on a global level, the fate of democracies and of the independent democratic nation states in particular, is fraught with difficulty. In this context, the meaning and place of democratic politics, and of the contending models of democracy, have to be rethought in relation to overlapping local, national, regional and global structures and processes.<sup>40</sup>

In this context, Ian Adams has rightly remarked that nationalism is the weakest of the ideologies. As such it is doomed to disappear. He observes; 'The coherence and autonomy of nationalism — Nationalism is the simplest and most powerful of the ideologies, but intellectually the weakest. This is because the central concept upon which the ideology is based is quite remarkably vague and difficult to pin down.'<sup>41</sup>

In spite of these setbacks above, it is too hasty to say that state is no longer a capable entity to act for the public goods and is doomed to demise. James N. Rosenau argued that we can not deny that governments still have the capacity to maintain order with coercive methods, although this maintenance of order by the exercise of force is not a measure of whether government is performing its expected tasks and getting its jobs done.<sup>42</sup> However, the conventional notion of territorial state needs to be updated since the national policies and regulations have been made on the basis of the premise of effective control within national boundaries.<sup>43</sup>

In conclusion, we return to our original question: Is the state still relevant in the globalized world? Certainly, the traditional principle for state formation and existence such as governing authority, effective control, sovereignty and legitimacy, economic and

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<sup>37</sup> Ibid p 228

<sup>38</sup> David Held (1995) Democracy and The Global Order-From the Modern State to Cosmopolitan Governance Polity Press, first published in 1995. pp. 13-14

<sup>39</sup> Ibid p18

<sup>40</sup> Ibid. p, 21

<sup>41</sup> Ian Adams (1993) Political Ideology Today by Manchester University Press, p. 99

<sup>42</sup> James N. Rosenau (2003)Distant Proximities: Dynamics Beyond Globalization published by Princeton University Press.268

<sup>43</sup>Ibid 268-69

social developments are rapidly being redefined in the borderless world.<sup>44</sup> Though it is not clear whether globalization will lead to greater international conflict or global peace or a compromise position somewhere between these uncertainties, however it does not mitigate the importance of states if state adapt to changing situations but if a state that is unable to adapt itself to these altered circumstances will find itself increasingly marginalized and irrelevant in the globalized world.

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<sup>44</sup>James Jerome Lim(2008) "On the Role of the State in an Increasingly Borderless World", reprinted and edited by Robin Ghosh, K.R. Gupta &Prasenjit Maiti , *Development Studies*, vol. 2, Atlantic Publishers ,New Delhi, India page 81

# ROGOL BAWAH UMUR DI MALAYSIA: TEORI UNDANG-UNDANG JENAYAH DAN SENARIO KES DI MALAYSIA

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## ABSTRAK

Di bawah Kanun Keseksaan, undang-undang rogol bawah umur diwujudkan untuk memelihara maruah kanak-kanak perempuan dari perbuatan seks memandangkan mereka masih belum cukup matang dalam membuat keputusan. Oleh yang demikian, kerelaan mereka untuk melakukan hubungan seks bersama lelaki tidak boleh dianggap sebagai kerelaan mutlak. Di Malaysia, kes rogol bawah umur ini semakin membimbangkan dan kini diambil serius oleh banyak pihak termasuk badan-badan bukan kerajaan (NGO). Kertas kerja ini akan membincangkan tentang undang-undang ini serta pemakaianya dalam beberapa kes kes mahkamah. Perbincangan juga akan dibuat terhadap haluan dan arah yang diikuti oleh mahkamah dalam mengaplikasi undang-undang ini serta menjatuhkan hukuman.

**Kata kunci :** rogol bawah umur, kanun keseksaan

## PENGENALAN

Kes rogol bawah umur melibatkan kanak-kanak perempuan semakin membimbangkan dan kini diambil serius oleh banyak pihak termasuk badan-badan bukan kerajaan (NGO). Tujuan wujudnya undang-undang rogol bawah umur ini adalah untuk memelihara maruah kanak-kanak perempuan dari perbuatan seks memandangkan mereka masih belum cukup matang dalam membuat keputusan. Oleh yang demikian juga, kerelaan mereka untuk melakukan hubungan seks bersama lelaki tidak boleh dianggap sebagai kerelaan mutlak.

Selain itu, faktor umur yang masih muda dan mentah adalah sasaran yang mudah untuk dimanipulasi dan diperdaya oleh mereka yang jauh lebih tua dan berpengalaman. Mahkamah Tinggi dalam kes *Afizal Azizan v Public Prosecutor*<sup>2</sup> menjelaskan bahawa pada umur bawah 16 tahun, kanak kanak perempuan masih belum dapat membezakan baik dan buruk untuk masa hadapannya dan kehidupannya penuh dengan fantasi berbanding realiti.

Selain alasan di atas, tujuan akta ini juga dibentuk sebagai satu mekanisma untuk menjaga maruah perempuan dan keluarganya kerana lelaki memandang serius nilai kesucian seorang perempuan yang ingin dijadikan isterinya lebih-lebih lagi dalam budaya dan norma hidup masyarakat melayu yang mementingkan maruah dan harga diri. Perempuan yang mengalami pengalaman seksual yang menyalahi undang-undang ini dianggap sudah rosak.<sup>3</sup>

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<sup>2</sup> [2012] MLJU 812

<sup>3</sup> Deborah, C. Statutory Rape. England

Menurut Erik Erikson, seorang ahli psikologi Jerman telah merangka satu garis panduan dalam menentukan perkembangan tahap psikososial manusia bermula dari peringkat bayi hingga tua. Dalam pada itu, terdapat juga penekanan berkenaan aspek perkembangan psikoseksual. Menurut carta tersebut, kanak-kanak bermula dari umur 4 hingga 16 tahun masih mengalami perkembangan minda dalam mencerap suasana persekitaran mereka, membina daya pertimbangan dan pembentukan personaliti.

Menurutnya lagi, tempoh umur 13 tahun hingga 16 tahun akan memperlihatkan krisis identiti atau menurut Erikson, meningkatnya potensi untuk dipengaruhi. Ketika ini, individu tersebut mampu dan mudah dimanipulasi terutamanya oleh lelaki. Pada ketika ini juga, pertimbangan dalam diri mereka masih belum sempurna dan matang. Dengan kata lain, gambaran besar yang cuba dibawa oleh teori ini adalah tempoh masa sehingga 16 tahun merupakan jangka masa kritikal untuk kanak-kanak berkembang dari segi psikologi sebelum menempuh alam dewasa.

Tambahan lagi, menurut satu kajian di Arab Saudi oleh S. Shawky dan W. Milaat<sup>4</sup> berkenaan dengan status fizikal kanak-kanak perempuan yang berkahwin pada umur 16 tahun dan ke bawah, purata umur kanak-kanak perempuan mula didatangi haid atau mencapai tahap *menarche* adalah pada umur 13 tahun dan memerlukan tempoh 2 tahun hingga ke 3 tahun untuk mencapai tahap kematangan untuk mengadakan hubungan seks seterusnya mengandung.

Kesemua faktor dan kajian terperinci yang dijelaskan di atas menjustifikasi akan pentingnya kewujudan undang-undang rogol statutori.

## **UNDANG-UNDANG ROGOL STATUTORI DI MALAYSIA**

Seksyen 375 Kanun Kesejahteraan memperuntukkan bahawa:

Seseorang lelaki dikatakan melakukan “rogol” jika ia, kecuali dalam hal yang dikecualikan, bersestebuh dengan seseorang perempuan dalam keadaan seperti berikut :-

- a) Bertentangan dengan kemahuan perempuan itu;
- b) Dengan tiada kerelaan perempuan itu;
- c) Dengan kerelaan perempuan itu manakala kerelaannya telah didapati dengan mendatangkan kepadanya atau mana-mana orang lain ketakutan mati atau cedera, atau telah didapati melalui salah tanggapan fakta dan lelaki itu tahu atau ada sebab untuk mempercayai bahawa kerelaan itu telah diberi akibat dari salah tanggapan tersebut;
- d) Dengan kerelaan perempuan itu manakala lelaki itu ketahui bahawa ia bukan suaminya, dan kerelaan itu diberi kerana perempuan itu percaya lelaki itu ialah lelaki yang menjadi atau yang ia percaya menjadi suaminya yang sah di sisi undang-undang atau yang kepadanya ia akan memberi kerelaan;
- e) Dengan kerelaannya, jika pada masa memberi kerelaan itu dia tidak boleh memahami jenis dan akibat mengenai apa yang dia memberi kerelaan;
- f) Dengan kerelaan perempuan itu, apabila kerelaannya didapati dengan menggunakan kedudukannya yang berkuasa ke atas perempuan itu atau atas

<sup>4</sup> Shawky, S., and W. Millat. "Early teenage marriage and subsequent pregnancy outcome." *East Mediterranean Health Journal* / 6, no. 1 (2000): 46-54.

sebab hubungan profesional atau lain-lain hubungan amanah berkaitan dengannya;

- g) Sama ada dengan kerelaan perempuan itu atau tidak, apabila perempuan itu dibawah umur 16 tahun.

Menurut seksyen 375(g) ini, jelas bahawa dengan persetujuan mahupun tanpa persetujuan, seorang lelaki tetap boleh didakwa atas kesalahan merogol jika perempuan tersebut berumur 16 tahun ke bawah. Seksyen 376 Kanun Keseksaan memperuntukkan hukuman bagi rogol ialah penjara selama tempoh sehingga 20 tahun dan boleh dikenakan sebat.

Menurut seksyen 376(2)(d) dan (e) lelaki yang merogol perempuan berusia 12 tahun ke bawah dengan atau tanpa persetujuannya akan dikenakan hukuman penjara mandatori sekurang-kurangnya 5 tahun sehingga ke maksimum 30 tahun dan dikenakan juga hukuman sebatan. Hukuman yang sama juga dikenakan jika perempuan tersebut di bawah umur 16 tahun dan tidak merelakan diri untuk melakukan hubungan seks dengan pesalah lelaki.

Apabila diteliti seksyen ini, tiada hubungan seksual yang tidak melanggar undang-undang bagi kanak-kanak di bawah umur 12 tahun. Hukuman madatori sekurang-kurangnya 5 tahun penjara perlu dikenakan ke atas pesalah yang melakukan kesalahan tersebut. Tetapi sebaliknya, untuk perempuan yang berumur 12-16 tahun, budi bicara hakim untuk menjatuhkan hukuman perlu dilaksanakan dan faktor kerelaan kedua-dua belah pihak turut diambil kira dan tiada hukuman mandatori yang dikenakan ke atas pesalah kecuali perempuan tersebut tidak merelakannya.

Tambahan pula, seksyen 375 (g) Kanun Keseksaan telah memperuntukkan bahawa kerelaan perempuan berumur 16 tahun kebawah adalah tidak relevan untuk dijadikan pembelaan oleh tertuduh si lelaki, pesalah lelaki tetap dianggap bersalah oleh mahkamah jika benar hubungan seksual itu dapat dibuktikan. Seksyen ini juga menjelaskan bahawa hanya lelaki sahaja yang boleh melakukan rogol manakala perempuan tidak boleh didapati bersalah kerana merogol. Malah, faktor usia lelaki yang merogol atau melakukan hubungan seks dengan perempuan bawah umur ini juga tidak diambil kira walaupun lelaki tersebut juga merupakan seorang kanak-kanak berusia 10 hingga 18 tahun.

Persoalan timbul apabila hubungan seks dilakukan oleh seorang lelaki di bawah umur dan melakukannya bersama perempuan yang bukan lagi di bawah umur. Di negara Malaysia, perbuatan ini tidak diistilahkan sebagai rogol statutori. Ini berbeza dengan keadaan di negara seperti Amerika Syarikat dimana kes rogol statutori merangkumi lelaki dan perempuan yang bawah umur secara keseluruhannya.<sup>5</sup> Dengan erti kata yang lain, seorang wanita yang bukan lagi bawah umur boleh didapati bersalah atas kesalahan rogol statutori jika melakukan hubungan seks bersama lelaki yang masih di bawah umur.

## TEORI HUKUMAN

Dalam dunia perundangan, hukuman merupakan suatu perkara yang tidak asing yakni melibatkan pesalah yang telah melakukan kesalahan tertentu. Hukuman yang dijatuhkan mestilah setimpal dan menepati keperluan dalam menghukum. Tujuan umum dalam menghukum pesalah adalah untuk menimbulkan kesedaran atas kesalahan yang telah

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<sup>5</sup> Troup-Leasure, Karyl, and Howard N. Snyder. "Statutory Rape know to Law Enforcement." *Office of Justice Programs*. August 2005.

dilakukan dan mengelakkan perkara yang sama daripada berulang lagi daripada individu tersebut. Secara tidak langsung juga, hukuman yang dijatuhkan memberi pengajaran terhadap orang awam supaya tidak melakukan perkara yang sama.<sup>6</sup>

Dalam menjustifikasi rogol statutori sebagai suatu kesalahan yang serius pada pandangan masyarakat, tidak kurang juga dari sudut etika, pertimbangan yang teliti perlu diambil. Hukuman yang setimpal perlu digariskan supaya nasib dan akibat buruk yang dialami oleh mangsa terbela. Tanpa sedikit pun mengabaikan nilai etika dan sentimen dalam menuntut bela maruah mangsa, kategori rogol ini telah termaktub sebagai mandatori, meletakkan pesalah dalam keadaan pasti dalam menghadapi hukuman yang ditetapkan setelah perbicaraan.

Situasi kes rogol statutori di Malaysia yang melibatkan hukuman mandatori adalah tertakluk menurut seksyen 375(g) tanpa pertimbangan persetujuan, dengan kata lain tidak mengambil kira perlakuan seksual tersebut telah berlaku dengan atau tanpa kerelaan mangsa yang berumur 16 tahun dan ke bawah. Hukuman yang ditetapkan sepatutnya menepati kanun ini melibatkan seksaan bagi rogol iaitu penjara maksimum sehingga 20 tahun dan boleh dikenakan sebatan. Jika pesalah merogol kanak-kanak berumur 12 tahun dan ke bawah dengan atau tanpa persetujuan, seksyen 376(2)(d) dan (e) terpakai melibatkan hukuman penjara sekurang-kurangnya 5 tahun sehingga 30 tahun beserta hukuman sebatan. Hukuman yang sama juga boleh dikenakan jika mangsa berumur 16 tahun dan ke bawah, tidak merelakan diri dalam perlakuan tersebut. Perlu digariskan bahawa mangsa mestilah perempuan dan pesalah adalah lelaki.

Perbincangan dalam ruang lingkup teori hukuman mandatori amat luas dan aktif secara akademik. Dari sudut pandang pihak kehakiman, hanya satu pilihan tersedia dalam menjatuhkan hukuman mandatori.<sup>7</sup> Isu moral dalam menjatuhkan hukuman kepada pesalah amat dititikberatkan supaya ia bertepatan, dan dalam konsep mandatori perkara ini merupakan tujuan asal hukuman dilaksanakan selain untuk menekan pesalah serta menzahirkan pengajaran kepada orang awam.<sup>8</sup> Ketika hukuman mandatori dikenakan, situasi kes tidak mampu membuat perubahan melainkan hukuman tersebut tetap akan dilaksanakan oleh mahkamah.<sup>9</sup>

Dalam konteks rogol, seorang ahli falsafah Perancis Michel Foucault pernah menyatakan bahawa pesalah rogol perlu dihukum secara fizikal. Beliau berhujah bahawa tiada hukuman lain yang patut dikenakan selain secara fizikal kerana kelakuan rogol melibatkan organ seks; langsung tidak sama seperti tangan, rambut atau hidung.<sup>10</sup> Di Malaysia, selain daripada hukuman penjara, pesalah juga boleh dikenakan hukuman sebat, bersesuaian dengan kelakuan ganas secara seksual pesalah dalam merogol. Dalam tindakan meminda kanun yang melibatkan kes rogol statutori, isu hukuman keras dan berat perlu dipastikan supaya pesalah menerima pengajaran daripada tindakan sumbangnya. Masyarakat terutamanya ibu bapa sangat mengambil berat hal ini, dan

<sup>6</sup> Banks, Cyndi. *Criminal Justice Ethics: Theory and Practice*. (Amerika Syarikat: SAGE Publications, Inc., 2013), 115.

<sup>7</sup> Bageric, Mirko. *Punishment & Sentencing*. (London: Cavendish Publishing Limited, 2001), 255.

<sup>8</sup> Walker, Nigel. *Punishment, Danger and Stigma: The Morality of Criminal Justice*. (New Jersey: Barnes & Noble Books, 1980), 42-43.

<sup>9</sup> Hallevy, Gabriel. *The Right to Be Punished: Modern Doctrinal Sentencing*. (London: Springer Science & Business Media, 2012), 113.

<sup>10</sup> Hendersont, Holly. "Feminism, Foucault, and Rape: A Theory and Politics of Rape Prevention." *Berkeley Journal of Gender, Law & Justice* 22, no. 1 (September 2013): 225-226.

berpendapat bahawa siasatan perlu mengambil kira pelbagai aspek kerana perkara ini melibatkan masa depan mangsa.<sup>11</sup>

Hukuman sebatan adalah signifikan dari segi praktikal dan taktikal, bahkan haiwan yang ganas mampu dilatih menggunakan rotan, tanpa menafikan kejinakan boleh diraih dengan kasih sayang dan belaian. Secara analoginya, individu yang didakwa atas kesalahan jenayah berkaitan dengan moral sesuai dijatuhi hukuman sebatan. Itu sebabnya, kesalahan serius mendorong parliment untuk memperkenalkan hukuman sebatan terhadap pesalah yang berkenaan.

Dalam kes *Leken @ Delem Ak Gerik (m) v Public Prosecutor*,<sup>12</sup> Y.A. Dr. Haji Hamid Sultan Bin Abu Backer menjelaskan kes yang melibatkan keganasan memerlukan hukuman tambahan seperti sebatan, penjara bagi suatu tempoh yang panjang untuk memberi masa supaya pesalah tersebut sedar tahap keseriusan kesalahan yang telah dilakukannya. Keselamatan masyarakat mungkin akan tergugat jika mereka dibebaskan setelah menjalani hukuman dalam masa yang singkat. Namun bagi pesalah yang melakukan kesalahan tersebut atas dasar suka sama suka ataupun dengan kerelaan, kesalahan pertama tetap melibatkan sebatan tetapi jangka masa hukuman penjara mungkin dapat dipendekkan, cukup sebagai suatu bentuk pemulihan, di samping berperanan untuk menghukum pesalah bagi mengubati luka dalaman mangsa dan keluarga mangsa, termasuk sentimen masyarakat terhadap pelaku perbuatan terkutuk tersebut.

## KES-KES DI MALAYSIA

Berdasarkan statistik Jabatan Siasatan Jenayah Bukit Aman, pada tahun 2009, jumlah keseluruhan kes rogol mangsa bawah umur ialah 2048, sebanyak 281 kes kes rogol melibatkan mangsa bawah 13 tahun manakala baki 1,767 kes pula melibatkan mangsa antara 13 dan 15 tahun.

Pada tahun 2010 pula, statistik ini menurun kepada 1,777 kes (214 kes bagi bawah 12 tahun, 1,563 kes bagi 13 hingga 15 tahun), dan seterusnya menurun lagi kepada 1,652 kes pada tahun 2011, (202 kes bagi bawah 12 tahun, 1,450 kes antara 13 hingga 15 tahun).

Setakat Julai tahun 2012, jumlah kes rogol statutori yang dilaporkan ialah 859 kes, iaitu 109 melibatkan mangsa bawah 12 tahun dan 750 kes melibatkan mangsa berumur 13 hingga 15 tahun.

Menurut peguam negara, Abdul Gani Patail, ‘antara faktor penurunan kes tersebut termasuklah hukuman berat yang telah diperkenalkan pada tahun 2007 dan dilaksanakan dengan sewajarnya oleh mahkamah setakat ini.’. Kenyataan beliau juga merujuk kepada statistik Jabatan Pendaftaran Negara (JPN) mengenai pendaftaran kelahiran anak tanpa maklumat bapa di mana ibu berumur di bawah 18 tahun, ia jelas menunjukkan bahawa ramai kanak-kanak bawah 18 tahun telah melahirkan anak luar nikah akibat daripada tindakan seseorang dewasa yang telah mengambil kesempatan terhadap kanak-kanak tersebut.<sup>13</sup>

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<sup>11</sup> Lee, Lam Thye. "Berhati-hati pinda kanun rogol statutori ." *Utusan Online*, Disember 20, 2012, diakses pada September 5, 2014, [http://www.utusan.com.my/utusan/Rencana/20121220/re\\_07/Berhati-hati-pinda-kanun-rogol-statutori](http://www.utusan.com.my/utusan/Rencana/20121220/re_07/Berhati-hati-pinda-kanun-rogol-statutori)

<sup>12</sup> [2007] 3 MLJ 730

<sup>13</sup> Peguam negara pandang serius keputusan kes rogol, faillkan rayuan. Berita, Kuala Lumpur: Sinar Harian, 2012.

Berikut merupakan statistik isu rogol bawah umur yang berlaku di Malaysia mengikut pecahan bangsa, pada tahun 2012, sebanyak 1,550 kes yang telah dilapor dan 1,243 daripadanya melibatkan orang Melayu, 73 kes orang Cina dan 45 kes orang India dan 189 kes melibatkan kaum-kaum lain. Manakala, pada tahun 2013 pula, dari jumlah 1424 kes yang dilaporkan, 1,147 kes melibatkan orang Melayu, 62 kes orang Cina dan 32 kes orang India. Kesimpulannya, jumlah kes rogol bawah umur dari tahun 2009 hingga 2012 adalah lebih kurang sama iaitu dari 1250 – 1700 kes setiap tahun. Pada tahun 2012, kebanyakan kes yang dilaporkan oleh bangsa Melayu adalah yang tertinggi berbanding bangsa Cina dan India.<sup>14</sup>

Walaupun persetujuan atau kerelaan pihak perempuan tidak relevan untuk diterima dalam jenayah rogol yang dilakukan, tetapi faktor lain yang diambil kira ialah hukuman yang dikenakan ke atas tertuduh. Sebagai contoh, terdapat kes melibatkan rogol bawah umur dimana tertuduh merupakan pemain bowling negara, tertuduh diringankan dari hukuman disebabkan budi bicara mahkamah yang menyatakan bahawa tertuduh ini mempunyai masa depan yang cerah.

Dalam kes *Afizal Azizan v Pendakwaraya*<sup>15</sup> dan *Pendakwaraya v Hazmie bin Hamdan*,<sup>16</sup> keadaan di mana mangsa ‘merelakan diri’ untuk melakukan hubungan seks tidak diambil kira oleh peguambela maupun pihak hakim kerana kerelaan tersebut bukan kerelaan mutlak atas faktor umur. Secara amnya, usia mangsa yang masih di bawah umur tidak boleh dijadikan pembelaan di dalam mahkamah. Walau bagaimanapun keadaan berbeza di luar negara seperti Amerika Syarikat bahawa defendant masih boleh menggunakan alasan keculusan umur ini sebagai pembelaan di dalam mahkamah. Tetapi sejauh mana ia dibenarkan masih menjadi perbahasan dalam isu ini.

Walau bagaimanapun, kegagalan membuktikan umur boleh melemahkan kes rogol statutori. Ini telah dibuktikan dalam beberapa kes yang telah diputuskan di mahkamah. Contohnya dalam kes *Jamaludin bin Hashim v PP*<sup>17</sup>, hakim menyatakan bahawa:

“in the case of statutory rape, the police investigating officer has to primarily ascertain that the age of the alleged victim was in fact below 16 years of age at the time of the offence. The identity card of the alleged victim cannot in law be used as a proof of her age or date of her birth.”

Dalam kes *Reganathan v PP*<sup>18</sup>, pula, terdapat keraguan berhubung dengan umur sebenar mangsa di mana hakim mengatakan bahawa “no definite proof that the girl was under 14.” Oleh yang sedemikian tertuduh telah dibebaskan.

## KESIMPULAN

Kes *Afizal Azizan* mendapat perhatian meluas para media termasuk pihak NGO yang membantah keputusan Mahkamah Seksyen yang hanya menjatuhkan hukuman bon RM25,000 untuk berkelakuan baik selama 5 tahun. Pada pendapat penulis, Mahkamah Seksyen menjatuhkan hukuman setimpal terhadap pesalah atas faktor-faktor yang perlu diambil kira termasuklah kerelaan mangsa dan umur pesalah yang masih muda selain pesalah yang banyak berbakti dalam sukan bowling yang disertainya dan komitmen kepada keluarganya yang miskin.

<sup>14</sup> Wan Junaidi, *Bukan Melayu mungkin kurang sensitif rogol bawah umur*, Berita, Kuala Lumpur: The Malaysian Insider, 2014

<sup>15</sup> [2012] MLJU 812

<sup>16</sup> [2012] MLJU 506

<sup>17</sup> [1999] 4 MLJ 1

<sup>18</sup> [1947] 13 MLJ 133

Walaupun menjadi terkenal dan mempunyai kejayaan dalam bidang sukan, namun itu bukanlah tiket untuk melakukan kesalahan jenayah, tetapi perlu difahami bahawa pesalah menyerah diri dan mengaku kesalahannya dan ini menjimatkan kos mahkamah. Tambahan pula, hukuman bon RM25,000 untuk berkelakuan baik selama 5 tahun adalah setimpal dengan kadar jenayah yang dilakukannya.

Adalah perlu untuk kita fahami bahawa hukuman bon memerlukan pesalah untuk melapor diri ke balai polis sepanjang 5 tahun tersebut dan perlu berkelakuan baik dengan tidak melanggar sebarang undang-undang jenayah sepanjang tempoh tersebut atau pesalah tersebut dihukum dengan hukuman asal yang lebih berat disamping wang RM25,000 diambil oleh pihak kerajaan. Melalui cara ini, ia dapat mendisiplinkan pesalah muda ini tanpa perlu menggelapkan masa depannya dengan hukuman penjara yang mampu memberi kesan buruk kepada kerjaya dan status pesalah di masa hadapannya.

Menyentuh tentang hukuman juga, Roosniza<sup>19</sup> sebaliknya mencadangkan agar undang-undang jenayah rogol diperketatkan dalam usaha mengurangkan jenayah rogol yang semakin meningkat di negara ini. Beliau berpendapat hukuman yang dikenakan ke atas perogol masih gagal untuk mengekang jenayah ini daripada terus berlaku. Lebih malang lagi, penglibatan mangsa sebagai saksi pendakwa di mahkamah boleh memburukkan keadaan mangsa yang biasanya mengalami trauma selepas dirogol. Beliau turut menyentuh berkenaan kepentingan untuk membuktikan mangsa berumur kurang daripada 16 tahun dalam kes rogol statutori.

Daripada kes-kes di atas juga, tiada pihak yang menentang kewujudan undang-undang rogol statutori ini atau membantah had umur yang diperuntukkan dalam Kanun. Setakat ini, Malaysia masih mengekalkan umur 16 tahun sebagai had umur bagi mengenakan kesalahan dengan atau tanpa kerelaan perempuan yang berumur 16 tahun.

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# **POLITICAL CONFLICT, PREVENTION AND MANAGEMENT: A NIGERIAN EXPERIENCE**

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## **ABSTRACT**

The early economists and political punter foresaw a more promising future for Nigeria as an emerging black power but the country has now experienced its own parcel of political upheavals due to largely lack of tolerance, compromise, good judgment and willingness to stand by the rule of law and fair play in governance, leading to political instability engulfing the nation since independence to present contemporary day. Political conflict currently radiates in almost every part of the country. This article delineates the elements that contributed to the political disputes in Nigeria and the methods use in the management and prevention of conflicts. The study conducted through established documents in current Studies that have dominated discussions on Nigerian politics and challenging crisis now experienced within the country. The paper concludes with some recommendation that proffer solutions to these problems.

**Keywords:** Political Conflict Management Prevention

## **INTRODUCTION**

Nigeria as a nation became an independent country on 1st October, 1960 with great hope and admiration, particularly to Nigerians and black people all over the world. This confidence has diminished drastically over the years and turned into a nightmare.

People are wondering with exactly what is happening to the so-called giant of Africa. However, this is not surprising to those who are conversant with Nigerians developments from the colonial period to present contemporary days. At the verge of the departure, colonial masters left no country in Africa, including Nigeria as developed, but purely underdeveloped (Babawale & Odukoya, 2005).

Tracing back the history of Nigeria's political conflict, Anyebe (2008) and other writers with similar intellectual persuasions have contributed immensely on the critic regarding the problems and prospects of Nigeria. They discern on issues that had to do with Nigerian political conflict. This paper has summarized the situation from a historical point of view and held that Nigeria can move better. In line with political stability, economic well-being and national cohesion if a certain patriotic decision were carried out and implemented.

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Reflecting the potentialities of Nigeria with huge amount revenue generated from daily supply of about 2.2 million barrels of crude oil with enormous human and material resource (Okene 2011). The country has a population size of more than 150 million; it provides huge consumer market and intensive labour capacity. These provide opportunities for investment in different aspects such as in the areas of education, provision of health care, agriculture and telecommunication. Nigeria in the global political economy can be among the productive and economic giant, considering the capacities it has. Little has been done to promote this country towards the spirit of progress rather it is circled with problems that were associated with political conflict

### **POLITICAL CONFLICT**

The factor which prompts Political conflict partner with bad governance (Adenugba, 2013). However, political conflict tries to explain the period when the political system is experiencing some challenges within the constituents (Ayebe, 2008). The conflict is in a higher frequency and intensity of either potential or manifest violence that dominate both the political culture and everyday lives of the people.

Though different meanings have been deduced by many scholars, but for the purpose of this study, it will be viewed within the conceptual and operational framework. In recognition of this, this paper elaborates on political conflict, the factors that promote political conflicts in Nigeria and its implications. In the same manner the study attempts to explain the causes of conflict, its prevention and management?

The above will have little meaning without first exploring and understanding the reasons for the current political conflicts in Africa and Nigeria. Anyebe, (2008) viewed three fundamental factors that prop up political conflict in Nigeria and Africa; these factors are geographical, economic and social-cultural.

#### **Geographical**

The Nigeria Land area is at 910770 sq. Km according to World Bank (2010), the country has different ethnic groups with varying believes coupled with enormous natural resources. Little wonder that the country has continued to experienced leadership problems. Tracing back in history, Nigeria's political crisis was first accentuated by the colonial masters, as a result of divisive sentiment fuel by the formation of three regions. Solely supported by ethnocentrism at the detriment of National interest and unity (Anyebe, 2008). Successive administration has done little or no efforts in addressing issues of national interest rather were subjected to personal sentiments.

Nigerian polity has splits, and many factors have been responsible for disunity among the citizenry, this lacuna was in existence since the period of colonialism to date. These were due to the discriminatory nature of British rule, ethnic chauvinism, religious sentiment, prolong military rule, excessive poverty. Illiteracy, corruption as well as politicking with every aspect of Nigeria development (Okene, 2011). The colonial masters did the amalgamation of Nigeria as a political entity in 1914. In this amalgamation, the north and south were brought together, the division of the country into regions was done unequal with the north being almost twice the size of the south. The south comprises predominantly of the South West and the South East. The colonial master has done much in disintegrating the unity of the country through divide and rule syndrome. The northern region was given more land than others because of their loyalty and administrative convenience (Irobi, 2005) While the other two regions have few land. As a result of unequal sharing, the administration became inconvenient, especially during resources allocation.

### **Socio-Cultural Factor**

Many years after independence Nigerian battled with series of racial, communal conflict and backwardness in socio-cultural integration (Okene, 2013). The country has between 250-400 ethnic groups with each having its language, and accepted one form of religious beliefs or the other, namely Islam, Christianity and Paganism. The greater proportions of practitioners of these religions are illiterate they depend on the few learned for guidance. This weakness has created a pressing challenge most of these clerics exploit this opportunity to create both political and economic powers for themselves. Okene(2013) postulates "Electioneering campaigns and voting pattern of elections is based on ethnicity, sectionalism, religion and other primordial ties". Anyebe (2008) and Irobi (2005) observe that, most underdeveloped countries are, usually, characterized by superstitions. Custom and traditions in Nigeria promote superstition and mysticism which in turn hinder cooperation among the citizenry, and this is devils the country into a social crisis. Okene (2011) "Mistrust and mutual acrimony were engendered just as they created wild wide gap between the people even in a common geopolitical zone".

The elite classes of Nigeria that have acquired western education tend to alienate their cultural background and serves as an agent for European cultural imperialism, one of these being the blind limitation of perceptions. Western (Anglophiles) cultures, whether, in fashions, mannerism, and economic lifestyle or even political system was followed irrationally. This "Borrowing" mentality at the expense of our own social and cultural values has remained one of the most persistent problems of the Nigerian political system today. The dilemma poses by ethnicity now in Nigeria is bound with competition, the struggle for power is on ethnic mediocrity at the expense of meritocracy (Vande, 2012).

### **Economic Factor**

Okene (2013) advanced that in Nigeria divisive sentiment radiates among the citizens and in vital economic issues. There is a definite inequitable resource allocation accompanied by increasing poverty have incited extreme conflict in the Nigerian political system. Prior to this time, the social strata in Nigeria comprise of the Upper, Middle and Lower classes consisting mainly of the Bourgeois, Technocrats and the Working class were relatively proportionate. However, there has been an apparent shift that today the vast majority of Nigerians, lives at a subsistence level with no capacity to save but engage in conspicuous consumption is a typical indicator of economic underdevelopment. Prior to discovery of oil in Nigeria, agriculture was relied on as the main source of revenue for the country with the North contributes most. There were several cries and worries from the North at that time on the sharing formulae.

The commercial discovery of oil from the South fine tunes the cries and worries coming from the south southern part of the country, Requesting for a significant share from the national revenue to the extent that the Ministry of Niger Delta was created during the Administration of Late Umar Musa Yar'Adua, to address this emerging conflict. Thus, it could be asserted that the discovery of oil and inequality of wealth accentuates political conflict in Nigeria. Though, Nigeria is a very rich country, but the majority of its citizen are surviving below a dollar. Unemployed youth received a peanut to perpetuate crime while during electioneering campaign they are used as a political tug for rigging election. Therefore, the economic factor contributes immensely to the political crisis in Nigeria

### **CONFLICT PREVENTION AND MANAGEMENT**

Theorists reveal that conflict management expressed as an effective treatment of differences (Irobi, 2005). Lake and Rothschild (1996) were of the opinion that the ethnic

conflict is attributed to a weak state. Conflicts are an event that precedes recorded history and exists in every society, between individuals and groups. Among organizations, intra, or interstates and across the borders this may be on association, community and religion, family or economic among others. It is a natural phenomenon and is inevitable depending on the degree or intensity, Conflict has a positive or negative impact and cannot be eliminated entirely, its impact can be minimized and possibly managed.

Violence is the outcomes of negligence of social and economic responsibility of the state and leadership for citizen. The motive of conflict management may be desirable when productive and in conformity with the overall goal of development or undesirable when destructive and an obstacle to growth and development of a society and mankind. The primordial school has stresses exclusive importance of ethnicity, in line with this, feature of ethnicity were characterized by affiliation, birth, and individual's nature with environment that surrounds him/her (Geertz, 1963). Instrumentalist argued that when there is poverty and deprivation due to injustice in resource allocation, ethnicity is used as a solution (Barth 1969, Glazer and Moynihan, 1975).

Conflict resolution is considered virtually as the ways to minimize conflict. The term conflict attached to the fight; conflict is of higher degree than dispute. Conflict will reduce its effect through negotiation; mediation and diplomacy whereas dispute can be resolved through formal complaint, arbitration and litigation. From the conceptual point of view, conflict resolution is regarded as methods and forms of bringing the conflict to an end (Forsyth, 2009).

John Burton (1979, 1997) human needs theory, explains about how we can manage conflict. That ethnic conflict due arises as a result of psychological needs, which includes needs for identity, security, recognition, participation and autonomy this theory established the grounds of conflict among different ethnic groups.

Conflict could depict a battle, combat, dual encounter, fight, struggle, contention, discord, dissension, opposition, strike, war, antagonism, etc. Thus, implying a distasteful situation in which each one of the two parties is distastefully against each other. From the foregoing, conflict arises when two parties have incompatible goals, and each interferes with another to achieve its goals.

However, conflict can be viewed as an "opportunity for change". Which could be neither positive nor negative, but depends on how we handle it? Some of the visible negative impact includes a high rate of labour turnover in organizations, work stoppages/strikes-mainly arising from hostility and aggression as a result of communication gap between the conflicting parties. Added to this are decreases in the productive capacity of an organization or individuals. And workers became less trusting and suspicious, of the other party. Absences of team work thus, leading to promoting unionism in organizations. The resultant effect is Innocent individuals or countries not party to the conflict also suffer substantially either economically or by the loss of lives.

Conversely, the positive attributes of conflict include strengthening the productive capacity of an organization or individuals. To achieve organizational goals Complacency on the part of the Government or Management of an organization is prevented while transparency, accountability and fair application of the rule of law were upheld.

The weaknesses and strengths of conflicting parties are, usually, exposed. Finally, make them realize each other's worth, and this paves the way for reconciliation and peaceful co-existence which eventually leads to the advancement of societal goals and objectives. Conflicting interests in Nigeria are more or less predicated on scarcity of

abundant resources, and this has led to the dissatisfaction of the generality of the people. That is why everybody is yearning for political power in the country, to be able to better his economic lot and that of his people, since nobody means to be currently ready to do so for everybody. Here underscore the political factor as an agent of conflict (Vande, 2012)

For conflict to be managed or minimized and possibly be prevented, a good knowledge of the conditions that give rise to a unique approach(s) to its resolution or management is prerequisites. However, some general strategies, do exist which are applicable to most conflict situations either at the individual, organizational, governmental or even global levels. Once conflict has surfaced, it has to be controlled in order to minimize its adverse effects. From theoretical and the scholastic point of view Jones and George (1996) have proposed five major ways in which conflict can be resolved or managed. These include compromise, collaboration, accommodation, avoidance and competition.

However, integration is perceived as another way of reducing ethnicity and regional tension (Bienen, 1986). The idea is to develop a fusion of mental and physical well being (Binder, 1964), and it could use individually or to the entire community. Thus, integration makes people leaving within the community to respect, trust, and peaceful coexistence used resource in pursuit of a common objective(s). Mazrui (1972) explain that the integration is done through the fusion of norms and culture, promotion of economic interdependence, reducing inequalities fairness and justice in dealing with sprouting crises.

## **CONCLUSION**

Management of conflict and its prevention in general is on the institutional justice, equity, objectives, decorum and respect of moral values (Ibogje & Dode, 2007)

Conflict as a product of sentimentality is itself a wanton exhibition of emotional intrigues which can transform into major catastrophes from this contextual perspective, managing of conflict is a preferable constructive approach. Rather than leaving it to escalate and degenerate into violence and this brings about positive changes. It is good note that in every conflict situation, there are different solutions, and there are things that bring about escalation and or de-escalation of conflict. Hence, conflict escalates when it is being managed in a destructive way and de-escalates if managed constructively.

## **RECOMMENDATION/SUGGESTION**

In line with the above Nigeria and other countries with similar features can prevent or manage political conflict to the barest minimum using the following strategies: -

Peace education should be intensified all levels of the communities, stressing about the dangers associated with crisis through government agencies, nongovernmental organizations and social clubs.

Authorities should focus on conflict prevention specifically support measures on de-escalation and management of local community, ethnic and religious conflict proactively.

Non-governmental organizations (NGOs) should be establishing inter-ethnic forge to promote local conflict prevention in the cities and rural areas respectively.

Government should provide employment opportunities to crave the menace associated with un-employment as the saying goes "an idle mind is a devils workshop"

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# **ANALISIS ADVOKASI KEBIJAKAN PENCEGAHAN DAN PENANGGULANGAN TUBERKULOSIS DI DAERAH KOTA MALANG**

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## **Abstrak**

Tuberkulosis (TB) sebagai penyakit infeksius telah meluas diberbagai negara termasuk di Indonesia. TB dianggap sebagai suatu penyakit yang dapat berdampak terhadap rendahnya produktifitas seseorang (penderita) sehingga mempengaruhi pertumbuhan ekonomi dan kesejahteraan suatu negara. Pemerintah Indonesia berupaya keras untuk mencegah dan menanggulangi TB dengan melalui berbagaimacam bentuk dan kegiatan. Kendati pemerintah telah berupaya keras namun angka TB di Indonesia masih tergolong cukup tinggi. Berdasarkan laporan WHO tahun 2013, Indonesia berada pada ranking ke empat sebagai negara dengan beban TB tertinggi di dunia. Pada tingkat lokal sebagaimana yang terjadi di Kota Malang, jumlah TB masih menjadi kendala dalam mencapai Visi Malang Kota Sehat atau bebas dari penyakit TB. Hasil penelitian tim analisis TB Daerah Kota Malang menunjukkan: *Pertama*, berdasarkan data Dinas Kesehatan Kota Malang, pada tahun 2013 angka TB mencapai 1610 orang (Angka TB CNR), dan dengan penemuan TB Paru (BTA+) mencapai 615 orang (Angka TB CDR), dan atau CDR mencapai 68,% dari CNR 1610 orang. Angka TB tersebut meningkat dari tahun 2012 yang hanya mencapai 1556 orang (Angka TB CNR), dan dengan penemuan TB Paru (BTA+) mencapai 573 orang (Angka TB CDR), dan atau CDR mencapai 65,3% dari CNR 1556 orang. *Kedua*, Penyakit TB di Kota Malang tersebut diakibatkan oleh minimnya kesadaran masyarakat untuk hidup sehat dan bersih terutama minimnya kesadaran untuk batuk dan bersin dengan baik dan benar. Sementara itu pasien TB tidak sedikit yang putus obat, sehingga gagal sembuh secara total, atau bahkan menjadi resisten terhadap obat, hingga meninggal dunia. Kondisi ini membuat Petugas puskesmas sebagai pendamping lapangan harus bekerja keras, dengan pro aktif melalui home visit sebagai upaya untuk mencegah putus obat. Kondisi kota Malang yang berada di dataran tinggi dengan kondisi iklim suhu udara (22,2 derajat celcius – 24,5 derajat celcius) dan sebagai kota yang menarik kaum emigran untuk tujuan sekolah, mencari pekerjaan dan wisata, setidaknya juga berkontribusi pada jumlah angka TB. *Ketiga*, Penderita TB di Kota Malang mendapatkan pelayanan obat gratis dari puskesmas sehingga penderita TB tidak mengalami kesulitan dalam mendapatkan obat. Namun di sisi lain jumlah tenaga kesehatan di puskesmas masih terbatas. Hal ini tentu akan berpengaruh terhadap kualitas pelayanan khususnya bagi penderita TB. Program pelayanan kesehatan terutama terkait pelayanan pencegahan dan penanggulangan TB di Kota Malang juga masih jauh dari harapan untuk mewujudkan Kota Malang sebagai Kota Sehat atau terhindari dari penyakit TB. Program penanggulangan TB masih dianggap tugas Dinas Kesehatan dan belum terintegrasi atau bersinergi dengan dinas lain, seperti dinas sosial, sinas ketenaga kerjaan maupun dengan dinas pekerjaan umum. *Keempat*, Kebijakan Anggaran Pemerintah Kota Malang dinilai tidak berpihak pada pelayanan kesehatan. Dari total APBD Kota Malang Tahun Anggaran 2013, hanya 6,22% untuk bidang kesehatan. Padahal menurut undang-undang

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kesehatan, pemerintah daerah harus mengalokasikan anggaran 10% untuk bidang kesehatan dari total APBD Kota Malang. Namun yang cukup memprihatinkan adalah anggaran untuk TB hanya sebesar 0,003%. Dan anggaran inipun tidak semua teralokasi dengan baik ke dalam program pencegahan dan penanggulangan TB. Kesenjangan antara kebijakan anggaran, dan program pembangunan kesehatan, dianggap sebagai pemicu tercipta dan meluasnya penyakit TB di Kota Malang. Kelima, Kerugian negara secara finansial akibat penyakit TB adalah sebesar 1.415.050.875 (Satu miliar empat ratus lima belas juta lima puluh ribu delapan ratus tujuh puluh lima rupiah. Namun, kerugian terbesar sesungguhnya adalah hilangnya tenaga kerja produktif, dan menjadi beban sosial keluarga. Berdasarkan temuan di atas, tim penyusun situasi TB Kota Malang merekomendasikan untuk melakukan tiga bentuk aksi, yaitu aksi utama, aksi kemitraan, dan aksi perumusan program strategis pencegahan dan penanggulangan TB di Kota Malang. Pada intinya tiga aksi tersebut diarahkan untuk mendorong beberapa point penting, yaitu :(1) Pemerintah Kota Malang dan pemerintah provinsi Jawa Timur perlu bekerjasama untuk membuat kebijakan pengobatan gratis bagi penderita TB disemua level layanan kesehatan terutama di Rumah Sakit Umum. (2) Pemerintah Kota Malang perlu menambah tenaga kesehatan di puskesmas sebagai upaya mengoptimalkan pelayanan publik khususnya bagi penderita TB. (3) Mengintegrasikan program pembangunan kesehatan yang saling terkait dengan pencegahan dan penanggulangan TB di Kota Malang. (4) Pemerintah Kota Malang perlu memperluas program pencegahan dan penanggulangan TB yang berbasiskan partisipasi aktif masyarakat. (5) Pemerintah Kota Malang perlu mendorong partisipasi *stakholder* secara luas sehingga persoalan TB bukan hanya tanggungjawab pemerintah Kota Malang. (6) Pemerintah Kota Malang perlu menyusun kebijakan anggaran yang berpihak kepada persoalan TB. Kebijakan anggaran harus mendukung secara nyata penanggulangan dan pencegahan TB di Kota Malang. (7) Pemerintah Kota Malang perlu melakukan publikasi data tentang TB secara transparan, terukur, dan dapat diakses oleh siapapun terutama bagi peneliti yang sedang mendalami persoalan TB di Kota Malang. Tiga bentuk aksi di atas juga diarahkan untuk mendorong *stakeholders* terutama Pimpinan Aisyiyah Kota Malang untuk terus berupaya membangun komunikasi intensif dengan Pemerintah dan DPRD Kota Malang, Dinas Kesehatan Kota Malang, Perguruan Tinggi, Tokoh Masyarakat, Tokoh Agama, dan Kelompok Dukungan Sebaya (KDS) sehingga terbentuk suatu kerjasama dalam menjalankan program pencegahan dan penanggulangan TB secara aktif, tuntas, dan berkelanjutan.

**Kata Kunci:** Tuberkulosis (TB) , Pencegahan, Penanggulangan, Pemerintah Kota Malang.

*Tuberculosis (TB) as an infectious disease has been widespread in many countries including Indonesia. TB is considered as a disease that can affect a person's low productivity (patients) that affect the economic growth and well-being of a country. The Indonesian government strive to prevent and control TB through any way and activities. Although the government has tried hard but the rate of TB in Indonesia is still quite high. In 2010, Indonesia is ranked as the state with the fifth highest TB burden in the world. Estimated prevalence of TB cases amounted to 660,000, and the estimated incidence amounted to 430,000 new cases a year. The number of TB deaths estimated 61,000 deaths a year (Minister of Health, 2010). Malang is still an obstacle in achieving the vision be malang healthy city, or free of TB disease. In 2007, for TB disease, CDR which achieved only 57% and still achieve a cure rate of 54%. Malang became one of the cities with the most people with TB disease, as supported by the location of the landscapes are located in the highlands to the climatic conditions of air temperature (22.2 ° C - 24.5 ° C) (KPDE Malang Government, 2006).*

*Results of the research team analyzes the TB Regional Malang shows: First, based on data from the Department of Health Malang, in 2013 the number of TB reached 1610 peoples (figure TB CNR), and with the discovery of pulmonary TB (AFB +) reached 615 peoples (rate of TB CDR), and or CDR reaches 68.% of the CNR in 1610. The rate of TB has increased from 2012 which only reached 1556 people (figure TB CNR), and with the discovery of pulmonary TB (AFB +) reached 573 people (rate of TB CDR), and or CDR reaches 65.3% of the CNR in 1556. Second, TB disease in Malang is caused by lack of public awareness for healthy living and clean, especially the lack of awareness to cough and sneeze properly. Third, communications through officer Poly RSSA of TB to TB patients is less well assessed so that TB patients, especially patients with MDR TB are reluctant to seek treatment completely. MDR TB patients and their families desperate for treatment, and they willingly accept it if one day die because of TB disease suffered. Clinic staff as a field companion also experiencing despair encourage MDR TB patients to be treated completely. Fourth, TB patient in Malang get free medicine from the clinic services. Free medicine is not available in the hospital. So that TB patients find it difficult to get access to services at the hospital. Fifth, TB patients have great hopes of the ministry health centers. Because the medicine is available for free at the health center of the neighborhood and close them. But unfortunate health care facilities, especially the provision of community health workers in health centers is very limited. Community health workers in health centers are not proportional to the number of health centers in Malang. Sixth, the health care program, especially related to the prevention and control of TB services in Malang is too far from Malang hopes to achieve as a Healthy City or unavoidable from TB disease. Health programs of Malang City Health Office assessed a technical nature (administrative), that's not integrated between a program with the other programs to support prevention and control of TB disease in Malang. Seventh, Malang Government Budget Policy judged in favor of the health service. Of the total budget for Fiscal Year 2013 Malang, only 6.22% for the health sector. And according to the laws of health in Malang, local government must allocate 10% to the total budget of the health sector. Eighth, Budget 6.22% to health sector in Malang of the total budget for Fiscal Year 2013 are not allocated properly to the prevention and control of TB programs, but the budget actually leads to programs that are not directly related to the field of prevention and control TB in Malang. Ninth, the total loss suffered as a result of TB disease is at 1,415,050,875 (one billion four hundred and fifteen million fifty thousand eight hundred and seventy-five dollars. Tenth, The gap between budget policy, health development programs, and lack of health facilities to the prevention and prevention of TB disease in Malang is considered as the trigger is created and spread of TB disease in Malang.*

*Based on the findings above, the editorial team of the TB situation Malang recommend to do the three forms of action, the main action, partnerships action, and strategic action program formulation prevention and control of tuberculosis in the city of Malang. In essence these three actions aimed at encouraging some important points, namely: (1) The Government of Malang and East Java provincial governments need to work together to create a policy for free treatment for TB patients at all levels of health services, especially in the General Hospital. (2) The Government of Malang need to increase health workers in health centers in an effort to optimize the public service, especially for TB people. (3) Integrating health development programs that are related to the prevention and control of TB in Malang. (4) The Government of Malang need to expand TB prevention and control programs are based on the active participation of the community. (5) Malang Government needs to encourage stakeholder participation broadly to the issue of TB is not only the responsibility of the government of Malang. (6) The government needs to devise Malang budget policies that favor the TB problem. Policies should support real budget reduction and prevention of TB in Malang. (7) Malang Government needs to publication of data on TB transparently, scalable, and accessible to anyone, especially for researchers who are steeped in the issue of TB in Malang.*

*Three forms of action above also directed to encourage stakeholders, especially in Malang Aisyiyah Leaders to continue in building an intensive communication with the governments and parliaments of Malang, Malang City Health Department, Universities, Community Leaders, Religious Leaders, and Peer Support Groups (KDS) that formed a partnership in running the TB prevention and control programs are active, complete, and sustained.*

**Keywords:** *Tuberculosis (TB), Prevention, Mitigation, Government of Malang.*

### **Potret Kondisi TB di Indonesia**

Tuberkulosis (TB) adalah penyakit infeksi yang disebabkan oleh bakteri yang nama ilmiahnya adalah *Mycobacterium Tuberculosis*. TB pertama kali ditemukan oleh Dokter Jerman yang bernama Robert Koch pada tahun 1882 yang membuatnya menerima hadiah nobel untuk penemuan ini. TB paling umum mempengaruhi paru-paru, namun juga dapat melibatkan semua organ apa saja dari tubuh. Seseorang terinfeksi bakteri 259Tuberculosis ketika menghirup sedikit partikel-partikel dari dahak yang terinfeksi dari udara. Bakteri-bakteri tercemar ke dalam udara ketika seseorang yang mempunyai infeksi 259tuberculosis paru batuk, bersin, bersorak atau meludah. Orang – orang yang saling berdekatan, juga kemungkinan akan menghirup bakteri ke dalam paru-paru mereka. TB tidak menular melalui berjabat tangan dan bertukar pakaian dengan orang – orang yang terinfeksi ([www.totalkesehatananda.com/tuberculosis](http://www.totalkesehatananda.com/tuberculosis), 2014).

Seiring perkembangan kehidupan manusia penyakit TB diprediksi akan semakin meluas dalam kehidupan masyarakat. Penyakit TB dinilai sebagai penyakit yang mudah tersebar dalam kehidupan manusia. WHO mengakui penyakit TB merupakan salah satu penyakit yang membahayakan bagi kehidupan manusia dimasa yang akan datang. Karena itu, strategi pencegahan dan penanggulangan TB harus dipikirkan secara bersamai, baik di tingkat global maupun regional.

WHO menyatakan bahwa TB merupakan kedaruratan global bagi kemanusiaan. Walaupun strategi DOTS telah terbukti sangat efektif untuk pengendalian TB, tetapi beban penyakit TB di masyarakat masih sangat tinggi. Dengan berbagai kemajuan yang dicapai sejak tahun 2003, diperkirakan masih terdapat sekitar 9,5 juta kasus baru TB, dan sekitar 0,5 juta orang meninggal akibat TB di seluruh dunia (WHO, 2009, dalam Strategi Nasional Kementerian Kesehatan Tahun 2010-2014).

Data WHO tersebut menghendaki kepada negara-negara di dunia termasuk Indonesia untuk memikirkan secara strategis melakukan pencegahan dan penanggulangan penyakit TB dalam kehidupan warga masyarakat masing-masing. Menurut laporan WHO tahun 2012 jumlah penderita TB di Indonesia berada pada peringkat keempat di dunia dengan Estimasi prevalensi TB semua kasus adalah sebesar 660,000. Sedangkan estimasi insidensi menurut kementerian kesehatan, adalah berjumlah 430,000 kasus baru per tahun. Jumlah kematian akibat TB diperkirakan 61,000 kematian per tahunnya (Menteri Kesehatan RI, 2012).

Memahami persoalan tersebut pemerintah Indonesia mengupayakan menyusun program strategis untuk penanggulangan dan pencegahan TB di Indonesia. Program strategis Indonesia untuk pencegahan dan penanggulangan TB terlihat dari program strategis nasional menteri kesehatan tahun 2010-2014 berikut ini.

Mengacu pada RPJMN, Kementerian Kesehatan menetapkan empat misi dalam rencana stratejik 2010-2014 sebagai berikut: 1. Meningkatkan derajat kesehatan

masyarakat melalui pemberdayaan masyarakat, termasuk swasta dan masyarakat madani; 2. Melindungi kesehatan masyarakat dengan menjamin tersedianya upaya kesehatan yang paripurna, merata, bermutu dan berkeadilan; 3. Menjamin ketersediaan dan pemerataan sumber daya kesehatan; serta 4. Menciptakan tata kelola pemerintah yang baik (Menteri Kesehatan RI, 2010). Dalam kurun waktu empat tahun yaitu antara tahun 2010 hingga 2014, pemerintah Indonesia mengupayakan secara nyata agar misi di atas dapat tercapai dengan baik dan benar dengan melalui program strategis ini.

Berdasarkan misi tersebut Kementerian Kesehatan telah merumuskan enam utama, meliputi: 1. Meningkatkan pemberdayaan masyarakat, swasta dan masyarakat madani dalam pembangunan kesehatan melalui kerja sama nasional dan global 2. Meningkatkan pelayanan kesehatan yang merata, bermutu dan berkeadilan, serta berbasis bukti dengan mengutamakan upaya promotif dan preventif; 3. Meningkatkan pembiayaan pembangunan kesehatan, terutama untuk mewujudkan jaminan sosial kesehatan nasional; 4. Meningkatkan pengembangan dan pendayagunaan SDM kesehatan yang merata dan bermutu; 5. Meningkatkan ketersediaan, pemerataan, dan keterjangkauan obat dan alat kesehatan serta menjamin keamanan, khasiat, kemanfaatan, dan mutu sediaan farmasi, alat kesehatan dan makanan; dan 6. Meningkatkan manajemen kesehatan yang akuntabel, transparan, berdayaguna dan berhasilguna untuk memantapkan desentralisasi kesehatan yang bertanggung jawab (Menteri Kesehatan RI, 2010).

Pada tahun 2011 pemerintah Indonesia dinilai mampu menanggulangi penyakit TB. Hal ini terlihat dari Laporan Pencapaian Tujuan Pembangunan Milenium di Indonesia Tahun 2011, Indonesia telah mencapai target *Millenium Development Goals*(MDGs) 2015 dalam bidang penurunan penyakit TB. Sebagai contoh, Angka kejadian Tuberkulosis (semua kasus/100.000 penduduk/tahun) pada tahun 1990 mencapai 343. Angka ini mampu diturunkan hingga pada 189 kasus per 100.000 penduduk per tahun pada tahun 2011. Keberhasilan ini dapat dilihat pada tabel 1.1 tentang Laporan Pencapaian Tujuan Pembangunan Milenium di Indonesia Tahun 2011 berikut ini.

**Tabel 1**

Laporan Pencapaian Tujuan Pembangunan Milenium di Indonesia Tahun 2011

Indikator	Acuan dasar	Saat ini	Target MDGs 2015	Status	Sumber
Target : Mengendalikan penyebaran dan mulai menurunkan jumlah kasus baru Malaria dan penyakit utama lainnya hingga tahun 2015					
Angka kejadian, prevalensi dan tingkat Kematian akibat Tuberkulosis					
Angka kejadian Tuberkulosis (semua kasus/100.000 penduduk/tahun)	343 (1990)	189 (2011)		•	
Tingkat prevalensi Tuberkulosis(per 100.000 penduduk)	443 (1990)	289 (2011)	Mulai berkurang	•	Laporan TB Global WHO, 2011
Tingkat kematian karena	92	27		•	

Tuberkulosis (per 100.000 penduduk)	(1990)	(2011)			
Proporsi jumlah kasus Tuberkulosis yang terdeteksi dan diobati dalam program DOTS					
Proporsi jumlah kasus Tuberkulosis yang terdeteksi dalam program DOTS	20,0% (2000)	83,48% (2011)	70,0%	●	Laporan TB Global WHO, 2009
Proporsi kasus Tuberkulosis yang diobati dan sembuh dalam program DOTS	87,0% (2000)	90,3% (2011)	85,0%	●	Laporan Kemenke s.

**Keterangan:** Status :● Sudah Tercapai

Sumber: Laporan Pencapaian Tujuan Pembangunan Milenium di Indonesia Tahun 2011.

Tabel di atas juga menunjukkan Program Pengendalian TB di Indonesia mengalami peningkatan. Terlihat peningkatan angkапenemuan kasus *Case Detection Rate* (CDR) dari 20,0 % pada tahun 2000 menjadi 83,48 % pada tahun 2011. Usaha untuk mencapai hasil ini dimulai sejak tahun 1996, dimana padatahun itu CDR hanya mencapai 4,6 %. Pengobatan TB memerlukan waktu sekitar 6-8 bulan, sehingga untuk mendapatkan angka keberhasilan pengobatan *Succes Rate* (SR) diperlukanwaktu untuk evaluasi selama 9-12 bulan, maka pasien yang berobat pada tahun 2010 baru dapatdilaporkan pada tahun 2011. SR pada tahun 2000 mencapai 87,0 % dan terjadi peningkatansampai dengan 90,3 % pada tahun 2011. Kedua indikator tersebut merupakan sasaran dari MDGs, dan telah melampaui target MDGs (masing-masing 70 dan 85 %). Indonesia adalahnegara pertama dari 22 *High Burden TB Countries* di wilayah Asia Tenggara yang mencapai targetglobal yaitu CDR 70 % dan SR 85 % pada tahun 2005.

Selain itu keberhasilan pengendalian TB ini juga ditunjukkan oleh penurunan angkak ejadian TB yang diukur dengan jumlah kasus per 100.000 penduduk per tahun, tingkat prevalensi dan tingkat kematian TB. Angka kejadian TB menurun drastis dari 343 kejadian per 100.000 penduduk padatahun 1990 menjadi hanya 189 kejadian 20 tahun kemudian. Tingkat prevalensinya juga menurun dari 443 kejadian per 100.000 penduduk pada tahun 1990 menjadi 289 pada tahun 2010. Sementara itu tingkat kematian karena penyakit ini juga menurun dari 92 kejadian per 100.000 penduduk pada tahun 1990 menjadi 27 pada tahun 2010

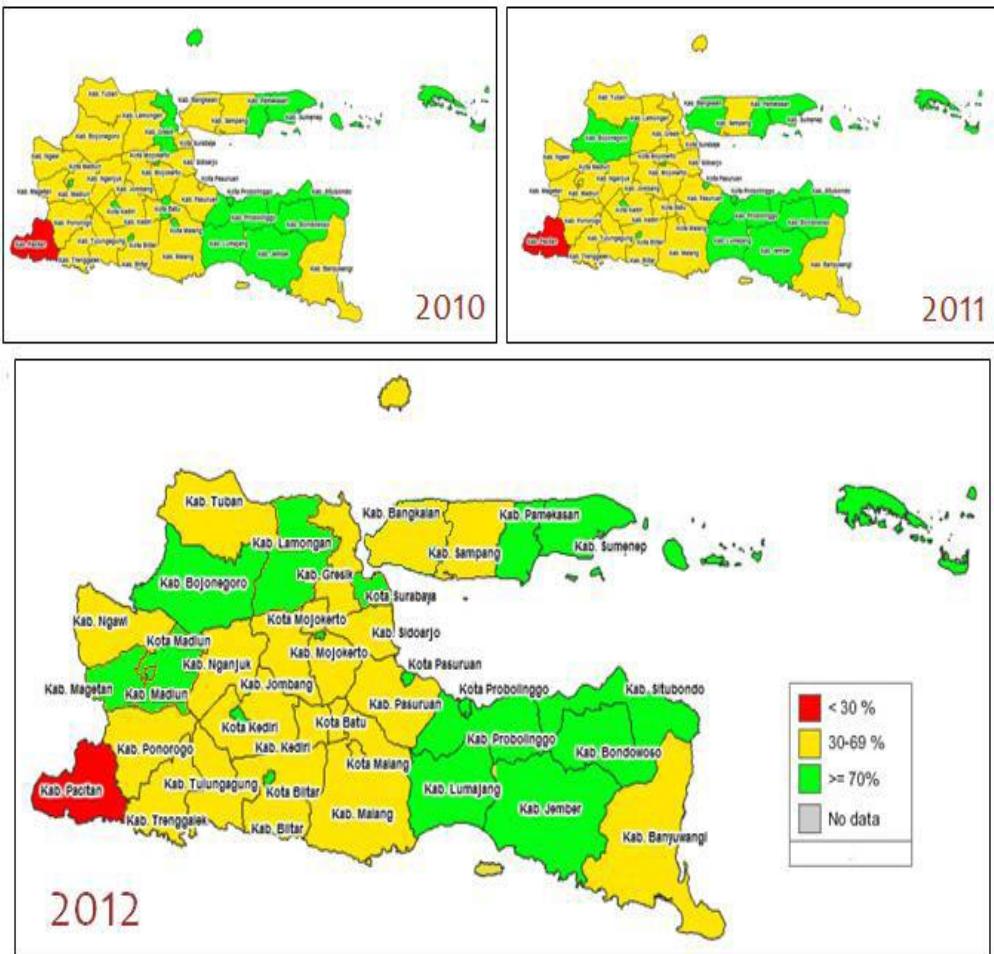
Ditinjau dari skala regional (provinsi), Provinsi Jawa Timur merupakan salah satu penyumbang jumlah penemuan penderita TB Paru terbanyak dan disusul Provinsi Jawa Barat. Berdarakan data dinas kesehatan Jawa Timur dalam buku profil kesehatan tahun 2012 menunjukkan angka penemuan kasus baru BTA Positif (*Case Detection Rate*) merupakan proporsi penemuan kasus TB BTA Positif dibanding dengan perkiraan kasus dalam persen. Pada tahun 2012, angka CDR sebesar 63.03% dengan jumlah kasus baru (positif dan negatif) sebanyak 41.472 penderita dan BTA Positif baru sebanyak 25.618 kasus. Kondisi tersebut masih jauh dari target CDR yang ditetapkan yaitu 70%. Perkembangan CDR dan *Success Rate* (SR) digambarkan pada grafik di bawah ini.



Sumber : Laporan Program TB Seksi Pemberantasan Penyakit, Dinas Kesehatan Provinsi Jawa Timur.

**Gambar 1** Perkembangan Persentase CDR dan Success Rate TBProvinsi Jawa Timur Tahun 2009-2012

Pada tahun 2012, terdapat 18 kabupaten/kota yang telah mencapai target CDR70%, sedangkan 20 kabupaten/kota lainnya masih belum. Kondisi tersebut menunjukkan kabupaten/kota yang berhasil mencapai target 70% semakin meningkat. Kegiatan penemuan pasien TB mengalami kemajuan. Berdasarkan jenis kelamin, penderitapenyakit TB Paru ternyata lebih banyak menyerang laki-laki (54%) dibandingkan perempuan (46%). Hal tersebut ditunjukkan dengan peta persebaran CDR dan SR di Provinsi Jawa timur dari Tahun 2010-2012 sebagaimana gambar 1.2.



Sumber : Laporan Program TB Seksi Pemberantasan Penyakit, Dinas Kesehatan Provinsi Jawa Timur.

**Gambar 2** Peta persebaran CDR dan SR di Provinsi Jawa timur dari Tahun 2010-2012.

Kendati di tingkat propinsi terdapat 17 Kabupaten/Kota memenuhi 70% kesuksesan penanggulangan TB bukan dalam arti pemerintah Provinsi Jatim dapat dikatakan sukses dalam penanggulangan dan pencegahan TB. Justru data di atas menunjukkan masih terdapat 20 Kabupaten/Kota yang belum memenuhi angka 70% kesuksesan penanggulangan TB.

Di tingkat Kabupaten/Kota termasuk Kota Malang masih menuai banyak persoalan dalam pencegahan dan penanggulangan TB. Kota Malang masih mengalami kesulitan untuk mencapai Visi Malang Kota Sehat atau bebas dari penyakit TB. Pada tahun 2007, untuk penyakit TB, CDR yang dicapai hanya 57% dan Tingkat kesembuhan masih mencapai 54%. Kota Malang menjadi salah satu kota dengan pengidap penyakit TB terbanyak, karena didukung oleh letak tata kotanya yang berada di dataran tinggi dengan kondisi iklim suhu udara (22,2 derajat celcius – 24,5 derajat celcius) (KPDE Pemerintah Kota Malang, 2006).

Berdasarkan kajian terdahulu terdapat beberapa point penting yang menyebabkan sulitnya pencegahan dan penanggulangan penyakit TB di Kota Malang, yaitu kelembaban yang relatif tinggi (berkisar 74%-82%) memudahkan basil tuberkulosis hidup lebih lama, sehingga memberikan kecenderungan kepada para penduduknya

terserang penyakit tuberkulosis ataupun penyakit saluran nafas lainnya. Berdasarkan data penderita tuberkulosis Kota Malang dan sekitarnya, kadar keterjangkitan penyakit tuberkulosis mengalami kenaikan di setiap tahunnya. Data terakhir menunjukkan pada tahun 2007, jumlah kasus terakhir meningkat 29% dibandingkan tahun 2006 dari 1906 orang menjadi 1.418 orang (Annisa Tanjung, 2008).

Kondisi rumah yang tidak sehat juga ikut berpengaruh terhadap pertumbuhan penyakit TB, demikian juga dengan Perilaku Hidup Bersih dan Sehat (PHBS). Capaian Rumah Tangga Ber-PHBS Tahun 2010 tercatat mencapai 48, 29 % rumah tangga Ber-PHBS dari 21.252 rumah tangga yang disurvei. Pada Tahun 2011 jumlah kasus baru dan lama TB Paru mencapai 2.001 kasus, dimana terdiri dari 1.331 kasus baru dan 670 kasus lama. Prevalensi dari kasus TB paru tahun 2011 mencapai 244, artinya selama tahun 2011 terdapat 244 kasus dari setiap 100.000 penduduk Kota Malang. Namun prevalensi antara laki-laki dan perempuan adalah laki-laki yang mencapai 137 dan perempuan mencapai 121 (Buku Profil Kesehatan Dinkes Kota Malang Tahun 2012).

Angka insiden kasus baru pada tahun 2011 mencapai 162,3, artinya dari 100.000 penduduk Kota Malang pada tahun 2011 terjadi kasus baru penyakit TB paru yang menyerang 162 - 163 orang penduduk Kota Malang. Sedangkan angka insiden kematian akibat penyakit TB paru adalah 3,7,artinya dari 100.000 penduduk Kota Malang, yang rentan terserang penyakit TB paru dan berakibat pada kematian terjadi pada 3 hingga 4 orang.

Adapun jumlah kasus selama tahun 2011, jumlah kasus klinis TB paru mencapai 2.001 kasus dan jumlah kasus BTA (+) mencapai 614 kasus. Sedangkan angka penemuan kasus (CDR) mencapai 69,96%, artinya pada tahun 2011 ditemukan 69 - 70 kasus baru BTA (+) dari 100 jumlah penduduk yang diperkirakan pada tahun yang sama. Sedangkan CDR laki-laki mencapai 74,62% jika dibandingkan dengan perempuan yang mencapai 65,42%. Pada tahun 2011, jumlah kasus TB paru yang diperkirakan terjadi adalah 878 kasus baru.Sedangkan tingkat kesembuhan penderita TB paru pada tahun 2011 mencapai 71,84%, dimana dari 696 penderita BTA (+) pada tahun 2010 yang diobati dan sembuh pada tahun 2011 mencapai 500 penderita. Penderita tersebut telah menerima pengobatan anti TB paru dan telah dinyatakan sembuh. Sedangkan angka kesuksesan mencapai 80,32%. Artinya penderita TB paru yang sembuh dan mengikuti pengobatan lengkap mencapai 80 - 81 per 100 penderita TB paru yang berobat (Buku Profil Kesehatan Dinkes Kota Malang Tahun 2012).

Pada tahun 2011 pengembangan program pengendalian penyakit TB Paru masih menggunakan strategi DOTS (Directly Observed Treatment Shortcoursechemotherapy yang telah dilaksanakan di seluruh puskesmas di Kota Malang. Selama tahun tersebut pengobatan terhadap penderita penyakit TB Paru telah dilaksanakan dan masih berjalan terhadap 2.001 penderita, yang terdiri dari 1.331 kasus baru dan 670 kasus lama. Dalam penanganan program, semua penderita TB yang ditemukan ditindaklanjuti dengan paket-paket pengobatan intensif. Melalui paket pengobatan yang diminum secara teratur dan lengkap, diharapkan penderita akan dapat disembuhkan dari penyakit TB Paru yang dideritanya. Namun demikian, dalam proses selanjutnya tidak tertutup kemungkinan terjadinya kegagalan pengobatan akibat dari paket pengobatan yang tidak terealisasi atau *drop out* (DO), terjadinya resistensi obat atau kegagalan dalam penegakan *diagnosa* di akhir pengobatan.

Upaya pemerintah Kota Malang dalam menanggulangi tuberkulosis (TB) setiap tahun menunjukkan kemajuan. Hal ini dapat diketahui dari angka kejadian kasus menular maupun dari meningkatnya jumlah penderita yang ditemukan dan disembuhkan setiap tahun. Pada tahun 2011, jumlah penderita TB Paru klinis di Kota Malang mencapai

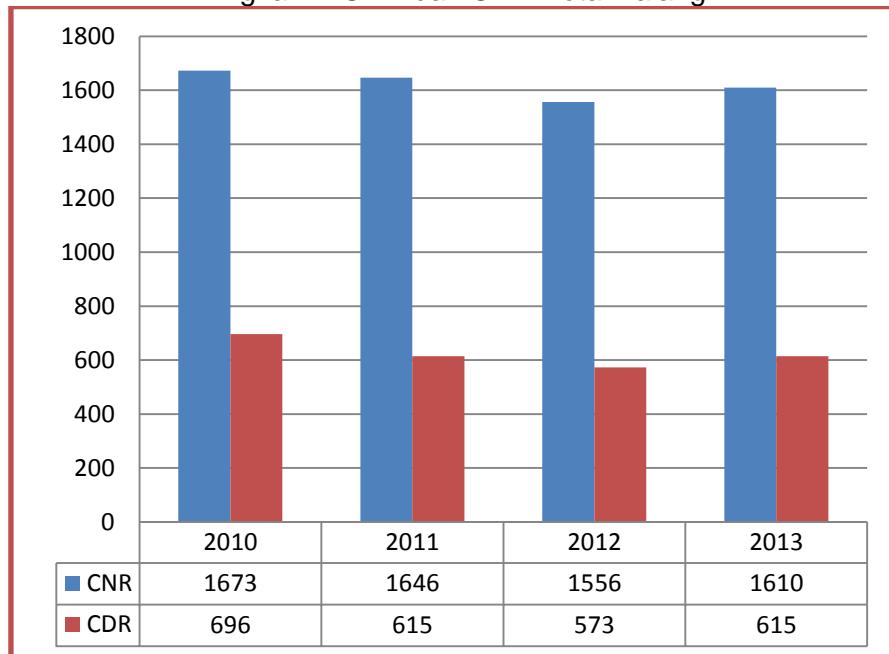
2.001 orang, meningkat dari tahun 2010 yang mencapai 1.670 orang. Demikian juga dengan penderita TB Paru BTA positif pada tahun 2011 berjumlah 614 orang, menurun dari tahun 2010 yang berjumlah 695. Selain angka insiden, keberhasilan program pengendalian TB Paru dapat dilihat pada beberapa indikator program pengendalian TB Paru yang antara lain melalui angka penemuan kasus *case detection rate*(CDR) dan angka keberhasilan pengobatan *success rate*(SR). Tingkat kesembuhan dari penderita pasca pengobatan biasanya sangat sulit ditegakkan oleh karena kendala dari penderita dalam mengeluarkan dahak sehingga dalam pemantauan hasil akhir lebih diarahkan pada tingkat kelengkapan pengobatan atau success rate (SR). Angka kesembuhan tahun 2011 dari proses pengobatan yang mulai berjalan pada tahun 2010 adalah sebesar 80,32% atau berjumlah 559 pasien, yang terdiri dari 500 pasien sembuh dan 59 pasien menjalani pengobatan lengkap(kompas, 2008 dalam Annisa Tanjung).

Berdasarkan data tentang penyakit TB di Kota Malang tahun 2011, dengan angka kesembuhan (SR) mencapai 80,32% dan angka penemuan kasus (CDR) 69,96% yang mencakup penemuan kasus kepada laki-laki sebesar 74,62 %, dan kasus pada perempuan sebesar 65,42% menunjukkan bahwa Kota Malang belum mencapai target MGDs , yaitu untuk SR sebesar 80 % dan CDR sebesar 70 %. Kondisi tersebut juga terjadi pada tahun 2012, dimana Kota Malang masih belum mencapai target MGDs untuk CDR, karena angka CDR kota Malang hanya berkisar antara 35 % - 69%. Belum tercapainya CDR dan SR inilah yang menjadi salah satu penghambat bagi Kota Malang untuk mencapai Visi Malang sebagai Kota Sehat. Visi menjadikan Kota Malang sebagai Kota yang sehat ini tertuang pada Rencana Strategis (RENSTRA) Kota Malang tahun 2009-2013, dimana sasaran RENSTRA bagi penyakit TB adalah mencapai kesembuhan bagi penderita TBC BTA positif sebesar 80 % pada target lima tahunan, yang setiap tahun angkanya ditingkatkan, yaitu sebesar 60% pada tahun 2009 yang diharapkan menjadi 80% pada tahun 2013 (Buku Profil Kesehatan Dinkes Kota Malang Tahun 2012).

### **Profil TB di Kota Malang**

Angka TB di Kota Malang tergolong cukup tinggi dan membutuhkan perhatian serius dari Pemerintah Kota Malang. Pada tahun 2013 angka TB CNR atau semua pasien TB di Kota Malang mencapai 1610 orang. Angka TB CNR tersebut lebih tinggi dibandingkan tahun 2012 yang mencapai 1556 orang. Kenaikan angka TB CNR tersebut, juga diikuti kenaikan angka TB CDR (Penemuan TB Paru) yakni angka TB CDR mencapai 573 orang tahun 2012, dan meningkat menjadi 615 pada tahun 2013. Kenaikan angka TB CNR dan CDR tersebut dapat dilihat pada bagan di bawah ini.

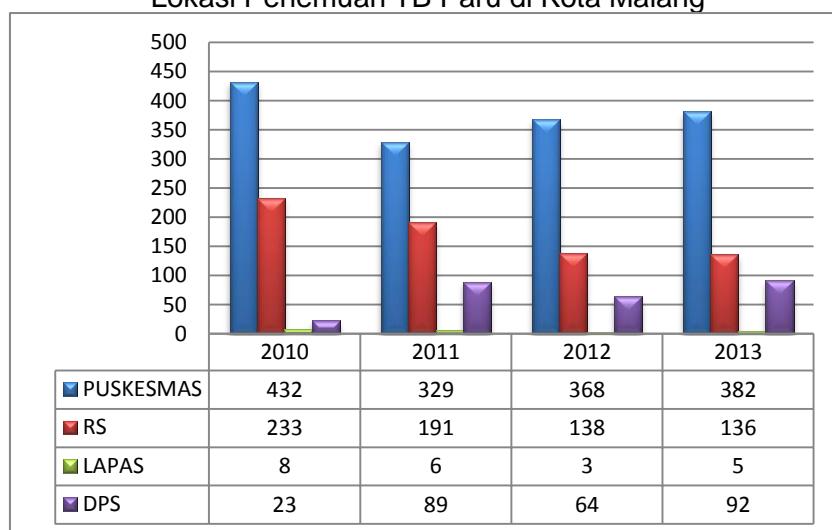
**Bagan 1**  
Angka TB CNR dan CDR Kota Malang



Sumber: Dinas Kesehatan Kota Malang, 2014.

Secara langsung kenaikan angka TB CNR pada tahun 2013 menunjukkan bahwa pencegahan dan penanggulangan TB di Kota Malang belum maksimal. Namun pada sisi lain, kenaikan angka TB CDR menunjukkan kinerja Dinas Kesehatan Kota Malang dalam mencegah dan penanggulangan TB di Kota Malang lebih maksimal, karena dalam teori pencegahan dan penanggulangan TB semakin banyak kasus TB yang dijumpai maka semakin baik kinerja pemerintah Kota Malang. Lokasi Penemuan TB Paru (BTA+ atau CDR) paling banyak ditemukan di Puskesmas, disusul Rumah Sakit, Lapas, dan Dokter Pemerintah dan Swasta (DPS) sebagaimana bagan di bawah ini.

**Bagan 2**  
Lokasi Penemuan TB Paru di Kota Malang

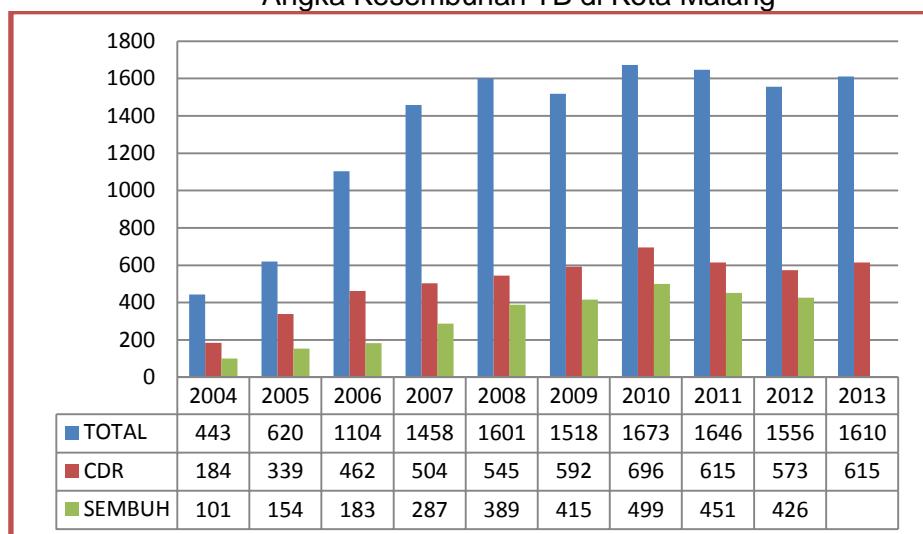


Sumber: Dinas Kesehatan Kota Malang, 2014.

Pada bagan tersebut terlihat penemuan TB Paru di Puskesmas pada tahun 2013 mencapai 382 orang, Rumah Sakit 136 orang, Lapas 5 orang, dan DPS 92 orang. Data ini menunjukkan mestinya pemerintah Kota Malang harus memperhatikan sarana dan prasarana pendukung Puskesmas dalam melakukan pencegahan dan penanggulangan TB di Kota Malang. Namun pemerintah Kota Malang masih cenderung mengabaikan kondisi sarana Puskesmas terutama tenaga medis dan tenaga kesehatan masyarakat. Analisis tentang sarana puskesmas akan dijelaskan pada bagian akar masalah.

Jumlah kesembuhan Angka TB di Kota Malang pada tahun 2013 belum terekap sehingga untuk mengukur kinerja Pemerintah Kota Malang dalam penanggulangan atau pengobatan TB belum dapat dilakukan. Namun tim penelitian mengukur kinerja tersebut menggunakan data pada tahun 2011 dan 2012. Angka kesembuhan TB CNR pada tahun 2012 menurun dari tahun 2011 yakni pada tahun 2012 angka kesembuhan hanya mencapai 426 orang dari angka TB CNR 1556 orang, sedangkan pada tahun 2011 angka kesembuhan mencapai 451 orang dari TB CNR 1646 orang. Angka kesembuhan TB tersebut dapat dilihat pada bagan di bawah ini.

**Bagan 3**  
Angka Kesembuhan TB di Kota Malang



Sumber: Dinas Kesehatan Kota Malang, 2014.

Menurunya angka kesembuhan pada tahun 2012 menunjukkan kinerja pemerintah Kota Malang belum cukup baik. Dinas Kesehatan Kota Malang belum memiliki program, kegiatan, dan anggaran yang cukup mendukung untuk mewujudkan Kota Malang sebagai Kota Sehat, dan atau minimal pada kontek penelitian ini terwujudnya Kota Malang bebas TB. Kendati demikian, pemerintah Kota Malang telah mampu menunjukkan keberhasilan pengobatan (SR) yakni pada tahun 2012 keberhasilan pengobatan mencapai angka 86%. Angka tersebut mendekati target MMDGs 87%. Angka SR yang dicapai pemerintah Kota Malang tersebut dinilai sebagai angka yang baik dan secara langsung menunjukkan kinerja baik pemerintah Kota Malang. Angka SR Kota Malang dapat dilihat pada bagan di bawah ini.

**Tabel 2**  
Keberhasilan Pengobatan TB di Kota Malang

TAHUN	DPS		Kota Malang		MDGs	
	CDR		CDR	SR	CDR	SR
2010	23/696 : DPS : 24	3,3%	76,9%	80,3%	73%	85%
2011	89/615: DPS : 87	14,47%	70,1%	63%	75%	86%
2012	64/573: DPS : 60	11,17%	65,3%	86%	80%	87%
2013	92/615: DPS : 72	14,95%	68,3%		85%	87%
2014					87%	88%

Sumber: Dinas Kesehatan Kota Malang, 2014.

Keberhasilan pengobatan TB di Kota Malang sebagaimana tabel di atas menunjukkan keberhasilan pemerintah Kota Malang dalam melakukan pengobatan TB. Namun keberhasilan ini tidak ikuti keberhasilan pemerintah Kota Malang untuk menurunkan angka TB. Karena itu, tim peneliti menegaskan berdasarkan data tersebut pemerintah Kota Malang hanya berhasil melakukan pengobatan namun tidak berhasil melakukan pencegahan.

Berdasarkan data trend angka TB di atas, terlihat bahwa penanganan TB di Kota Malang yang dilakukan oleh Pemerintah masih belum sepenuhnya berhasil. Hal ini bisa dilihat dari hasil CNR dan CDR yang dimulai pada Tahun 2010-2013, dimana angka CNR dan CDR nya cenderung fluktuatif atau bisa naik dan turun setiap tahunnya. Kemudian untuk angka jumlah penemuan TB Paru dengan kesembuhan dan total jumlah pasien yang dibandingkan mulai tahun 2004 – 2013 juga terlihat angkanya masih fluktuatif. Dimana jumlah penderita TB dari tahun ke tahun angkanya cenderung naik walaupun angka kesembuhan dan penemuan kasus juga ikut naik. Angka CDR dan kesembuhan yang cenderung naik mulai tahun 2004-2013 ini tidak bisa dikatakan sukses, karena kenaikan angka CDR dan penemuan TB ini diikuti oleh naiknya jumlah angka penderita TB.

Belum berhasilnya penanganan penyakit TB di Kota Malang juga ditunjukkan dengan Kasus kegagalan pasien yang berobat mengalami DO (Drop Out) sejak tahun 2005 – 2012 angkanya juga masih cenderung fluktuatif. Sementara itu dalam hal pengobatan terhadap TB juga masih dibutuhkan kerja keras oleh Pemerintah Kota Malang dan pihak-pihak yang terkait dalam upaya menanggulangi penyakit TB. Hal ini karena berdasarkan data keberhasilan trend pengobatan yang dimulai tahun 2006 – 2012, tingkat keberhasilan pengobatan atau SR (Succe Rate) baru berhasil dicapai pada tahun 2012 yaitu sebesar 86% dari target SR yang ditetapkan sekitar 85%. Untuk kasus penemuan penyakit TB BTA+ yang dimulai dari tahun 2010-2013, Puskesmas masih menjadi tempat penemuan kasus terbanyak, diikuti oleh Rumah Sakit, Lapas dan DPS. Temuan tersebut menunjukkan bahwa Puskesmas masih menjadi tujuan utama bagi seseorang yang ingin berobat dan menyembuhkan penyakit TB nya. Dapat disimpulkan bahwa penanggulangan TB di Kota Malang masih belum sepenuhnya berhasil dan dibutuhkan usaha yang keras dari berbagai pihak yang terlibat dalam penanggulangan TB. Belum berhasilnya penanggulangan TB oleh pemerintah Kota Malang ini dapat dilihat dari angka CDR, SR , kegagalan pengobatan, DO dan angka kesembuhan TB yang angkanya dari tahun ke tahun masih fluktuatif dan belum mencapai target MDGs yang telah ditetapkan.

### **Analisa Profil TB Kota Malang Tahun 2013**

Berdasarkan data TB Kota Malang sebagaimana terlihat pada tabel di bawah ini menunjukkan Pemerintahan Kota Malang dan *stakholder* terkait untuk terus berupaya secara nyata dalam melakukan pencegahan dan penanggulangan TB secara efektif, menyeluruh, dan tuntas.

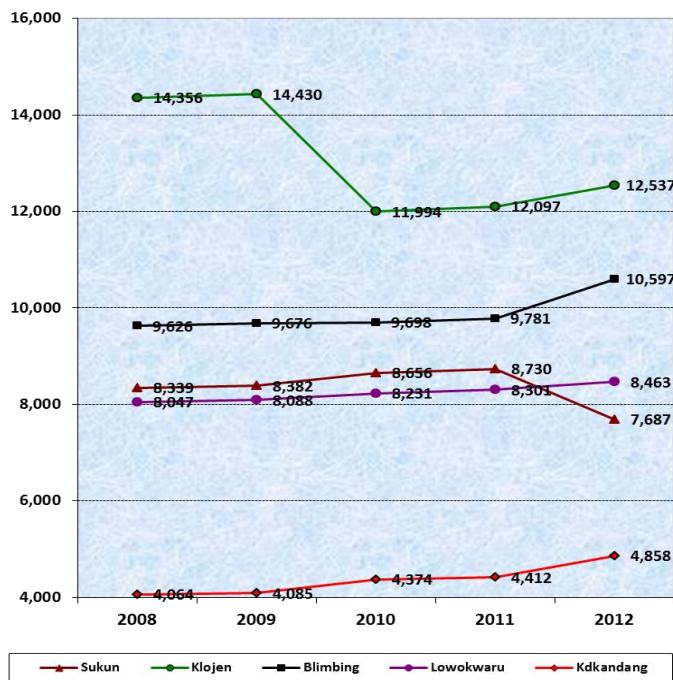
**Tabel 3**  
Jumlah TB Kota Malang Tahun 2013

Penderita TB	Jumlah	Jumlah Kematian
TB BTA (+) Baru	615	11
Penderita Kambuh	100	2
Penderita TB BTA (-)	637	14
Penderita TB Anak	152	1
Penderita TB MDR	49	6
Penderita TB HIV	11	0
<b>Jumlah</b>	<b>1610</b>	<b>34</b>
Penderita TB Laki-laki	708	-
Penderita TB Wanita	545	-

Sumber: Diolah dari Buku Profil Kesehatan Dinkes Kota Malang, dan Didukung hasil wawancara langsung dengan Ibu Puji Lestari (Kasi Pengendalian Penyakit Dalam Dinkes Kota Malang).

Jumlah total TB di Kota Malang tahun 2013 masih tergolong tinggi mencapai 1610 orang. Jumlah tersebut terdiri dari TB BTA (+) Baru 616 orang dengan angka kematian 11 orang. Penderita TB kambuh mencapai 100 orang dengan angka kematian 2 orang. Penderita TB BTA (-) 637 orang dengan angka kematian 14 orang. Penderita TB BTA (-) adalah varian TB tertinggi dari varian-varian TB lainnya. Penderita TB Anak mencapai 152 orang dengan angka kematian 1 orang. Penderita TB MDR mencapai 49 orang dengan angka kematian mencapai orang. Pada masing-masing TB tersebut terdapat angka prevalensi TB laki-laki mencapai 708 orang sedangkan TB perempuan mencapai 545 orang.

Berdasarkan grafik di bawah ini Kecamatan Klojen tergolong wilayah kepadatan tertinggi dari kecamatan-kecamatan lain di Kota Malang. Kepadatan ini merupakan implikasi logis dari luas wilayah Kecamatan Klojen 8,83% dari luas sebesar 11.006 ha atau 110,06 km<sup>2</sup>. Luas wilayah tersebut dihuni **sejumlah** penduduk 107.805. Kepadatan penduduk kecamatan Klojen disusul kecamatan Blimbings, Lowok Waru, Sukun, dan Kedungkandang.



Sumber: RPJMD Kota Malang 2008-2013.

**Gambar 3** Kepadatan Penduduk (jiwa/km<sup>2</sup>) Berdasarkan Kecamatan Tahun 2008-2012

Secara teoritis, tingginya kepadatan penduduk pada suatu wilayah akan berpengaruh pada buruknya kondisi kesehatan pada wilayah tersebut. Tingginya kepadatan penduduk pada suatu wilayah akan memicu munculnya berbagai penyakit seperti penyakit TB. Menurut Dinas Kesehatan Kota Malang, salah satu yang memicu munculnya penyakit TB adalah adanya kepadatan penduduk yang tinggi pada suatu wilayah (Dinas Kesehatan Kota Malang, 2012). Namun hasil temuan peneliti justru tidak demikian, yakni tingginya kepadatan penduduk pada suatu wilayah tidak serta merta diikuti tingginya angka TB pada wilayah tersebut. Kecamatan Klojen yang kepadatan penduduk sangat tinggi dibanding kecamatan lain justru angka TB paling rendah dibandingkan kecamatan lain di kota malang.

**Tabel 4**  
Jumlah TB Paru dan TB BTA + Tahun 2013 Kota Malang

No	Kecamatan	Jumlah TB	Jumlah Kasus Kematian
1	Kedungkandang	129	0
2	Sukun	150	1
3	Klojen	76	1
4	Blimbing	113	1
5	Lowok Waru	108	0

Sumber: Diolah dari berbagai sumber..

Di Kota Malang justru angka TB tertinggi ada di Kecamatan Kedungkandang yang kepadatan penduduknya terrendah dibandingkan dengan kecamatan-kecamatan lainnya. Karena itu, peneliti menegaskan kepadatan penduduk tidak dapat dikatakan secara langsung akan mengakibatkan tingginya angka TB pada wilayah tersebut.

Berdasarkan temuan lapangan, penyebab TB di Kota Malang diawali oleh minimnya kesadaran masyarakat untuk hidup bersih dan sehat (HBS), minimnya fasilitas pelayanan kesehatan khususnya tenaga penyuluhan kesehatan masyarakat di berbagai Puskesmas yang tersebar di Kota Malang, dan minimnya keberpihakan program dan kebijakan anggaran terhadap bidang pencegahan dan penanggulangan TB. Berikut ini diuraikan penyebab-penyebab TB tersebut dengan menggunakan analisa Akar Masalah.

### Analisa Profil TB Berdasarkan Data RSSA

Mengingat keberadaan RSSA tidak hanya melayani pasien di daerah Kota Malang, maka data TB di RSSA tidak dapat menjelaskan secara khusus tentang kondisi TB di Kota Malang. Kendati demikian, tim penelitian mempercayai data TB di RSSA secara umum dapat menjelaskan tentang kondisi pelayanan TB di Kota Malang, minimal menggambarkan tentang kondisi dan komunikasi pelayanan bagi penderita TB di Kota Malang.

Data yang ditemukan peneliti di RSSA Kota Malang jumlah TB dengan berbagai jenis (Non TB MDR) pada tiga tahun terakhir yaitu tahun 2011 mencapai 1,386 orang, tahun 2012 mencapai 1090 orang, dan tahun 2013 mencapai 1060 orang.



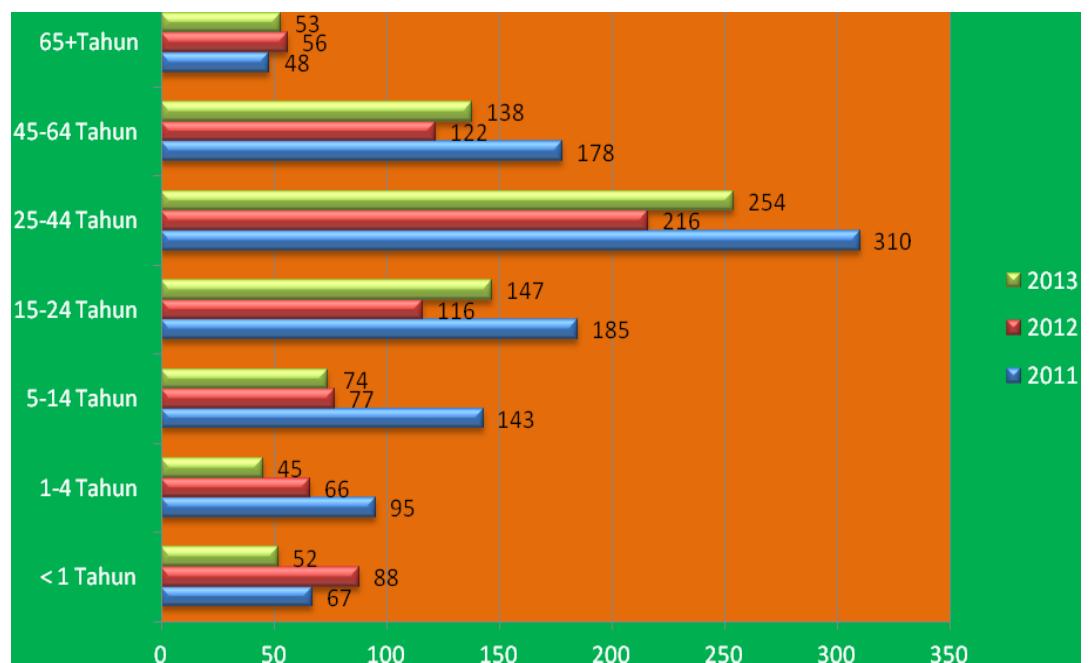
Sumber: Diolah dari Buku Laporan Tahunan RSUD Dr. Saiful Anwar Malang tahun 2013.

**Gambar 4.** Jumlah TB Tiga Tahun Terakhir dengan Berbagai Jenis TB (Non TB MDR) di RSSA Kota Malang.

Para pasien TB tersebut di atas mendapat pelayanan dari RSSA dengan dua kategori yaitu riwak jalan dan rawat inap. Pasien TB untuk kasus rawat jalan yang dimulai dari golongan umur kurang dari satu tahun ( $< 1$  tahun) sampai golongan umur lebih dari 65 tahun (65+) cenderung fluktuatif tiap tahunnya , bisa angkanya turun dan naik.Dari golongan umur  $<1$  tahun sampai dengan 65+, terlihat bahwa kebanyakan pasien TB di Kota Malang adalah golongan umur dengan rentang antara 15-64 tahun.

Dari rentang umur tersebut, golongan umur pasien TB 15-24 tahun dan 25 - 44 tahun termasuk tinggi angkanya setiap tahun. Tingginya angka pasien TB dari golongan usia

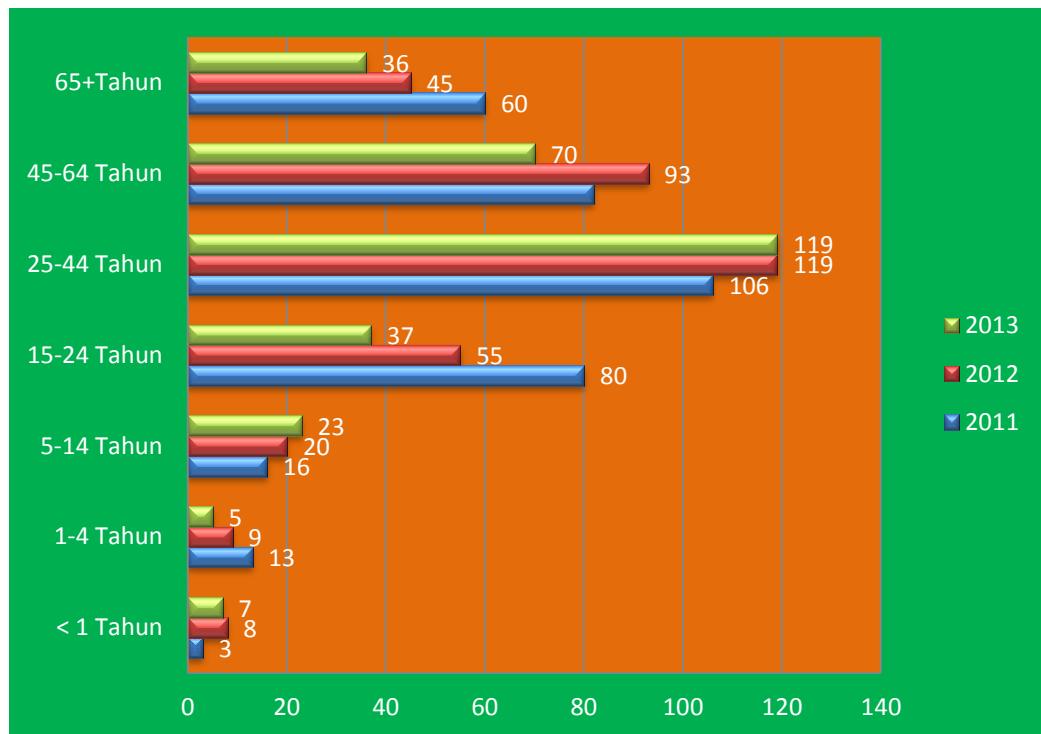
remaja dan dewasa di Kota Malang ini akan menyebabkan kerugian secara ekonomi, karena bukan saja Negara harus mengeluarkan beaya pengobatan, tetapi mereka juga tidak bisa bekerja secara produktif.



Sumber: Diolah dari Buku Laporan Tahunan RSUD Dr. Saiful Anwar Malang tahun 2013.

**Gambar 5.** Jumlah Kasus TB Rawat Jalan Tiga Tahun Terakhir Berdasarkan Umur di RSSA Kota Malang

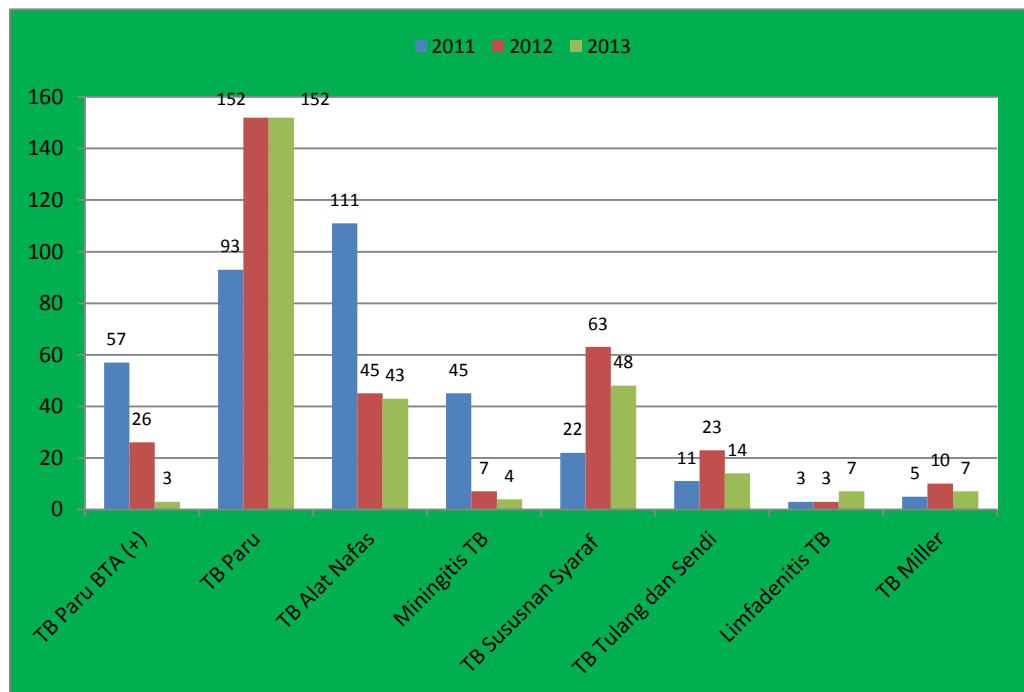
Tingginya angka TB dengan rataan usia produktif pada kasus rawat jalan mulai tahun 2011, 2012 dan 2013 juga terjadi pada pasien TB rawat inap. Untuk Kasus TB rawat inap yang angkanya dari tahun ke tahun juga fluktuatif atau bisa turun dan naik, terlihat bahwa pasien dengan golongan umur 15-24 tahun dan 25-44 termasuk tinggi angkanya dibanding pasien TB lainnya, tingginya angka pasien TB rawat inap yang juga berasal dari golongan usia produktif, sekali lagi menunjukkan ketidak berhasilan Pemerintah Kota Malang dalam menanggulangi penyakit TB.



Sumber: Diolah dari Buku Laporan Tahunan RSUD Dr. Saiful Anwar Malang tahun 2013.

**Gambar 6.** Jumlah Kasus TB Rawat Inap Tiga Tahun Terakhir Berdasarkan Umur di RSSA Kota Malang

Jumlah kasus TB rawat inap dan rawat jalan berdasarkan jenis TB tiap tahun yang dimulai tahun 2011, 2012 sampai tahun 2013, terlihat bahwa jenis TB paru merupakan jenis penyakit TB dengan jumlah pasien yang paling banyak dibandingkan dengan jenis penyakit TB lainnya sebagaimana gambar berikut ini.



Sumber: Diolah dari Buku Laporan Tahunan RSUD Dr. Saiful Anwar Malang tahun 2013.

**Gambar 7.** Jumlah TB Tiga Tahun Terakhir Berdasarkan Jenisnya di RSSA

Tingginya Jumlah angka TB Paru , baik itu untuk rawat jalan dan rawat inap, menunjukkan bahwa masyarakat belum sepenuhnya sadar akan kebersihan dan kesehatan lingkungan, karena TB adalah penyakit yang penyebarannya tergolong mudah dan cepat. Oleh karena itu, diperlukan peran pemerintah dan pihak-pihak yang terkait dalam penanggulangan TB, terutama dalam memberikan informasi melalui sosialisasi atau pembuatan program-program yang bertujuan untuk mencegah penyebaran penyakit TB di masyarakat, dan yang lebih penting lagi untuk mencegah dan mengurangi penularan penyakit TB dari penduduk dengan golongan usia produktif.

**Tabel 5.**  
Analisis Kondisi Profil TB di Kota Malang

Masalah/Profil	Profil TB Tiga Tahun Terakhir (2011,2012,2013)	Profil TB Tahun 2013	Profil Layanan TB RSSA
Minimnya Prilaku Masyarakat Untuk Hidup Bersih dan Sehat	Tingginya anggak TB pada tiga tahun terakhir disebabkan minimnya prilaku masyarakat untuk hidup bersih dan sehat	Angga TB tahun 2013 sangat tinggi dibandingkan tahun 2011 dan 2012. Persoalan ini dipicu minimnya kesadaran masyarakat untuk hidup bersih dan sehat	RSSA tidak terlalu terlibat dalam menyadarkan masyarakat untuk hidup bersih dan sehat
Buruknya Komunikasi Petugas Kesehatan memicu keenggangan penderita TB untuk berobat secara tuntas	Tingginya angka TB tiga tahun terakhir disebabkan buruknya komunikasi petugas kesehatan terutama petugas kesehatan RSSA	Angka TB tahun 2013 meningkat karena belum membaiknya komunikasi petugas kesehatan dalam melayani penderita TB di Kota Malang	RSSA belum berupaya untuk membangun komunikasi yg baik dengan penderita TB
Buruknya pelayanan kesehatan	Tingginya Angka TB tiga tahun terakhir karena minimnya pelayanan prima di berbagai UPK	Angka TB tahun 2013 semakin tinggi karena belum adanya pelayanan prima	Pelayanan RSSA dalam hal sarana dan prasarana sudah cukup baik namun belum didukung kemampuan komunikasi yang baik

Minimnya program dan anggaran pencegahan dan penanggulangan TB	Tingginya angka TB tiga tahun terakhir karena minimnya program dan anggaran	Angka TB tahun 2013 semakin tinggi karena tidak didukung oleh program dan anggaran yang memadai	Program dan Anggaran RSSA didukung penuh APBD Provinsi Jawa Timur.
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### Analisa Akar Masalah TB di Kota Malang

Temuan kami dilapangan menunjukkan akar persoalan penyakit TB di Kota Malang adalah (1) minimnya kesadaran masyarakat untuk hidup bersih dan sehat di lingkungan wilayah mereka masing-masing,(2) buruknya komunikasi layanan RSSA terhadap pasien TB sehingga enggan berobat secara tuntas dan berkelanjutan, (3) buruknya pelayanan publik dalam konteks melayani penderita TB, (4) Minimnya program pemerintah Kota Malang dalam pencegahan dan penanggulangan TB di Kota Malang, dan (5) minimnya komitmen pemerintah daerah untuk menyusun kebijakan anggaran yang berpihak pada program pencegahan dan penanggulangan TB di Kota Malang.

Lima point akar masalah di atas dapat dikelompokan kedalam tiga bentuk akar masalah yaitu: **(1) Akar masalah mendasar** terdiri dari minimnya kesadaran masyarakat untuk hidup bersih dan sehat, dan lemahnya komunikasi layanan kesehatan RSSA terhadap penderita TB di Kota Malang. **(2) Akar masalah utama** terdiri dari buruknya pelayanan publik pemerintah Kota Malang dalam menyediakan sarana tenaga kesehatan masyarakat yang mencukupi di setiap Puskesmas di Kota Malang. **(3) Akar masalah pendukung** terdiri dari minimnya keberpihakan program dan anggaran pemerintah Kota Malang terhadap program pencegahan dan penanggulangan TB di Kota Malang.

Masing-masing akar masalah tersebut di atas dijelaskan secara rinci berikut ini.

### Minimnya Perilaku PHBS Pemicu TB di Kota Malang

Peneliti menemukan, perilaku hidup sehatlah yang menentukan tinggi rendahnya angka TB pada suatu wilayah di Kota Malang.Perilaku hidup bersih dan sehat (PHBS) adalah upaya untuk memberdayakan anggota rumah tangga agar tahu, mau danmampu melaksanakan perilaku hidup bersih dan sehat serta berperanaktif dalam gerakan kesehatan di masyarakat.

Indikator PHBS terdiri dari tidak merokok, melakukan aktifitas fisik setiap hari, makansayur dan buah setiap hari, mempunyai jaminan pemeliharaan kesehatan,tersedia jamban, tersedia air bersih, kesesuaian luas lantai dengan jumlahpenghuni, dan lantai rumah bukan dari tanah.Rumah tangga ber-PHBS selama tahun 2012 mencapai 36,07%dari 22.447 rumah tangga yang dipantau di Kota Malang, atau sebesar8.096 rumah tangga. Jumlah ini menurun walaupun secara proporsimeningkat jika dibandingkan dengan tahun 2011 yang mencapai 35,61%dari 22.809 rumah tangga yang dipantau di Kota Malang, atau sebesar 8.122 rumah tangga (Buku Profil Kesehatan Kota Malang, 2012). Tabel berikut ini menggambarkan prilaku hidup bersih dan sehat pada masing-masing kecamatan di Kota Malang.

**Tabel 6**

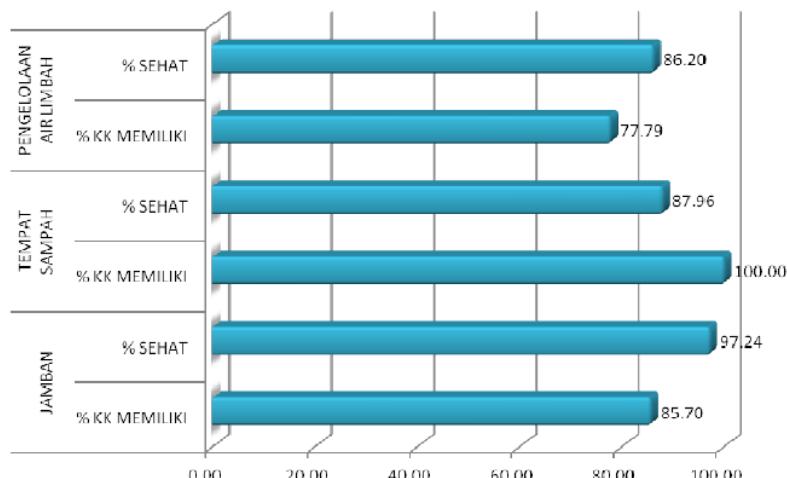
### Jumlah Rumah Tangga Ber PHBS di Kota Malang

Kecamatan	Jumlah Rumah Tangga	Rumah Tangga Di Pantau	Rumah Tangga Ber PHBS	%
Kedungkandang	40,598	4,500	1,398	1,5%
Sukun	38,356	4,500	1,346	1,5%
Koljen	29,029	4,500	1,465	1,5%
Blimbing	41,033	3,000	1,468	1,5%
Lowok Waru	34,883	5,947	1,639	1,5%

Sumber: Diolah dari Buku Profil Kesehatan Kota Malang, 2012.

Berdasarkan tabel di atas terlihat jelas PHBS masyarakat di Kota Malang tergolong minim. Presentase PHBS masyarakat di masing-masing kecamatan berada dibawah angka 2% dari masing-masing rumah tangga dipantau. Meskipun demikian, berdasarkan data yang ditemukan peneliti menunjukkan fasilitas hidup bersih masyarakat kota Malang dinilai cukup mendukung untuk terwujudnya lingkungan hidup bersih dan sehat.

Di Kota Malang indikator PHBS tersediannya jamban, tempat sampah dan pengelolaan air limbah dinilai cukup tersedia dengan baik. Grafik berikut ini menunjukkan PHBS masyarakat Kota Malang dalam hal tersediannya jamban, tempat sampah, dan pengelolaan air limbah dinilai baik.



Sumber: Buku Profil Kesehatan Kota Malang, 2012.

**Gambar 8.** Jumlah Sarana PHBS di Kota Malang

Dari 73.474 keluarga yang diperiksa kepemilikan saluran pengelolaan air limbah (SPAL) pada tahun 2012 sebanyak 77,79% keluarga memiliki saluran pengelolaan air limbah (SPAL). Dari jumlah tersebut yang memiliki SPAL dengan kategori sehat adalah sebanyak 86,2% atau 49.263 keluarga. Demikian juga dengan kepemilikan tempat sampah, dari 75.153 keluarga di Kota Malang yang diperiksa pada tahun 2012, semua memiliki tempat sampah. Namun dari jumlah tersebut yang memiliki tempat sampah dengan kategori sehat mencapai 87,96% atau sebanyak 66.107 keluarga.

Sementara itu, mengenai kepemilikan jamban, pada tahun 2012 di Kota Malang mencapai 85,7% dari seluruh keluarga yang diperiksa atau mencapai 49.738 keluarga. Dan dari jumlah tersebut yang masuk kategori sehat mencapai 97,24% atau berjumlah

48.363 keluarga. Hal ini sebagaimana ditunjukkan pada tabel 6.6 lampiran. .Ini semua menunjukkan kesadaran masyarakat yang tinggi terhadap masalah kesehatan lingkungan sekitar yang dapat berpengaruh terhadap masalah kesehatan masyarakat Kota Malang (Buku Profil Kesehatan Kota Malang, 2012).

Ditinjau dari Indikator PHBS tersediannya air bersih, juga menunjukkan telah mencukupinya dengan baik. Pada tahun 2012, dari 76.848 keluarga yang diperiksa, terdapat 76.557 atau 99,65%. keluarga yang menggunakan sumber air minum terlindung. Jumlah ini meningkat jika dibandingkan dengan tahun 2011 yang mencapai 73.309 keluarga yang menggunakan sumber air minum terlindung. Dari jumlah tersebut, mayoritas penduduk menggunakan air ledeng meteran sebagai sumber air minum untuk keluarga mereka, yaitu 87,52% atau mencapai 67.255 keluarga. Angka ini terjadi peningkatan dimana pada tahun 2011 berjumlah 62.347 keluarga.

Disamping menggunakan air ledeng meteran, juga terdapat keluarga yang menggunakan sumber air minumnya dari sumur terlindung sebesar 8.378 keluarga atau 10,90%. Setelah itu, 937 keluarga 1,22% keluarga yang menggunakan pompa untuk sumber air minum. Terakhir terdapat sebanyak 7 keluarga atau 0,01%. keluarga yang menggunakan mata air terlindung sebagai sumber air minumnya sebanyak

Kendati tiga indikator PHBS di atas cukup baik, namun berdasarkan data sebagaimana yang digambarkan sebelumnya menunjukkan penyakit TB di Kota Malang tergolong tinggi. Karena itu, tiga indikator PHBS di atas dinilai belum cukup menghantarkan kehidupan masyarakat kota Malang menuju kehidupan sehat atau terhindar dari segala penyakit termasuk penyakit TB.

Berdasarkan hasil wawancara dengan sejumlah informan yang diteliti menunjukkan salah satu indikator PHBS yang belum dapat dihilangkan dalam kehidupan masyarakat adalah kebiasaan batuk dengan tidak menutup mulut dan membuang dahak sembarang. .Kebiasaan batuk dengan tidak menutup mulut dan membuang dahak sembarang dipandang sebagai sumber masalah terciptanya dan meluasnya penyakit TB pada wilayah tertentu di Kota Malang. Persoalan ini tergambar dari pernyataan RN, penderita TB berikut ini

“Saya merenungkan apa yang orang-orang bilang bahwa penyakit TB itu menular melalui udara, itu benar. Saya melihat ketika seseorang Penderita TB ada dilingkungan tertentu maka tidak lama lagi di lingkungan itu muncul penderita TB baru. Ini menurut saya penularannya melalui kebiasaan batuk tidak menutup mulut dan membuang dahak disembarang tempat”.

Bagi mayoritas masyarakat khususnya di Kota Malang, kebiasaan batuk dengan tidak menutup mulut dan membuang dahak sembarang dipandang sebagai kebiasaan yang membudaya dalam kehidupan bermasyarakat. Kebiasaan batuk dengan tidak menutup mulut dan membuang dahak sembarang dalam kehidupan masyarakat tidak memandang usia dan jenis kelamin. Hampir sebagian besar warga masyarakat terbiasa dengan hal itu.

### **Komunikasi yang kurang baik.**

Salah satu kendala besar khususnya penanggulangan TB di Kota Malang yaitu adanya cara pandang penderita TB khususnya penderita TB MDR yang enggan untuk berobat secara tuntas dan berkelanjutan. Cara pandang tersebut dipengaruhi oleh pemahaman mereka tentang dampak pengobatan terhadap kondisi kesehatan lebih lanjut. Berdasarkan informasi yang mereka dapatkan dari petugas kesehatan Poli Penyakit TB

di RSSA Kota Malang, pengobatan TB MDR melalui obat yang disediakan secara terus menerus, yaitu penderita akan mengalami gangguan pengelihan, gangguan saraf, dan kelumpuhan. Berdasarkan informasi ini akhirnya penderita TB MDR tidak mau berobat sesuai saran dan aturan dokter atau rumah sakit tempat berobat. Hal ini sebagaimana yang ditegaskan ibu Ros, Petugas penyuluhan kesehatan masyarakat Puskesmas sebagai berikut:

“Mas kami punya pasien TB MDR, dia enggan berobat. Ini sudah tiga bulan dia gak mau berobat. Masalah ini diakibatkan informasi yang mereka dapatkan dari petugas Poli Penyakit TB RSSA. Penjelasan petugas tentang dampak obat TB MDR menakutkan pasien. Petugas menyampaikan kalau minum obat TB MDR akan berakibat fatal terhadap kondisi kesehatannya lebih lanjut. Jadi menurut saya sumber persoalan ini dari petugas Poli TB RSSA”.

Pada dasarnya penjelasan petugas Poli RSSA telah sesuai dengan penjelasan ilmiah bahwa dampak minum obat TB MDR akan berakibat pada gangguan saraf, gangguan pengelihan, kelumpuhan, dan banyak gangguan kesehatan lain. Kendati demikian, menurut Ibu Rosita komunikasi kepada pasien penderita TB MDR dibutuhkan keterampilan khusus.

“Mestinya petugas Poli TB RSSA harus menyampaikan informasi tentang dampak obat TB MDR tidak seperti itu yang menakutkan. Mestinya harus ada komunikasi yang membuat pasien TB MDR tidak merasa ketakutan meskipun memang seperti itu dampaknya. Kalau pasien TB MDR sudah merasa ketakutan untuk berobat maka kami sebagai petugas pendampingan pengobatan TB MDR di lapangan mengalami kesulitan untuk membujuk dan merayu mereka untuk berobat”.

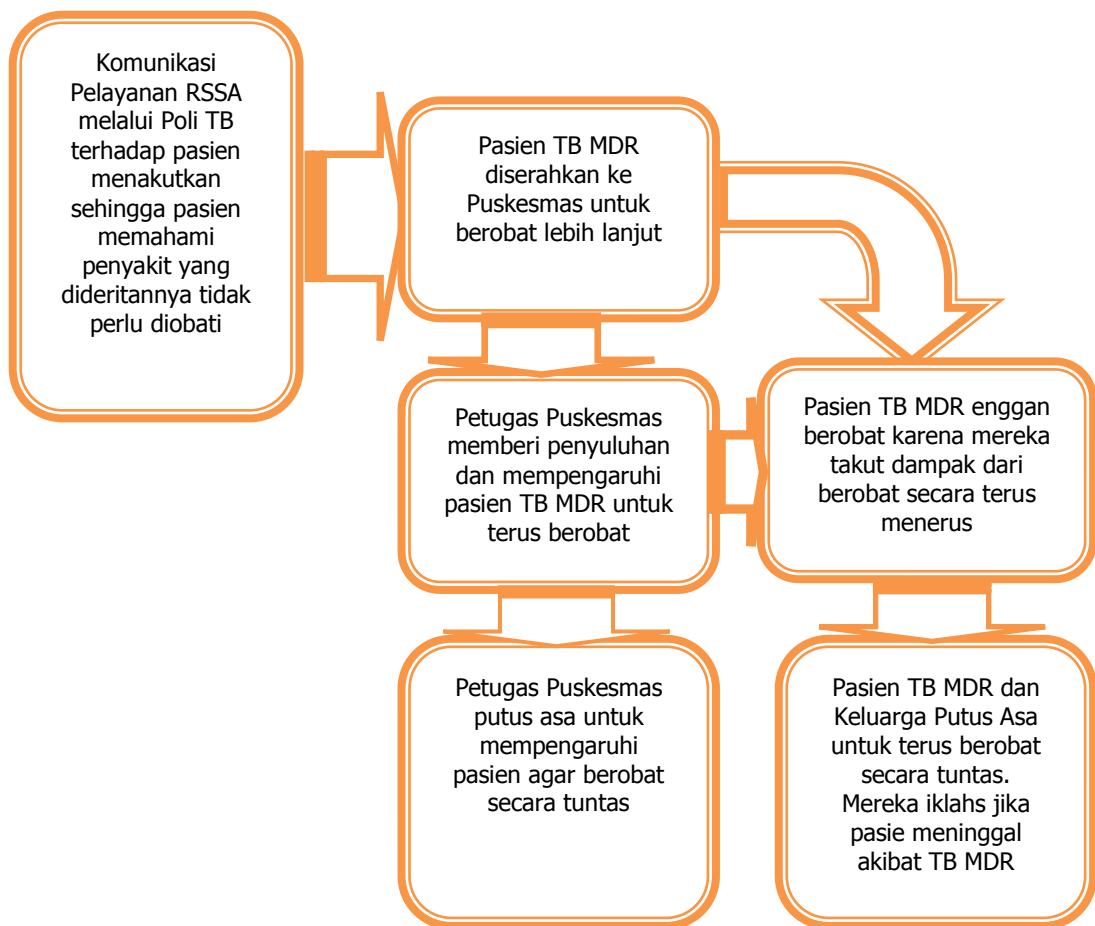
Observasi kami di Poli TB RSSA Kota Malang menggambarkan keterampilan petugas Poli TB dalam berkomunikasi memang kurang baik. Mereka melayani penderita TB khususnya TB MDR tidak begitu baik, bahkan kami menjumpai penderita TB MDR dilayani dengan komunikasi yang tidak ramah, tidak menyenangkan. Komunikasi petugas seperti ini juga berlangsung kepada keluarga pasien TB. Komunikasi yang kurang baik ini, kebanyakan dilakukan oleh petugas yang statusnya masih magang. Hal ini juga sebagaimana yang dinyatakan Ibu Ros seperti berikut ini:

“Petugas Poli TB RSSA kebanyakan para magang. Para magang ini komunikasinya masih belum baik. Mereka berkomunikasi tanpa memikirkan akibat dari pesan yang disampaikan. Sebaiknya petugas yang ditempatkan di Poli TB khususnya yang melayani dan memberikan informasi kepada pasien harus petugas yang memiliki kecakapan dalam komunikasi dan memiliki pengalaman khusus dalam melayani penderita TB khususnya TB MDR. Sebaiknya begitu supaya ketika berobat lanjutan di Puskesmas tidak mengalami kesulitan”.

Akibat komunikasi seperti ini bukan saja mengakibatkan ketakutan bagi pasien, tetapi juga mengakibatkan keluarga pasien untuk mendukung sikap pasien untuk tidak melanjutkan pengobatan. Yang lebih menyedihkan mereka besikap apatis dan fatalistic, karena mereka lebih mengikhlaskan jika suatu saat nanti keluarganya yang menderita penyakit TB meninggal. Sikap-sikap yang demikian tentu mempersulit petugas penyuluhan kesehatan masyarakat untuk membujuk dan mengajak penderita TB MDR berobat secara tuntas sebagaimana aturan dokter di RSSA. Kesulitan-kesulitan ini sebagaimana pengakuan petugas Puskesma Janti sebagaimana penjelasannya berikut ini:

“Saya sudah mengajak pasien TB MDR untuk terus berobat bekali-kali, tapi tetap saja dia menolak untuk berobat. Yang lebih parah lagi semua keluarga pasien itu sepakat agar si penderita untuk tidak berobat. Kalau semua anggota keluarganya seperti itu lalu kita mau berbuat apa. Akhirnya kami tidak mengunjungi pasien itu lagi. Kami tidak mau lagi membujuk pasien itu”.

Proses terciptanya kompleksitas persoalan tersebut dapat digambarkan melalui gambar berikut ini.



**Gambar 9.** Proses Komunikasi Petugas Kesehatan Hingga Membuat Pasien TB MDR Enggan Berobat

Keberadaan pasien TB MDR adalah sangat membahayakan lingkungan sosialnya, baik keluarga, kelompok, maupun komunitasnya. Menurut banyak ahli, satu orang penderita TB MDR yang tidak mau berobat secara tuntas maka besar kemungkinan akan menular secara cepat kepada masyarakat sekitar terutama dilingkungan keluarga. Karena itu, keputusasaan pasien TB MDR, keluarga, dan petugas puskesmas mestinya harus dihindari. Tidak dapat berobat satu TB MDR sama halnya menciptakan banyak penderita TB lainnya. Hal ini juga disampaikan oleh Ketua Tuberculosis Foundation (KNCV) Wilayah Jawa Timur, sebagai berikut:

"TB MDR merupakan TB yang paling berbahaya diantara jenis TB lainnya. Karena itu, mestinya penangan TB MDR harus dilakukan secara tuntas bagaimanapun caranya. Untuk menangani hal ini KNCV bekerjasama dengan pihak RSSA, dan beberapa puskesmas di Kota Malang. Kami KNCV melakukan pendampingan TB MDR dari mulai cek di RSSA hingga pengobatan lebih lanjut di Puskesmas-Puskesmas Kota Malang".

KNCV sebagai LSM internasional tentunya sangat memahami kondisi pelayanan TB MDR di RSSA. Mereka mengakui kondisi pelayanan di RSSA belum dikatakan baik. Hasil observasi kami, terdapat beberapa anggota keluarga mendampingi saudaranya yang berobat TB MDR dengan menginap di lorong-lorong gedung RSSA, dan tanpa memakai pengaman anti virus TB MDR. Menurut aktivis KNCV mestinya kondisi layanan seperti ini tidak perlu terjadi di rumah sakit sebesar RSSA ini. Selain itu, menurut mereka petugas yang layani pasien TB di Poli TB RSSA belum memiliki pengalaman yang cukup sebagaimana uraian di atas.

KNCV tidak menginginkan jika pasien TB MDR tidak berobat secara tuntas. KNCV melalui *Global Fun* berusaha memberikan bantuan kepada pasien TB MDR berupa biaya obat, transport, dan susu untuk diminum secara rutin. Selain itu, KNCV bekerjasama dengan puskesmas-puskesmas melakukan penyuluhan dan sosialisasi kepada warga masyarakat Kota Malang tentang bahaya TB MDR dengan harapan warga dapat melakukan cek kesehatan, jika positif TB maka warga diharapkan dapat berobat sesuai aturan dokter. Namun peran KNCV hanya sekedar fasilitator sedangkan yang berperan penting dalam melakukan penyuluhan dan penanggulangan TB MDR adalah puskesmas.

"Kami KNCV sebagai fasilitator dan memberikan dukungan kepada RSSA dan Puskesmas untuk berupaya melakukan pencegahan dan penanggulangan TB MDR. Kami hanya menyediakan dana tambahan untuk menjalankan program pencegahan dan penanggulangan TB MDR. Sebenarnya yang memiliki peran penting dalam hal ini adalah RSSA dan Puskesmas. RSSA lakukan pengecekan dan pengibatan awal TB MDR selanjutnya pengobatan lebih lanjut diserahkan ke puskesmas. Nah puskesmas memiliki peran penting dalam konteks ini. Mereka yang harus kontrol secara terus menerus bagaimana kondisi TB MDR".

Penjelasan KNCV menunjukkan bahwa mereka tidak memiliki kewenangan yang kuat untuk mengatur para pasien TB MDR hingga tuntas. KNCV menaruh harapan besar terhadap pemerintah daerah Kota Malang untuk mendorong dan mendukung puskesmas dalam melakukan pencegahan dan penanggulangan TB MDR. Dorongan dan dukungan pemerintah dapat berupa anggaran, fasilitas yang memadai, dan tenaga kesehatan yang mencukupi.

### **Buruknya Pelayanan Publik Pemicu TB**

Banyaknya penderita penyakit TB di Kota Malang juga diakibatkan adanya pelayanan publik diselenggarakan pemerintah kota malang yang kurang baik. Berdasarkan informasi yang kami dapatkan dari informan penelitian, sekilas menunjukkan pelayanan kesehatan pemerintah kota malang telah berpihak pada pelayanan responsif bagi warga penderita TB. Penderita TB di Kota Malang telah dilayani melalui pengobatan gratis di tingkat puskesmas sebagaimana pernyataan RN berikut ini.

"Kebijakan pemerintah untuk menanggulangi Penyakit TB, diwujudkan dalam bentuk program pemberian obat gratis untuk semua jenis penyakit TB, mulai dari TB Paru, TB anak, TB HIV. Program pengobatan gratis ini diberikan kepada pasien yang sudah

terindikasi positif terjangkit penyakit TB dan program pengobatan gratis ini diberikan oleh pemerintah sampai pasien TB benar-benar sembuh. Pasien yang terindikasi positif TB akan segera ditangani dan dirujuk ke Rumah Sakit atau Puskesmas terdekat”.

Penjelasan informan penelitian di atas menunjukkan mereka telah dilayani dengan baik melalui pengobatan gratis di tingkat puskesmas. Pada sisi lain kami menemukan pelayanan publik kota malang dinilai belum optimal untuk mewujudkan kota malang bebas atau terhindari dari penyakit TB. Hal ini terlihat dari tidak proporsionalnya tenaga kesehatan dan jumlah puskesmas Kota Malang, sebagaimana terlihat pada tabel berikut ini.

**Tabel 7**  
Tenaga Kesehatan dan Jumlah Puskesmas Kota Malang

No	Jenis Ketenagaan	Puskesmas*	Dinas Kesehatan
1	Medis	75	7
2	Paramedis	246	29
3	Farmasi	30	10
4	Gizi	24	6
5	Teknis Medis	22	1
6	Sanitasi	18	7
7	Penyuluhan Kesehatan Masyarakat	3	10
<b>JUMLAH</b>		<b>418</b>	<b>70</b>

Sumber: Diolah dari Buku Kesehatan Dinas Kesehatan Kota Malang  
Tahun 2013.

Di Kota Malang terdapat 48 Puskesmas terdiri dari 4 puskesmas perawatan, 11 puskesmas non perawatan, dan puskesmas 33 pembantu). Pada tabel di atas terlihat hanya 3 orang penyuluhan kesehatan masyarakat yang ada di 48 puskesmas di Kota Malang. Jumlah tersebut sangat tidak proporsional dengan jumlah puskesmas yang ada di kota malang. Padahal keberadaan tenaga penyuluhan kesehatan masyarakat di puskesmas sangat penting untuk memberikan kesadaran bagi warga masyarakat untuk hidup sehat. Selain itu, bagi warga masyarakat terutama penderita TB keberadaan puskesmas dipandang sebagai sarana penting untuk mendapatkan pelayanan kesehatan yang murah dan gratis.

Selain minimnya tenaga kesehatan masyarakat, di puskesmas juga dinilai minimnya tenaga teknis medis. Berdasarkan tabel di atas menunjukkan hanya 22 tenaga teknis medis untuk 48 puskesmas di Kota Malang. Jumlah tenaga teknis medis ini juga dinilai tidak proporsional dengan jumlah puskesmas di Kota Malang.

Jumlah tenaga sanitasi di puskesmas sebanyak 18 orang dinilai belum cukup untuk dapat melayani secara efektif. Hal ini karena jumlah tersebut tidak mungkin bisa memberi pelayanan sanitasi di segala level kehidupan masyarakat. .

Pada sisi jumlah sarana kesehatan, Pemerintah Kota Malang dinilai cukup baik. Dinas Kesehatan Kota Malang memiliki sarana pelayanan kesehatan masyarakat, yang terdiri dari 4 UPT Puskesmas Perawatan, 11 UPT Puskesmas Non Perawatan, 33 Puskesmas Pembantu, UPT Laboratorium Kesehatan, UPT Rumah Bersalin, UPT Pusat Pelayanan Kesehatan Olahraga (PPKO), UPT Pertolongan Pertama Pada Kecelakaan (P3K) dan gudang farmasi.

Sarana penunjang kegiatan pelayanan lainnya adalah mobil puskesmas keliling yang berjumlah 15 mobil dan kendaraan operasional yang berjumlah 45 sepeda motor dan tersebar di kantor Dinas Kesehatan ataupun di UPT yang ada. Jumlah alat transportasi tersebut tentu sudah cukup untuk meningkatkan mobilitas dalam memberi pelayanan kesehatan secara maksimal.

Pembangunan kesehatan di Kota Malang juga didukung oleh banyak pihak. Selain dibantu dengan keberadaan UPT (Unit Pelaksana Teknis) seperti puskesmas, rumah bersalin, pusat pelayanan kesehatan olahraga, laboratorium kesehatan dan pertolongan pertama pada kecelakaan, Dinas Kesehatan juga dibantu dengan keberadaan pelayanan kesehatan atau sarana kesehatan pemerintah dan swasta yang ada dan tersebar di Kota Malang. Selain itu, peran serta masyarakat melalui kader kesehatan dan berbagai UKBM yang berkembang telah berperan menjadi penggerak pembangunan kesehatan.

Hingga tahun 2012, jumlah sarana pelayanan kesehatan yang ada di Kota Malang adalah sebagai berikut

**Tabel 8**  
Jenis dan Jumlah Pelayanan Kesehatan di Kota Malang Tahun 2012

No	Pelayanan Kesehatan	Pemerintah	Swasta	Total
1	Rumah Sakit Umum	3	6	9
2	Rumah Sakit Khusus	0	14	14
3	Rumah Bersalin	1	0	1
4	Puskesmas Perawatan	4	-	4
5	Puskesmas Non Perawatan	11	-	11
6	Puskesmas Pembantu	33	-	33
7	Balai Pengobatan/ Klinik	-	44	44
8	Posyandu	-	656	656
9	Poskeskel	57	-	57
10	Apotek	16	190	206

Sumber : Dinas Kesehatan Kota Malang, 2013

Meskipun jumlah sarana kesehatan di atas cukup banyak, namun faktanya belum mendukung terselenggaranya program pencegahan dan pengobatan penyakit TB di Kota Malang secara maksimal. Hal ini karena warga masyarakat khususnya penderita TB hanya dapat mengakses pelayanan pengobatan gratis di tingkat puskesmas. Sementara untuk mendapatkan akses pelayanan di tingkat rumah sakit umum, poliklinik, dan dokter praktik, penderita TB masih mengalami kesulitan, karena harus mengeluarkan beaya yang tidak murah. Hal ini sebagaimana yang dikatakan oleh penderita TB yang bernama RN sebagai berikut;

“Sementara itu untuk obat gratis, Pasien TB hanya bisa mengambil di Puskesmas saja karena Rumah Sakit tidak menyediakan fasilitas obat gratis, karena Rumah Sakit mengikuti resep dokter sehingga untuk pasien TB diharuskan membeli obat di rumah sakit yang harganya cukup mahal”.

Peran kader kesehatan yang dibentuk dinas kesehatan kota malang dinilai belum maksimal dalam mengidentifikasi penderita TB di Kota Malang. Diakui RN banyak penderita TB yang belum terdata oleh dinas kesehatan. Bahkan seringkali dinas kesehatan keliru dalam mendata penderita TB di Kota Malang. Sehingga peran kader

kesehatan seringkali tidak tepat sasaran, dan juga dalam menjalankan tugas dan fungsinya hanya sekedar formalitas sehingga tidak berdampak baik bagi pencegahan dan pengobatan penyakit TB di Kota Malang.

Pada konteks ini kami melihat saran dan prasarana pendukung pelayanan kesehatan pemerintah Kota Malang yang dituangkan dalam dokumen kebijakan seperti Rencana Kerja dan Rencana Strategis Dinas Kesehatan Kota Malang tidak sejalan dengan praktik atau kondisi pelayanan kesehatan yang diterima oleh warga masyarakat Kota Malang. Karena itu, kinerja pelayanan kesehatan pemerintah Kota Malang yang menunjukkan telah mencapai standar pelayanan minimum (SPM) sebagaimana tabel di bawah ini patut dipertanyakan dan dikritisi sebagai upaya untuk menemukan formulasi kebijakan pelayanan kesehatan yang tepat.

**Tabel 9**  
SPM Dinkes Kota Malang

Cakupan penemuan dan penanganan penderita penyakit		2010	2011	2012
1	Penemuan penderita AFP	2,14	0,00	0,53
2	Penemuan dan penanganan penderita pneumonia balita	15,46%	17,18%	20,12%
3	Penemuan dan penanganan pasien baru TB BTA positif	76,80%	69,93	65,34%
4	Penemuan dan penanganan DBD	100%	100%	100%
5	Penanganan penderita diare	42,98%	46,28%	47,25%

Sumber: Renja Dinas Kota Malang Tahun 2013.

### **Minimnya Keberpihakan Program dan Kebijakan Anggaran untuk TB di Kota Malang**

Penjelasan tentang kualitas pelayanan kesehatan di atas menunjukkan minimnya komitmen pemerintah daerah dalam mengawal pencegahan dan pengobatan penyakit TB di Kota Malang. Minimnya komitmen itu juga ditunjukkan melalui minimnya program-program strategis dan kebijakan anggaran untuk pencegahan dan penanggulangan penyakit TB di Kota Malang.

Tim peneliti menelusuri data primer berupa kebijakan pemerintah Kota Malang yang mengatur tentang kesehatan terlihat jelas didalamnya tidak terdapat program strategis dan anggaran yang berpihak pada pencegahan dan penanggulangan penyakit TB di Kota Malang. Dalam Rencana Strategis Dinas Kesehatan Kota Malang Tahun 2013 terdapat tujuh sasaran program strategis. Tujuh sasaran program strategis tersebut minim yang terkait langsung dengan pencegahan dan penanggulangan penyakit TB di Kota Malang. Kami menilaia Renstra Dinas Kesehatan Kota Malang tidak berpihak pada persoalan pencegahan dan penanggulangan TB di Kota Malang. Berikut kami menjelaskan tujuh program strategis yang dimaksud beserta analisis masing-masing.

**SASARAN PERTAMA :Meningkatnya pelayanan kesehatan dasar dan rujukan yang bermutu.** Menurut peneliti secara tidak langsung sasaran pertama sangat terkait dengan pelayanan pencegahan dan penanggulangan penyakit TB. Dengan sasaran pertama ini diharapkan pederita TB di Kota Malang dapat dilayani dengan baik. Pertanyaannya

adalah, adakah program kegiatan untuk mewujudkan sasaran tersebut yang mendukung pelayanan pencegahan dan penanggulangan penyakit TB? Untuk menjawab pertanyaan ini perlu dianalisi program kegiatan yang disusun dinas kesehatan kota malang untuk mewujudkan sasaran pertama sebagai berikut.

- a. Program Upaya Kesehatan Masyarakat. Program ini didukung dengan beberapa kegiatan, yaitu :
  - 1) Pelayanan kesehatan penduduk miskin di puskesmas dan jaringannya.
  - 2) Peningkatan kuantitas dan kualitas pelayanan kesehatan masyarakat.
  - 3) Peningkatan pelayanan kesehatan peserta ASKES sosial/ PNS.
  - 4) Penyelenggaraan perizinan sarana dan tenaga kesehatan.
  - 5) Pemilihan tenaga kesehatan teladan Kota Malang.
  - 6) Penilaian kinerja puskesmas Kota Malang.
  - 7) Pengadaan dan pemeliharaan sertifikasi ISO 9001 : 2008.

Program upaya kesehatan di atas dilaksanakan dengan tujuh kegiatan.

Ketujuh kegiatan tersebut hanya dua kegiatan yang terkait dengan pelayanan kesehatan masyarakat yaitu (a) Pelayanan kesehatan penduduk miskin di puskesmas dan jaringannya, dan (b) Peningkatan kuantitas dan kualitas pelayanan kesehatan masyarakat. Kedua kegiatan tersebut juga dinilai tidak secara langsung mengupayakan pelayanan pencegahan dan penanggulangan TB di Kota Malang.

Sedangkan lima kegiatan lainnya tidak terkait dengan upaya pelayanan kesehatan masyarakat terutama yang berkaitan dengan pelayanan pencegahan dan penanggulangan penyakit TB di Kota Malang adalah sebagai beriku;:

1. Program pengadaan, peningkatan dan perbaikan sarana dan prasarana puskesmas/ puskesmas pembantu dan jaringannya. Program ini didukung dengan beberapa kegiatan :
  - a) Pemeliharaan rutin/ berkala alat-alat kesehatan di puskesmas perawatan, puskesmas non perawatan dan puskesmas pembantu.
  - b) Pemeliharaan rutin/ berkala bangunan puskesmas perawatan, puskesmas non perawatan dan puskesmas pembantu.
  - c) Pembangunan puskesmas perawatan, puskesmas non perawatan dan puskesmas pembantu.

Perbaikan sarana dan prasarana Puskesmas dipandang sebagai upaya yang baik dari pemerintah Kota Malang melalui Dinas Kesehatan Kota Malang dalam memperbaiki kualitas pelayanan kesehatan untuk warga masyarakat Kota Malang. Melalui sarana puskesmas diharapkan warga masyarakat terutama penderita TB mendapatkan akses pelayanan publik yang baik dan berkualitas.

Hemat kami dan berdasarkan hasil wawancara, persoalan yang perlu diupayakan perbaikan adalah penambahan tenaga pelayanan kesehatan di setiap puskesmas Kota Malang. Perbaikan sarana fisik tiga point kegiatan di atas tidak bermakna baik jika tidak diikuti dengan penambahan jumlah tenaga kesehatan.

Pada analisis sebelumnya, menunjukkan bahwa tenaga kesehatan di puskesmas tidak proposional dengan jumlah pusksemas di Malang. Padahal penderita TB lebih senang berobat di puskesmas daripada di rumah sakit umum. Hal ini karena selain jaraknya yang dekat dengan rumah, puskesmas menyediakan obat gratis bagi penderita TB, sedangkan di rumah sakit umum tidak tersedia obat gratis.

2. Program pengadaan, peningkatan sarana dan prasarana rumah sakit/ rumah sakit jiwa/ rumah sakit paru-paru/ rumah sakit mata. Program ini didukung dengan beberapa kegiatan, yaitu :

- a) Pemeliharaan rutin/ berkala alat-alat kesehatan di rumah sakit Pemerintah Kota Malang.
- b) Pemeliharaan rutin/ berkala bangunan rumah sakit.
- c) Pembangunan dan pengembangan rumah sakit Pemerintah Kota Malang.

Secara umum program pengadaan, peningkatan sarana dan prasarana rumah sakit dianggap berpengaruh baik terhadap kualitas pelayanan kesehatan masyarakat. Namun perlu dipahami bahwa pelayanan kesehatan rumah sakit tidak semua masyarakat terutama penderita TB dapat mengaksesnya karena pelayanan rumah sakit berbasiskan biaya. Karena itu, penderita TB terutama bagi yang tidak mampu tidak mendapatkan pelayanan dari rumah sakit. Terlebih hingga kini kota Malang belum memiliki Rumah Sakit Daerah (RSUD) sendiri. Dengan demikian, keberadaan rumah sakit hanya relevan bagi penderita TB bagi golongan masyarakat kaya..

**SASARAN KEDUA :Terwujudnya ketersediaan obat dan sediaan farmasi yang bermutu dan peningkatan mutu pelayanan kefarmasian.** Sasaran kedua dipandang sebagai sasaran utama untuk mendukung program pencegahan dan penanggulangan penyakit TB di Kota Malang.

Untuk mencapai sasaran terwujudnya ketersediaan obat dan sediaan farmasi yang bermutu, maka Dinas Kesehatan Kota Malang menetapkan program yang hendak dilakukan adalah : Program obat dan perbekalan. Program ini didukung dengan beberapa kegiatan, yaitu :

- a. Pengadaan obat untuk pelayanan kesehatan dasar di Puskesmas.
- b. Sosialisasi obat, obat tradisional, alat kesehatan dan kosmetika yang aman kepada masyarakat.
- c. Bimbingan teknis tentang obat, obat tradisional, alat kesehatan dan kosmetika kepada tenaga kesehatan.

Tiga kegiatan di atas terutama kegiatan nomor satu yaitu pengadaan obat untuk pelayanan kesehatan dasar di Puskesmas dipandang sebagai upaya tepat untuk meningkatkan pelayanan kesehatan masyarakat. Kualitas kesehatan masyarakat terutama bagi penderita TB sangat tergantung dari kesediaan obat. Pengadaan obat untuk pelayanan kesehatan dasar di Puskesmas merupakan keharusan yang perlu dilakukan oleh pemerintah Kota Malang, karena ketersediaan obat khususnya obat gratis bagi masyarakat di Puskesmas sangat membantu penderita TB di Kota Malang sebagaimana hasil wawancara kami dengan informan penelitian di atas.

**SASARAN KETIGA : Menurunkan angka kematian ibu dan anak..** Untuk mencapai sasaran menurunkan angka kematian ibu melahirkan dan anak, maka program yang hendak dilakukan adalah :

- a. Program peningkatan keselamatan ibu melahirkan dan anak. Program ini didukung oleh beberapa kegiatan, yaitu :
  - 1) Audit Maternal Perinatal (AMP).
  - 2) Upaya peningkatan pelaksanaan asuhan kebidanan.
  - 3) Upaya pemantapan pemanfaatan buku KIA.

- 4) Peningkatan pemberdayaan masyarakat dalam pelaksanaan program kelurahan siaga dengan P4K (program perencanaan persalinan dan pencegahan komplikasi).
- b. Program peningkatan pelayanan kesehatan anak balita. Program ini didukung oleh beberapa kegiatan, yaitu :
  - a) Penguatan stimulasi deteksi dan intervensi dini tumbuh kembang (SDIDTK) balita dan akan prasekolah.
  - b) Upaya peningkatan pelaksanaan manajemen terpadu bayi muda dan balita sakit (MTBM dan MTBS)

Secara umum sasaran ketiga dipahami tidak terkait dengan pelayanan kesehatan masyarakat dalam bidang pencegahan dan penanggulangan penyakit TB. Pada dasarnya hemat kami, persoalan penanggulangan atau menurunkan angka kematian ibu dan anak merupakan hal yang terkait dengan penanggulangan dan pencegahan penyakit TB. Karena penyakit TB sejatinya dapat dicegah sejak dini yaitu sebelum anak lahir dan balita.

Pada program kedua yaitu Program meningkatkan pelayanan kesehatan anak balita terdapat kegiatan upaya peningkatan pelaksanaan manajemen terpadu bayi muda dan balita sakit (MTBM dan MTBS). Mestinya kegiatan tersebut dapat dikaitkan dengan upaya pencegahan dan penanggulangan TB sejak dini.

**SASARAN KEEMPAT: Peningkatan status kesehatan dan gizi masyarakat.** Untuk mencapai sasaran peningkatan status gizi masyarakat, maka program yang hendak dilakukan adalah :Program perbaikan gizi masyarakat. Program ini didukung dengan beberapa kegiatan, yaitu :

- a. Pemberdayaan masyarakat untuk pencapaian keluarga sadar gizi.
- b. Penanggulangan kekurangan energi protein/ gizi buruk dan gizi kurang.
- c. Penanggulangan anemia gizi besi.
- d. Penanggulangan kekurangan vitamin A.
- e. Penanggulangan gangguan akibat kekurangan yodium.
- f. Pemberian makanan pendamping ASI dalam rangka kewaspadaan pangan dan gizi.
- g. Pemantapan pelatihan tata laksana gizi buruk dan gizi kurang.

Sasaran keempat dipandang sebagai sasaran program yang strategis untuk mendukung pencegahan dan penanggulangan penyakit TB. Argumentasi dasar yang mendukung asumsi tersebut adalah akibat munculnya penyakit TB yaitu kurangnya gizi dalam diri manusia, dan minimnya kesadaran masyarakat untuk hidup sehat (bergizi).

Pada praktinya implementasi program tersebut dinilai masih sangat konvensional yaitu dilakukan secara kondisional tanpa ada keteraturan dan pelaksanaan yang berkelanjutan. Selain itu program ini tidak didugung anggaran maksimal sebagaimana yang dijelaskan pada bagian akhir tulisan ini.

**SASARAN KELIMA : Menurunkan angka kesakitan, kecacatan dan kematian akibat penyakit.** Sasaran kelima ini merupakan sasaran program yang tepat dan terkait langsung dengan pencegahan dan penanggulangan penyakit TB. Untuk mencapai sasaran menurunkan angka kesakitan, kecacatan dan kematian akibat penyakit, maka program yang hendak dilakukan Dinas Kesehatan Kota Malang adalah :Program

pencegahan dan penanggulangan penyakit menular. Program ini didukung dengan beberapa kegiatan, yaitu :

- a. Peningkatan imunisasi.
- b. Peningkatan surveillance epidemiologi dan penanggulangan wabah.
- c. Pelayanan pencegahan dan penanggulangan penyakit menular.
- d. Pencegahan dan pengendalian HIV/ AIDS.
- e. Penemuan dan penanganan penyakit TB paru.
- f. Penemuan dan penanganan penyakit DBD.
- g. Penanganan penderita diare.
- h. Penanganan penderita pneumonia balita.
- i. Penanganan penderita kusta.

Sasaran kelima ini dipandang sebagai sasaran program yang relevan dengan kajian penelitian ini karena pada sasaran program ini terdapat empat kegiatan yang terkait dengan penyakit TB, yaitu Peningkatan surveillance epidemiologi dan penanggulangan wabah, Pelayanan pencegahan dan penanggulangan penyakit menular, Pencegahan dan pengendalian HIV/ AIDS, Penemuan dan penanganan penyakit TB paru. Masing-masing sasaran merupakan satu kesatuan yang saling terkait antara satu dengan yang lain.

Harapan pada sasaran kelima ini adalah program kegiatanya didukung oleh kemampuan anggaran sebagai supprot utama untuk melaksanakan kegiatan yang berdampak nyata bagi penanggulangan dan pencegahan penyakit TB di Kota Malang. Sayangnya, Pemerintah Kota Malang, belum mengalokasikan anggaran yang memadai sehingga tidak dapat dilaksanakan secara baik dan berdampak nyata bagi pencegahan dan penanggulangan penyakit TB di Kota Malang.

**SASARAN KEENAM : Mewujudkan lingkungan hidup yang bersih dan sehat.** Sasaran keenam dipandang sebagai program strategis dalam mendukung pencegahan dan penanggulangan penyakit TB. Sebagaimana yang diuraikan pada penjelasan sebelumnya tingginya angka TB di Kota Malang salah satunya disebabkan minimnya prilaku hidup sehat dan bersih warga masyarakat kota malang. Karena itu, program ini perlu diimplementasikan secara nyata dan bertanggungjawab.

Untuk mencapai sasaran mewujudkan lingkungan hidup yang bersih dan sehat, maka Dinas Kesehatan Kota Malang merumuskan program yang hendak dilakukan adalah :Program pengembangan lingkungan sehat. Program ini didukung dengan beberapa kegiatan, yaitu :

- a. Penyuluhan menciptakan lingkungan sehat.
- b. Pengembangan kota sehat.
- c. Peningkatan kemampuan petugas dalam bidang kesehatan lingkungan dan analisis mengenai dampak lingkungan.

**SASARAN KETUJUH : Meningkatkan perilaku hidup bersih dan sehat, dan peran serta aktif masyarakat di bidang kesehatan.** Sasaran ketujuh merupakan satu kesatuan dengan sasaran keenam. Karena itu sasaran program juga dipandang sebagai program pendukung pencegahan dan penanggulangan penyakit TB.

Untuk mencapai sasaran meningkatkan perilaku hidup bersih dan sehat, dan peran serta aktif masyarakat di bidang kesehatan, maka program yang hendak dilakukan adalah :Program promosi kesehatan dan pemberdayaan masyarakat. Program ini didukung dengan beberapa kegiatan, yaitu :

- a. Pemantapan program bina kesehatan bersumber daya masyarakat.
- b. Pengkajian rumah tangga sehat dalam rangka mengaktifkan kelurahan siaga aktif.
- c. Pembuatan media penyuluhan.
- d. Temu kader posyandu.
- e. Pelatihan kader keluarga siaga.
- f. Lomba posyandu balita.

### **Minimnya Keberpihakan Kebijakan Anggaran Pelayanan Kesehatan**

Program dan kegiatan pembangunan Dinas Kesehatan Kota Malang yang diuraikan di atas perlu didukung kebijakan anggaran yang memadai, yaitu anggaran yang cukup untuk mendukung terlaksananya ketujuh sasaran program dan kegiatan di atas. Karena itu, jika program dan kegiatan di atas tidak didukung anggaran yang memadai maka sulit untuk mencapai kota Malang bebas dari TB.

Persoalan yang ditemukan pada analisis program dan kegiatan pelayanan kesehatan Dinas Kesehatan Kota Malang yang dijelaskan di atas menunjukkan komitmen pemerintah Daerah Kota Malang dalam penanggulangan dan pencegahan penyakit TB sangat minim. Jika komitmen minim ini diikuti kebijakan anggaran yang tidak mengarah pada pencegahan dan penanggulangan penyakit TB, maka pemerintah Kota Malang betul-betul jauh dari *senses of responsibility* terhadap penderita penyakit TB.

Alokasi anggaran Pemerintah Kota Malang untuk bidang kesehatan pada tahun 2013 meningkat jika dibandingkan dengan alokasi anggaran pada tahun 2012. Pada tahun 2013, alokasi anggaran untuk pembangunan kesehatan mencapai Rp. 87.372.798.432,14 atau meningkat 1,18 kali dari anggaran tahun 2012 yang mencapai Rp. 73.776.937.274,04. Perbandingan antara alokasi anggaran untuk pembangunan kesehatan terhadap pembangunan Kota Malang secara keseluruhan dapat dilihat pada gambar dibawah ini :



Sumber: Renja Dinkes Kota Malang Tahun 2013.

**Gambar 10.** Anggaran Dinkes Kota Malang TA 2013

Secara umum Pemerintah Kota Malang belum menunjukkan sikap keberpihakannya terhadap pelayanan kesehatan. Sejatinya berdasarkan undang-undang kesehatan,

anggaran untuk bidang kesehatan harus mencapai 10% dari APBD. Pada praktinya di Kota Malang belum mencapai sebesar 10%. Pada tahun 2011 anggaran kesehatan hanya 5,7%, tahun 2012 menurun menjadi 5,1% dan tahun 2013 meningkat menjadi 6,22%.

**Tabel 10**  
Jumlah Belanja Dinas Kesehatan Tiga Tahun Terakhir dari Total APBD Kota Malang

TA	Total APBD	Belanja Dinkes	%
2011	1.010.799.330.814,29	7.809.000.000,00	<b>5,7</b>
2012	1.212.000.000.000,00	62.525.681.000,00	<b>5,1</b>
2013	1.500.000.000.000,00	93.300.000.000,00	<b>6,22</b>

Sumber: Diolah dari Renstra Dinskes, Renja Dinkes, dan Buku Profil Kesehatan Dinkes, 2013.

Jika kita telaah kembali anggaran tersebut di atas dikaitkan dengan program menurunkan angka kesakitan, kecacatan dan kematian akibat penyakit, maka kita temukan anggaran yang sangat minim sekali. Pada tahun 2011 anggaran menurunkan angka kesakitan, kecacatan dan kematian akibat penyakit hanya dialokasikan 0,47 % dari total APBD. Pada tahun-tahun berikutnya, anggaran menurunkan angka kesakitan, kecacatan dan kematian akibat penyakit, semakin menurun, menjadi 0,2 % pada tahun 2012 dan menurun menjadi 0,1 pada tahun 2013.

**Tabel 11**  
Perbandingan Jumlah Anggaran Menurunkan Angka Kesakitan, Kecacatan Dan Kematian Akibat Penyakit Dari Total APBD Kota Malang  
TA 2011, 2012, 2013

TA	Total APBD	Anggaran Penyakit Menular	%
2011	1.010.799.330.814,29	4.716.681.000,00	<b>0,47</b>
2012	1.212.000.000.000,00	2.321.972.200,00	<b>0,2</b>
2013	1.500.000.000.000,00	1.499.350.900,00	<b>0,1</b>

Sumber: Diolah dari Renstra Dinskes, Renja Dinkes, dan Buku Profil Kesehatan Dinkes, 2013.

Sementara itu, alokasi anggaran yang secara khusus terkait dengan penyakit TB, juga mengalami penurunan dari tahun ke tahun. Pada tahun 2011, anggaran untuk penanggulangan TB sebesar 0,004 dari total APBD. Jumlah tersebut menurun menjadi 0,01 pada tahun 2012, dan menurun lagi menjadi 0,003 pada tahun 2013. Hal ini semakin menunjukkan komitmen pemerintah Kota Malang tidak memiliki kebijakan anggaran pro pencegahan dan penanggulangan penyakit menular seperti TB. Berikut anggaran untuk penanggulangan TB dari total anggaran belanja Dinkes Kota Malang (TA 2011, 2012, 2013).

**Tabel 12**  
Perbandingan Jumlah Anggaran Penanggulangan TB dari Total Belanja Dinkes Kota Malang TA 2011, 2012, 2013.

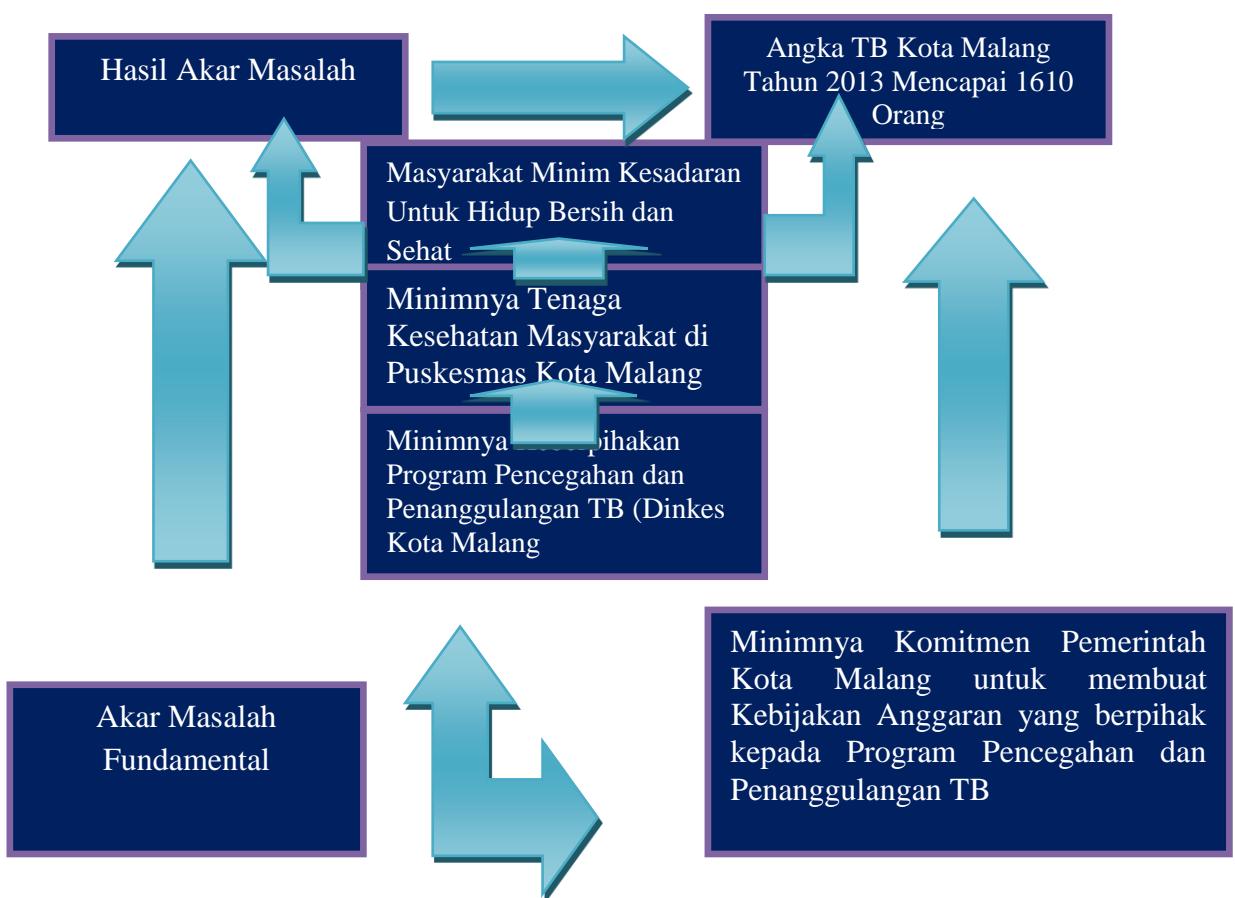
TA	Total APBD	Anggaran TB	%
2011	1.010.799.330.814,29	409.502.000,00	<b>0,04</b>
2012	1.212.000.000.000,00	145.423.400,00	<b>0,01</b>
2013	1.500.000.000.000,00	57.837.800,00	<b>0,003</b>

Sumber: Diolah dari Renstra Dinskes, Renja Dinkes, dan Buku Profil Kesehatan Dinkes, 2013

Jumlah anggaran khusus untuk program pencegahan dan penanggulangan penyakit TB semakin jauh dari harapan karena tidak lebih dari 0,1% dari total APBD. Jika diteliti lebih lanjut kisaran anggaran tersebut belum sepenuhnya fokus untuk penanggulangan TB secara langsung, melainkan juga untuk membiayai hal-hal teknis yang tidak bersentuhan langsung dengan persoalan pencegahan dan penyakit TB di Kota Malang.

Berdasarkan analisa Akar Masalah (Penyebab TB) sebagaimana uraian di atas, maka terlihat persoalan pencegahan dan penanggulangan TB di Kota Malang sebagaimana bagan berikut ini.

**Bagan 4**  
Bagan Akar Masalah Penanggulangan TB di Kota Malang



#### Analisa Kesenjangan

Berdasarkan hasil analisa akar masalah TB di atas menunjukkan kesenjangan pencegahan dan penanggulangan TB di Kota Malang yang angka TB pada tahun 2013

mencapai 1610 orang, adalah berada pada lima aspek yaitu prilaku masyarakat, komunikasi, pelayanan, program, dan anggaran. Kelima aspek tersebut akan dijelaskan berikut ini.

1. Berdasarkan analisa layanan masyarakat PHBS (Prilaku Hidup Bersih dan Sehat) di atas menunjukkan kondisi layanan PHBS di Kota Malang dinilai baik, yaitu sarana PHBS sudah tersedia dengan baik seperti Jamban dan Air Bersih. Namun pada konteks indikator PHBS kebiasaan batuk tanpa menutup mulut dan membuang dahak disembarang tempat masih menjadi kebiasaan masyarakat Kota Malang layaknya masyarakat lain pada umumnya. Indikator ini yang menjadi salah satu akar masalah terciptanya dan meluasnya TB di Kota Malang. Pada konteks ini menunjukkan adanya kesenjangan antara sarana PHBS yang berbentuk fisik baik namun belum didukung prilaku masyarakat yang mampu menjaga lingkungan dari penularan penyakit TB melalui udara.
2. Komunikasi layanan kerap membuat para penderita TB khususnya TB MDR enggan berobat lebih lanjut secara tuntas sebagaimana anjuran dokter. Petugas kesehatan dalam menyampaikan informasi tentang dampak obat TB MDR kepada penderita TB MDR bisa menimbulkan ketakutan. Akibatnya, mereka memiliki sikap fatalistic, yakni memilih tidak berobat atau bahkan mati daripada mengalami penderitaan akibat samping minum obat.
3. Kebijakan program pembangunan kesehatan dan Kebijakan Anggaran Dinkes Kota Malang dinilai kurang berpihak kepada pencegahan dan penanggulangan TB di Kota Malang. Program pembangunan tidak banyak yang mengarah secara langsung pada pencegahan dan penanggulangan TB. Bahkan beberapa program mestinya bagian dari pencegahan TB, namun uraian dan isi dari program tersebut tidak dikaitkan dengan persoalan TB. Selain itu, kebijakan anggaran pemerintah Kota Malang belum secara penuh memenuhi tuntutan undang-undang kesehatan yang wajibkan pemerintah daerah untuk mendistribusikan 10% anggaran kesehatan dari total APBD yang ada. Sementara itu jumlah anggaran untuk TB terlalu kecil dan tidak signifikan untuk menanggulangi TB secara tuntas.
4. Banyaknya Puskesmas tetapi minim dalam jumlah tenaga kesehatan terutama, juga merupakan bagian yang menyebabkan penanggulangan TB di malang kurang maksimal.
5. Kendala lain yang menyebabkan penanggulangan TB sulit diatasi adalah penyampaian sosialisasi kepada masyarakat termasuk pada penderita TB. Bahasa yang digunakan dalam sosialisasi kerap menimbulkan penderita TB merasa takut dan tidak mau membuka diri, karena para penderita TB takut mengalami stigma, dan diskriminasi. Dari aspek cakupan sosialisasi juga belum menyeluruh, karena tidak semua masyarakat mengetahui penyakit TB dengan benar. Masih banyak masyarakat mengetahui TB dari mulut ke mulut yang tidak semua benar.
6. Pengelolaan data TB yang masih kurang baik. Padahal pengelolaan data yang baik merupakan modal utama untuk merumuskan perencanaan program dan kebijakan. Lemahnya pengelolaan data akan menjadi penghambat penanggulangan TB secara tepatfektif dan efesian.

**Tabel 5**  
Analisis Kesenjangan

Peran/Stakeholder	Pemerintah dan DPRD Kota Malang	Dinkes Kota Malang	RSSA	Puskesmas	Aisyiyah Kota Malang	KNCV	Toga dan Toma
Menyusun Kebijakan APBD bidang Kesehatan terutama terkait dengan pencegahan dan penanggulangan TB di Kota Malang. Pada tahun 2013 anggaran untuk bidang kesehatan hanya 6,63% dari total APBD	Dinilai tidak berpihak kepada bidang kesehatan terutama terkait dengan pencegahan dan penanggulangan TB di Kota Malang. Pada tahun 2013 anggaran untuk bidang kesehatan hanya 6,63% dari total APBD	Mengajukan rancangan program dan anggaran (Renstra) namun program dan anggaran tidak terkait langsung dengan pencegahan dan penanggulangan TB di Kota Malang	Anggaran rancangan bersumber dari APBD Provinsi. Karena itu RSSA tidak memiliki kewenangan untuk mengajukan anggaran di Pemerintah Kota Malang	Tidak berperan dalam penyusunan program Anggaran Kesehatan sehingga tenaga kesehatan di puskesmas tidak mendukung pencegahan dan penanggulangan TB hanya bersumber dari Global Fun dan anggaran internal Aisyiyah	Tidak berperan dalam penyusunan kebijakan APBD sehingga anggaran pendukung program pencegahan dan penanggulangan TB hanya bersumber dari Global Fun.	Tidak berperan aktif penyusunan kebijakan APBD	Tidak berperan aktif penyusunan kebijakan APBD.

Melakukan Komunikasi (Penyuluhan dan Pendampingan) bagi Penderita TB)	Pemerintah dan DPRD Kota Malang dapat dipastikan tidak melakukan komunikasi secara baik kepada rakyatnya tentang persoalan TB.	Dinkes Kota Malang membangun komunikasi dengan penderita TB melalui Puskesmas. Karena itu, Dinkes tidak terlalu paham tentang persoalan TB di Kota Malang. Justru yang lebih paham adalah kelompok-kelompok masyarakat dan puskesmas.	Komunikasi RSSA dinilai buruk karena petugas layanan Poli TB RSSA membangun komunikasi yang menakutkan bagi penderita TB. Sehingga ga penderita TB tidak mau berobat secara tuntas.	Komunikasi Puskesmas dengan Penderita TB dan masyarakat umum dinilai cukup intens. Petugas Puskesmas melakukan penyuluhan minimal 2-3 kali dalam satu bulan. Namun Puskesmas mendapatkan tantangan tersendiri dalam berkomunikasi dengan masyarakat tentang TB. Masyarakat masih menutup diri tentang masalah TB.	Komunikasi Aisyiyah Kota Malang melalui kader TB yang dibentuk dengan masyarakat dan penderita TB dinilai cukup baik. Karena mereka dapat berkomunikasi secara langsung dengan masyarakat. Namun di lapangan sering kali kader TB belum terlalu memahami tentang penyakit TB sehingga komunikasi yang dibangun belum cukup efektif.	Komunikasi KNCV dengan penderita TB masih terbatas hanya dengan penderita MDR. Padahal persoalan TB Paru dan TB jenis lainnya masih membutuhkan perhatian serius.	Toga dan Toma tidak terlalu aktif melakukannya komunikasi dengan masyarakat tentang persoalan TB.
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Memberikan Pelayanan Kesehatan bagi Penderita TB	Pemerintah dan DPRD Kota Malang dinilai tidak terlalu memperhatikan program layanan kesehatan bagi penderita TB. Sehingga sarana dan prasarana terutama petugas kesehatan masyarakat masih sangat terbatas.	Dinkes Kota Malang memberikan pelayanan bagi penderita TB masih sangat konvensional yaitu melalui kegiatan-kegiatan formal seperti seminar, lokakarya, dan publikasi.	Pelayanan kesehatan RSSA bagi penderita TB dinilai cukup baik, namun pelayanan RSSA masih mengunakan pola menerima layanan pasien di tempat RSSA. Belum menunjukkan adanya layanan responsif (jemput bola)	Pelayanan kesehatan Puskesmas bagi penderita TB dinilai cukup baik. Puskesmas berupaya melayani penderita TB dengan sistem jemput bola (layanan responsif )	Aisyiyah Kota Malang memberikan layanan kesehatan kepada masyarakat termasuk penderita TB cukup optimal, karena mereka membuka konstulasi kesehatan bagi masyarakat. Dan mereka juga memiliki organisasi yang cukup rapi untuk menjalankan program pencegahan dan penanggulan TB di Kota Malang. Namun layanan kesehatan yang diberikan Aisyiyah belum cukup menyentuh secara	Layanan kesehatan KNCV bagi penderita TB cukup baik namun masih terbatas pada TB MDR.	Toga dan Toma belum berperan secara baik untuk memberikan pelayanan kesehatan kepada masyarakat (penderita TB)
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					merata di setiap masyarakat.		
Memberikan Informasi tentang data TB kepada Publik	Pemerintah dan DPRD tidak memahami data TB di daerah Kota Malang. Karena itu, informasi tentang TB di Kota Malang masih sangat terbatas.	Dinkes Kota Malang belum memiliki data yang cukup rapi tentang TB di Kota Malang, terutama tentang data TB berdasarkan jenisnya.	RSSA juga dinilai tidak memiliki data yang cukup baik tentang angka TB.	Puskesmas cukup kaya akan data TB namun belum tersusun dengan baik kedalam laporan tahunan	Karena akibat dari Dinkes yang tidak memiliki data TB yang baik, maka Aisyiyah pun tidak memiliki data TB yang cukup riil.	KNCV dinilai memiliki data yang baik tentang angka TB di Kota Malang karena mereka disetiap saat melakukan updating data TB secara online, namun mereka masih tertutup dengan mitra lainnya.	Toga dan Toma tidak memiliki data TB. Akhirnya mereka tidak memiliki argument yang kuat dalam memberikan persongan TB di Kota Malang.

### Analisa Peran Stakholders

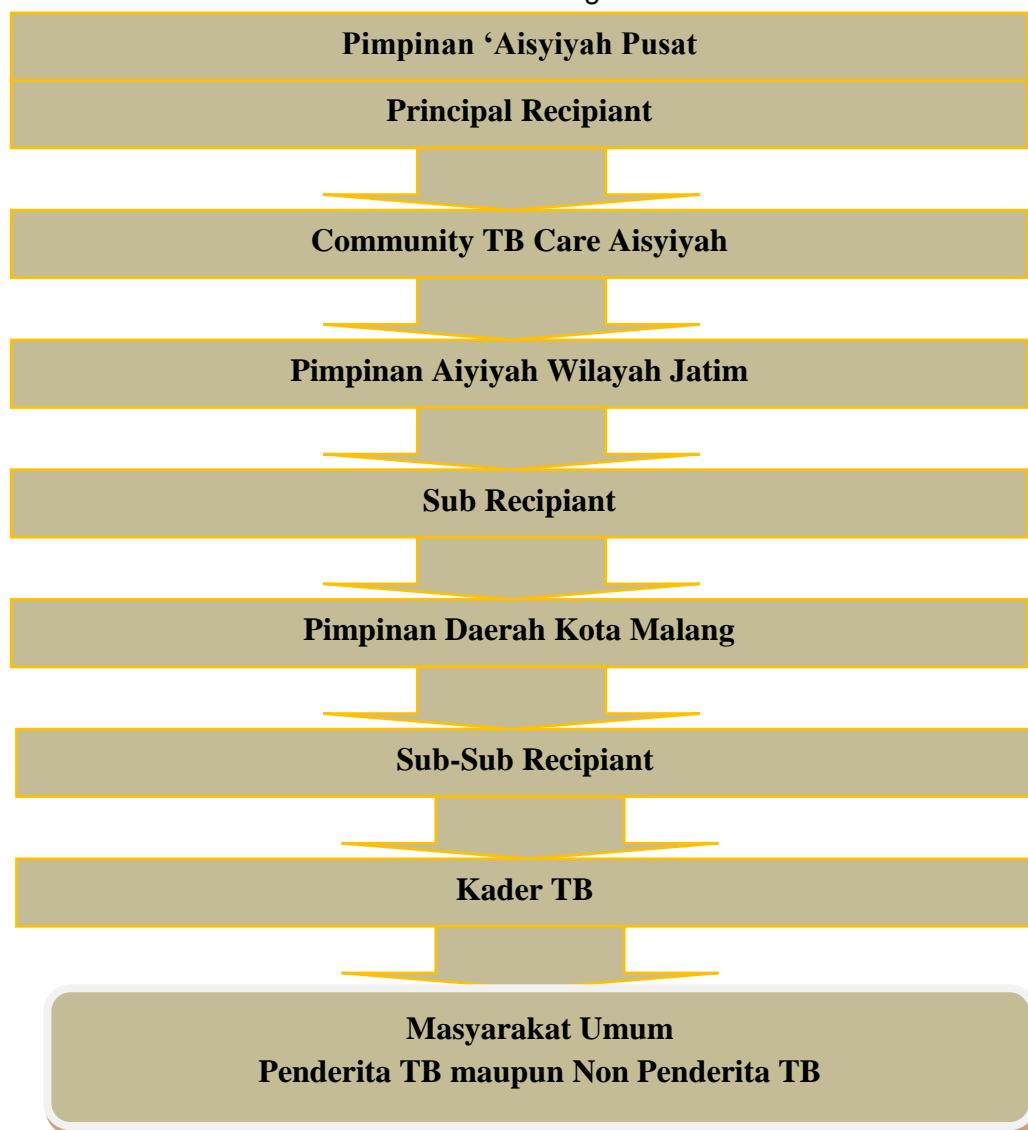
Dalam upaya penanggulangan TB tidak bisa dilepaskan dari peran staholder. Peran stakholders itu sangat penting untuk mendukung program pencegahan dan penanggulangan TB secara efektif, menyeluruh, dan tuntas di Kota Malang. Tidak mungkin program pembangunan termasuk dalam pencegahan dan penanggulangan TB tanpa didukung oleh kelompok-kelompok dalam masyarakat. Salah satu stakeholder yang banyak berperan dalam penanggulangan TB adalah PP. PP. Aisyiyah. Aisyiyah sebagai bagian dari organisasi masyarakat (Ormas) dinilai telah menunjukkan komitmen serius untuk mengupayakan pencegahan dan penanggulangan TB hingga ke daerah-daerah yang didelegasikan kepada Pengurus Cabang termasuk Pengurus Cabang Aisyiyah kota Malang. Komitmen serius PP Aisyiyah ditunjukan dengan membentuk *Community TB Care Aisyiyah* (Principal Recipient-PR), dan Sub Recipient (SR).

Di tingkat daerah pengurus cabang Aisyiyah Kota Malang membentuk Tim Pencegahan dan Penanggulangan TB Kota Malang beserta programnya. Disamping itu, juga dibentuk kader-kadaer TB, yang disebar untuk menjadi ujung tombak dalam

pembantasan TB. Komitmen ini dibangun Pimpinan Aisyiyah Kota Malang berlandaskan pada teologis sosial yang berdasarkan pada makna ayat suci Al-Quran Al-Ma'un atau mereka menyebutnya ***"Spirit Al-Ma'un dalam Gerakan Penanggulangan TB"***.

Untuk mensukseskan program pencegahan dan penanggulangan TB, dilakukan kerja sama dengan berbagai pihak. Di Tingkat pusat, PP Aisyiyah bekerja sama dengan Organisasi Internasional seperti *Global Fund*. *Global Fund*, memberi dukungan dana baik untuk program pencegahan dan penanggulangan TB, maupun untuk penelitian.

**Bagan 6**  
Struktur Organisasi Pencegahan dan Penanggulangan TB Pimpinan Aisyiyah  
Kota Malang



Bagan di atas menunjukkan Pimpinan Aisyiyah Kota Malang menjalankan program pencegahan dan penanggulangan TB di Kota Malang berdasarkan koordinasi struktural dan berbasiskan pada keterlibatan masyarakat sebagai kader yang menjalankan tugas pencegahan dan penanggulangan TB di Kota Malang. Berdasarkan koordinasi struktural dimaksud adalah pimpinan Aisyiyah Kota Malang bekerja menjalankan program pencegahan dan penanggulangan TB memperhatikan arahan dan

program kerja Pimpinan Pusat Aisyiyah dan Pimpinan Wilayah Aisyiyah Jatim sebagai acuan dasar untuk struktur Sub-sub Recipient hingga tingkat Kader TB. Hemat kami, kerapian struktural organisasi ini akan berdampak secara nyata mewujudkan pelaksanaan program pencegahan dan penanggulangan TB di Kota Malang secara efektif, tuntas, dan berkelanjutan.

Pimpinan Aisyiyah Kota Malang melalui organisasi di atas menjalankan beberapa program pencegahan dan penanggulangan TB di Kota Malang, yaitu memberi pelatihan khusus kepada kader TB secara sistimatis sehingga mereka (kader TB) dapat memiliki ilmu pengetahuan tentang pencegahan dan penanggulangan TB. Pimpinan Aisyiyah Kota Malang selain mengadakan pelatihan bagi kader TB, juga menerbitkan buku Penanggulangan TB sebagai bahan bacaan bagi Kader TB. Dengan buku tersebut, kader TB dapat meningkatkan Ilmu Pengetahuan tentang Penanggulangan TB. Dengan ilmunya tersebut, diharapkan kader TB dapat menjalankan tugasnya dengan baik, yaitu memberikan sosialisasi kepada masyarakat terutama penderita TB untuk hidup sehat dan bersih, berobat secara tepat, tuntas dan berkelanjutan serta mengetahui mekanisme pelayanan TB gratis di Unit Pelayanan Kesehatan (UPK) pemerintah maupun swasta.



: Dokumen Pimpinan Aisyiyah Kota Malang.

**Gambar 11** Buku Penanggulangan TB.

Pimpinan Aisyiyah Kota Malang juga menyiapkan stiker/pamflet tentang penanggulangan TB untuk diberikan kepada para kader TB sebagai sarana sosialisasi penanggulangan TB di wilayah kerja masing-masing. Kader TB menyampaikan stiker/pamflet kepada masyarakat umum terutama bagi penderita TB dengan harapan mereka membaca, memahami, dan menyadari pentingnya mencegah dan mengobati TB secara tuntas dan berkelanjutan.



Sumber: Dokumentasi Koordinator SSR Aisyiyah Kota Malang, 2014.

**Gambar 12** Stiker/Pamflet Penanggulangan TB.

Pimpinan Aisyiyah Kota Malang menyadari kerja pencegahan dan penanggulangan TB di Kota Malang tidak dapat dilakukan dengan sendirian melalui organisasi yang dibentuk seperti di atas, namun juga dibutuhkan kerjasama dengan berbagai pihak terutama pemangku kebijakan dan Unit Pelayanan Kesehatan (UPK).

“.....Dalam upaya penanggulangan TB di masyarakat, program penanggulangan TB yang dilaksanakan memerlukan campur tangan dan keterlibatan semua pihak untuk bersama-sama melakukan penanggulangan TB.....Dengan melibatkan berbagai pihak khususnya tokoh agama atau mualigh-mualighot di tingkat masyarakat, berharap bahwa akan terjadi percepatan pemahaman di masyarakat tentang penyakit TB, cara penularan, bagaimana mengatasinya. Bahkan mendorong masyarakat secara bersama-sama melakukan upaya

penanggulangan TB agar akhirnya masalah ini dapat dituntaskan oleh masyarakat itu sendiri”, (Buku Penanggulangan TB, Community TB Care Aisyiyah-Tanpa Tahun).

Karena itu, Pimpinan Aisyiyah Kota Malang berupaya keras untuk membangun jejaring kerjasama dengan berbagai pihak. Pada tanggal 27 Agustus 2014, Pimpinan Aisyiyah Kota Malang berhasil mengikat kerjasama dengan Rumah Sakit Daerah Saiful Anwar (RSSA) melalui Nota Kesepahaman (MoU). Pembahasan draf MoU dilaksanakan di RSSA (Ruang Singosari Lantai III Poli Umum RSSA) dengan mengundang Dinas Kesehatan Provinsi Jatim, Dinas Kesehatan Kota Malang, LSM KNCV, Akademisi Universitas Muhammadiyah Malang, dan Pemuda Muhammadiyah Kota Malang.

Setelah melalui pembahasan aktif, MoU tersebut disepakati secara baik oleh kedua belah pihak yaitu pihak Pertama Dr. Hj. Esty Martiana Rachmie (Ketua PWM Jatim), dan pihak Kedua 2. Dr. Budi Rahayu, MPH (Direktur RSU Dr. Saiful Anwar). Alasan kenapa yang bertindak sebagai pihak pertama adalah Pimpinan Wilayah Aisyiyah Jatim, dan kenapa buka Pimpinan Daerah Kota Malang, karena menyamakan dengan posisi RSU Dr. Saiful Anwar yang berkedudukan pada wilayah Provinsi Jawa Timur.

MoU tersebut mengatur kerjasama tentang Program Penanggulangan Tuberkulosis (*High Quality DOTS* dan *Multi Drug Resistant TB*) di RSU Dr. Soaiful Anwar. Ruang lingkup kerjasama ini meliputi tercapainya komitmen dalam pelaksanaan *High Quality DOTS* dan Pengendalian TB-MDR di RSU Dr. Saiful Anwar. Dengan pokok kegiatannya mencakup: (1) Memastikan pasien TB akan melanjutkan pengobatan/dirujuk dari RSU Dr. Saiful Anwar ke pengobatan Fasyankes yang sudah disepakati antara RS dengan pasien, (2) Membangun jejaring internal dan eksternal untuk pelaksanaan program TB DOTS. (3) Pendampingan dan memastikan pasien TB-MDR disiplin berobat secara rutin dan menyelesaikan pengobatan, serta melakukan pemeriksaan rutin untuk memantau kemajuan pengobatan. (4) Pendampingan dan memastikan pasien TB-MDR yang dirujuk oleh RS-PMDT ke puskesmas satelit tetap melanjutkan dan menyelesaikan pengobatan serta melakukan pemeriksaan rutin memantauan kemajuan pengobatan

Pimpinan Daerah Aisyiyah Kota Malang juga sedang berupaya membangun kerjasama dengan pihak Dinas Kesehatan Kota Malang. Namun hal ini masih menuai kendala, diantaranya (1) keterbukaan dan ketersediaan informasi mengenai program penanggulangan dan pencegahan TB dari Dinas Kesehatan Kota Malang masih terbatas, (2) sehingga komunikasi Pimpinan Daerah Aisyiyah Dau Malang dengan Dinas Kesehatan Kota Malang kurang efektif, dan (3) pada gilirannya Pimpinan Daerah Aisyiyah Dau Malang sulit membangun kesamaan visi-misi dengan Dinas Kesehatan Kota Malang untuk bersama-sama menjalankan program pencegahan dan penanggulangan TB di Kota Malang secara efektif, tuntas, dan berkelanjutan.

Kendati demikian Pimpinan Daerah Aisyiyah Kota Malang tetap berusaha untuk terus berkomunikasi dengan pihak Dinas Kesehatan Kota Malang dengan berbagai cara seperti mengundang pada acara pelatihan kader, seminar, dan FGD Penanggulangan TB di Kota Malang. Dengan mekanisme tersebut, diyakini Pimpinan Daerah Aisyiyah Kota Malang akan dapat bekerjasama dengan baik baik dengan Dinas Kesehatan Kota Malang. Selain itu, Aisyiyah Kota Malang juga berupaya membangun komunikasi dan kerjasama dengan LSM, Ormas, Tokoh Masyarakat, Tokoh Agama, Anggota DPRD, Kelompok Penggagas, dan Kelompok Dukungan Sebaya (KDS). Namun komunikasi tersebut sedang dibangun dengan harapan terciptanya kerjasama yang baik untuk pencegahan dan penanggulangan TB secara efektif, tuntas, dan berkelanjutan.

Selain Aisyiyah Kota Malang, terdapat beberapa stakeholder lain yang berperan dalam pencegahan TB di Kota Malang yaitu Kelompok Dukungan Sebaya (KDS) dan LSM KNCV. KDS banyak memberikan informasi dan edukasi serta dukungan sosial terutama pada penderita TB HIV. Hal ini karena KDS memfokuskan pada penanggulangan HIV/AIDS termasuk dalamnya adalah TB, karena HIV/AIDS tidak bisa dilepaskan dengan TB. Sedangkan LSM KNCV fokus pada program pengobatan TB MDR. Dalam menjalankan programnya tersebut KNCV bekerjasama dengan Global Fun, Rumah Sakit, dan Dinkes Kota Malang.

**Tabel 13**  
Analisis Peran Stakholders

Permasalahan/Peran Stakholders	RSSA	Aisyiyah	KNCV	KDS
Perilaku Masyarakat yang belum tersadarkan untuk hidup bersih dan sehat	RSSA tidak terlalu memperhatikan perilaku masyarakat dalam hidup sehat dan bersih.	Aisyiyah Kota Malang melalui kader TB yang dibentuknya berupaya melakukan penyuluhan kepada masyarakat untuk hidup bersih dan sehat.	KNCV tidak terlalu fokus pada pendampingan preventif namun lebih pada pengobatan penderita TB MDR.	KDS memiliki kesadaran untuk mendorong supaya masyarakat hidup sehat dan bersih namun KDS memiliki keterbatasan sumber daya manusia dan keuangan sebagai pendukung kegiatan.
Buruknya komunikasi layanan RSSA terhadap Penderita TB	Sedikitya Tenaga kesehatan yang terdapat di RSSA membuat pelayanan petugas kepada Penderita TB menjadi kurang maksimal, akibatnya komunikasi yang terjadi antara petugas dengan penderita TB akhirnya menjadi buruk	Aisyiyah telah menjalin kerjasama dengan RSSA yang diwujudkan dengan MOU untuk penanggulangan TB, terutama TB MDR.	KNCV tidak berperan dalam menjembatani buruknya komunikasi yang terjadi antara RSSA dengan Penderita TB tapi lebih fokus pada penanganan TB MDR	KDS mengadakan pertemuan untuk membahas permasalahan apa yang dihadapi dan perkembangan terbaru mengenai penyakit TB
Buruknya Pelayanan Kesehatan Pemerintah Kota Malang terhadap RSSA	Kurangnya Tenaga kesehatan di RSSA	Aisyiyah Kota malang melalui kader masyarakat	KNCV berusaha memberikan pelayanan	KDS mengadakan pertemuan untuk

penderita TB	merupakan salah satu kendala yang menyebabkan RSSA tidak maksimal dalam upaya memberikan pelayanan kepada masyarakat.	yang dibentuk telah memberikan penyuluhan kepada masyarakat tentang penyakit TB	yang baik kepada penderita TB yang difokuskan pada TB MDR dengan memberikan uang transport dan susu yang diperoleh dari global fund.	membahas permasalahan apa yang dihadapi dan perkembangan terbaru mengenai penyakit TB
Minimnya program dan anggaran untuk pencegahan dan penanggulangan TB	Terbatasnya tenaga kesehatan, terutama untuk penyakit TB dan terbatasnya anggaran membuat RSSA kurang memberikan pelayanan yang maksimal terhadap Penderita TB	Aisyiyah tidak terlibat secara aktif dalam penyusunan program dan kebijakan anggaran Kota Malang sehingga tidak terdapat program dan anggaran Pemerintah Kota Malang yang berpihak pada program pencegahan dan penanggulangan TB di Kota Malang.	KNCV memberikan bantuan kepada Penderita TB yang berupa uang transport tiap bulan dan susu yang berasal dari Global Fund.	KDS mengadakan pertemuan untuk membahas permasalahan apa yang dihadapi dan perkembangan terbaru mengenai penyakit TB
Terbatasnya informasi tentang TB di Kota Malang	Terbatasnya tenaga penyuluhan kesehatan di RSSA sehingga Petugas RSSA kurang maksimal memberikan sosialisasi kepada masyarakat.	Aisyiyah telah memberikan sosialisasi tentang TB kepada masyarakat melalui kader masyarakat yang telah dibentuk, walaupun jumlah kader masyarakatnya masih terbatas	KNCV telah berperan aktif memberikan sosialisasi kepada masyarakat, tapi hanya sebatas masalah TB MDR	KDS mengadakan pertemuan untuk membahas informasi terbaru terkait penanggulangan TB

### **Rekomendasi Aksi Advokasi dan Hasil yang diharapkan**

Rekomendasi rencana advokasi merupakan upaya mengatasi atau memecahkan persoalan yang ditemukan dari hasil analisa TB daerah Kota Malang sebagaimana yang dijelaskan pada bagian akar masalah TB. Rekomendasi aksi advokasi dilakukan dalam

tiga bentuk rekomendasi yaitu Rekomendasi Aksi Utama, Aksi Pendukung, dan Aksi Kemitraan.

Alur pencapaian hasil tiga bentuk rekomendasi aksi tersebut dapat digambarkan pada gambar berikut ini.



Tiga bentuk rekomendasi aksi tersebut di atas dinilai mampu menyelesaikan akar masalah TB di Kota Malang secara efektif, tuntas, dan berkelanjutan dalam mencapai target yang diinginkan (Target MDGs). Alur rekomendasi tersebut di atas akan dijelaskan secara rinci pada point 5.2. Sedangkan tiga bentuk advokasi tersebut di atas akan dijelaskan secara rinci pada point 5.3., 5.4., dan 5.5.

### Rekomendasi Aksi Advokasi

Ada tiga bentuk rencana aksi advokasi yaitu Aksi Utama, Aksi Pendukung, dan Aksi Kemitraan. Tiga bentuk aksi tersebut menunjukkan tujuan masing-masing rencana aksi advokasi adalah:

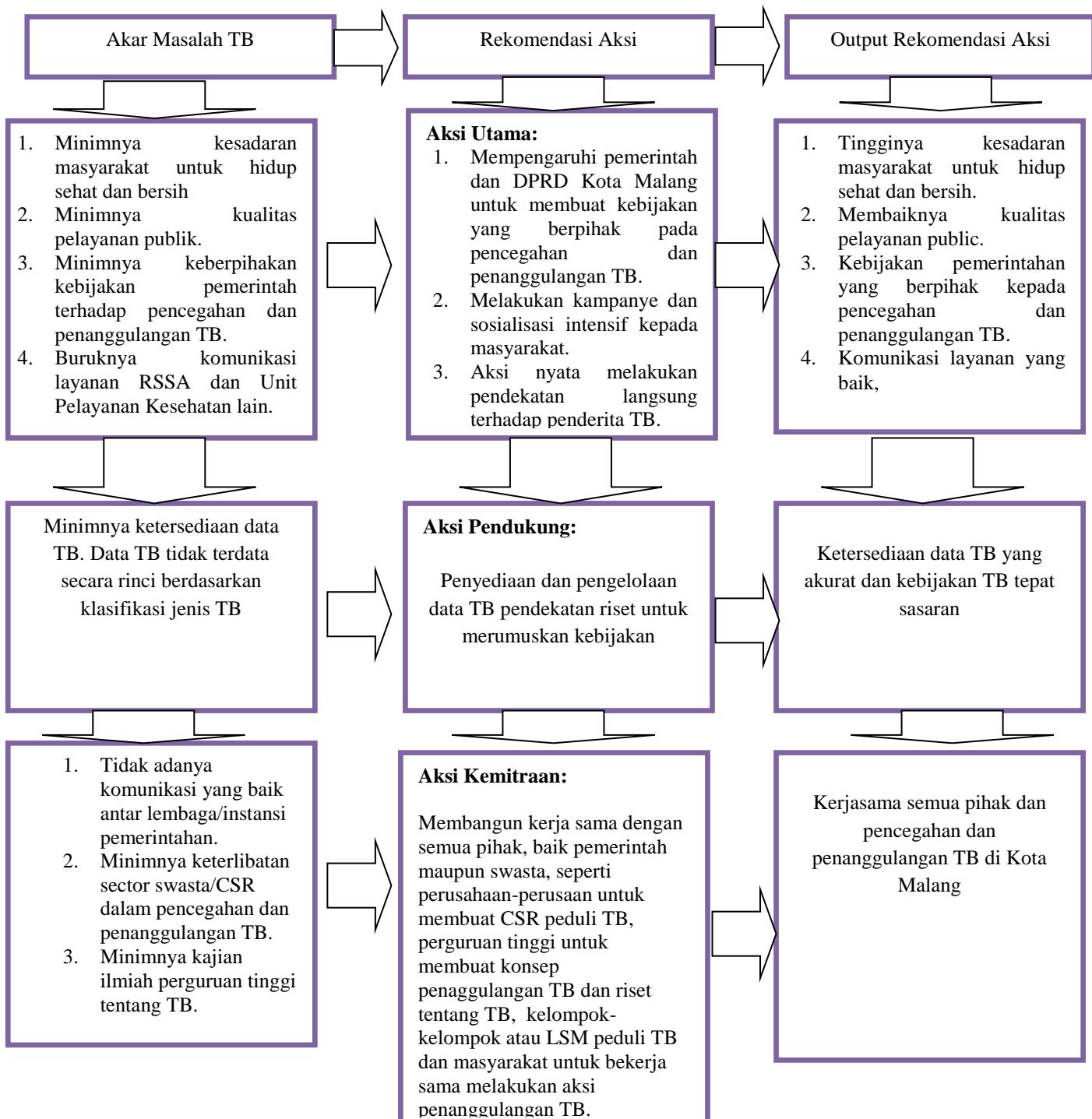
- a. Aksi utama bertujuan untuk (1) mempengaruhi pembuat kebijakan, agar peduli terhadap masalah TB. Karena tanpa adanya kebijakan yang berpihak pada TB, sulit rasanya untuk menanggulangi TB. Sasaran dalam aksi utama yaitu Pemerintah Kota Malang dan DPRD Kota Malang. Di samping itu juga kelompok-kelompok peduli TB, LSM, dan perguruan tinggi untuk ikut memberi masukan dalam membuat kebijakan tentang TB. (2) Melakukan kampanye atau sosialisasi tentang pencegahan dan penanggulangan TB, bahaya TB bagi kehidupan masyarakat, menggugah kesadaran masyarakat untuk hidup sehat dan bersih, dan menggugah kesadaran penderita TB untuk mau berobat secara tuntas. Kampanye TB harus melalui pendekatan edukatif agar kontraproduktif dimana masyarakat menjadi takut yang menimbulkan stigma dan diskriminasi. (3) Aksi nyata melakukan pendekatan langsung terhadap penderita TB dengan cara

jemput bola (*home visit*) untuk mengatasi penderita TB yang enggan atau takut berobat atau mereka yang putus obat. (4) Advokasi terhadap penderita TB yang mengalami diskriminasi baik di tempat kerja dan di keluarga maupun di masyarakat.

- b. Aksi Pendukung melakukan penyediaan dan pengelolaan data TB sebagai bahan formulasi kebijakan pembangunan terutama kebijakan pencegahan dan penanggulangan TB. Penyediaan dan pengelolaan data TB dipandang penting untuk melahirkan kebijakan pencegahan dan penanggulangan TB yang tepat sasaran, efektif, dan efisien.
- c. Aksi potensi kemitraan bertujuan untuk membangun kerja sama dengan semua pihak, baik pemerintah maupun swasta, seperti perusahaan-perusahaan untuk membuat CSR peduli TB, perguruan tinggi untuk membuat konsep penanggulangan TB dan riset tentang TB, kelompok-kelompok atau LSM peduli TB dan masyarakat untuk bekerja sama melakukan aksi penanggulangan TB. Secara khusus kemitraan juga perlu dilakukan inter dan antara instansi. Inter instansi adalah kerjasama kemitraan dengan dinas-dinas seperti dinas kesehatan dengan dinas sosial, dinas ketenagakerjaan dan juga permukiman. sedangkan antar dinas adalah kemitraan antara pemerintah kota dengan lembaga pemasyarakatan TNI, dan Polri, dan lain-lain

## Bagan 8

**Bagan Rencana Aksi Advokasi Pencegahan dan Penanggulangan TB**



Ketiga bentuk aksi di atas menuju satu tujuan akhir yaitu mencegah munculnya TB baru, dan menanggulangi penderita TB CNR 1610 orang secara efektif, tuntas, dan berkelanjutan sehingga Kota Malang menjadi Kota Sehat.

### **Rekomendasi Aksi Utama**

Aksi utama merupakan langkah awal dalam menjalankan program pencegahan dan penanggulangan penyakit TB di Kota Malang. Karena itu, aksi utama harus dilakukan secara tepat dan benar. Berdasarkan temuan tim analisis TB Kota Malang sebagaimana yang dijelaskan pada bagian akar masalah bahwa penyebab TB di Kota Malang muncul melalui tiga aspek yaitu prilaku masyarakat Hidup Bersih dan Sehat, komunikasi layanan RSSA yang dinilai buruk, fasilitas pelayanan yang belum memadai, program pencegahan dan penanggulangan TB belum terarah dengan baik, dan kebijakan anggaran yang tidak berpihak pada layanan kesehatan terutama dalam bidang pencegahan dan penanggulangan TB di Kota Malang.

Berangkat dari persoalan akar malah TB tersebut di atas, maka tim penyusun analisa situasi TB Kota Malang merekomendasikan bentuk-bentuk aksi utama berikut ini:

- a. Mempertajam hasil analisa situasi penyebab TB di Kota Malang sehingga menjadi sebuah basis data untuk perumusan program layanan TB, dan perumusan kebijakan anggaran yang berpihak pada pencegahan dan penanggulangan TB di Kota Malang.
- b. Mendorong *stakholders* melakukan sosialisasi intensif kepada masyarakat luas mengenai cara Pencegahan TB, Penanggulangan TB, dan Bahaya TB bagi kehidupan dan generasi bangsa. Stakholders melakukan sosialisasi dan edukasi harus melalui pendekatan berbasiskan komunikasi masyarakat yang ada di daerah sebagai sasaran.
- c. Mendorong *stakholders* untuk melakukan edukasi kepada masyarakat luas khususnya di daerah basis TB (Kecamatan Sukun, Kecamatan Kedungkandang) mengenai pentingnya hidup bersih dan sehat (HBS) terutama mengenai cara batuk, bersin, dan membuang dahak yang baik dan benar.
- d. Mendorong pemerintah Kota Malang (Dinas Kesehatan Kota Malang) untuk memperhatikan layanan kesehatan di tingkat puskesmas sebagai sarana yang dapat diakses masyarakat terutama penderita TB. Selain itu, pemerintah kota malang diarahkan untuk menerapkan layanan kesehatan di rumah sakit yang memudahkan akses masyarakat luas.
- e. Mendorong Dinas Kesehatan Kota Malang untuk bermitra sinergis dengan satkholders lain. Peneliti menemukan bahwa kurangnya kemitraan antara pihak-pihak yang terkait membuat program – program yang dibuat oleh Dinkes tidak berjalan dengan baik selain karena tidak terintegrasi antara program yang satu dengan yang lainnya. Karena itulah pihak Dinkes perlu berkoordinasi dengan pihak-pihak lain yang terkait dengan penanggulangan TB agar terjadi kesepahaman antara satu dengan lainnya, karena peneliti menemukan bahwa Dinas kesehatan selama ini kurang terbuka terkait data – data penyakit TB, sehingga hal tersebut merupakan salah satu penyebab sulitnya menanggulangi TB di Kota Malang.
- f. Mendorong Pemerintah dan DPRD Kota Malang untuk membuat kebijakan anggaran yang berpihak pada pencegahan dan penanggulangan TB di Kota Malang. Anggaran tersebut harus teralokasikan kedalam program strategis Dinas Kesehatan Kota Malang yang mengarah pada program pencegahan dan penanggulangan TB di Kota Malang secara efektif, tuntas, dan berkelanjutan.

- g. Mendukung stakeholders terutama Pimpinan Aisyiyah Kota Malang untuk terus berupaya membangun komunikasi dengan pihak pemerintah Kota Malang (Dinas Kesehatan Kota Malang) sebagai upaya membentuk ikatan kerjasama dalam pencegahan dan penanggulangan TB di Kota Malang.
- h. Mendukung Pimpinan Aisyiyah Kota Malang untuk menindaklanjuti ruang lingkup kerjasama dengan berbagai Unit Pelayanan Kesehatan (UPK) terutama dengan Rumah Sakit Saiful Anwar (RSSA) Kota Malang mengenai pencegahan dan penanggulangan TB di Kota Malang secara tuntas dan berkelanjutan.
- i. Mendukung Pimpinan Aisyiyah Kota Malang untuk terus berupaya mendidik kader TB di wilayah Kota Malang agar kader-kader tersebut memiliki kemampuan untuk melakukan pendampingan terhadap Penderita TB secara tuntas dan berkelanjutan.
- j. Mendukung Pimpinan Aisyiyah Kota Malang untuk terus memperluas jejaring kerjasama dengan berbagai organisasi dan masyarakat luas dalam rangka pencegahan dan penanggulangan TB di Kota Malang.

#### **Rekomendasi Potensi Kemitraan**

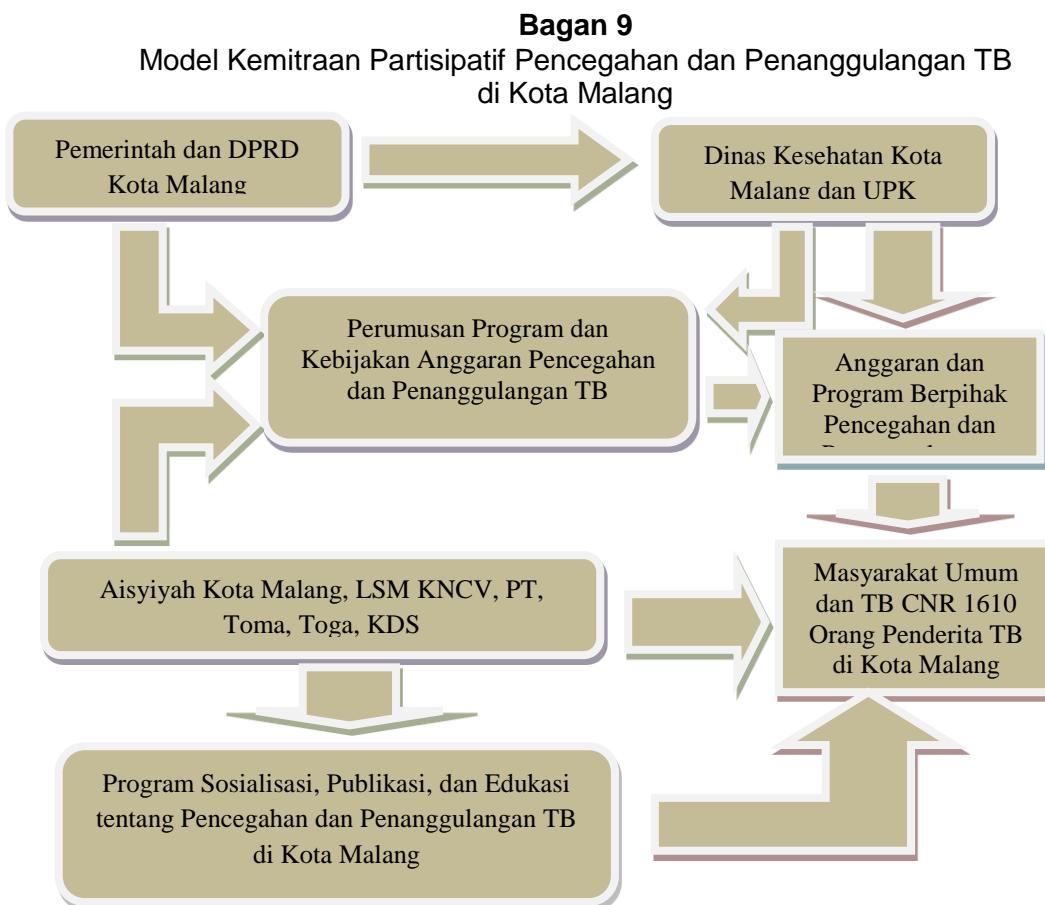
Untuk mewujudkan pencegahan dan penanggulangan TB secara efektif, tuntas, dan berkelanjutan di Kota Malang, maka diperlukan jejaring kerjasama (kemitraan) antar stakeholders terutama Pemerintah Kota Malang, DPRD Kota Malang, Dinas Kesehatan Kota Malang, Unit Pelayanan Kesehatan (UPK), Pimpinan Aisyiyah Kota Malang, LSM KNCV, Kelompok Dukungan Sebaya (KDS), Perguruan Tinggi (PT), Tokoh Masyarakat, dan Tokoh Agama.

Kemitraan tersebut harus berbasiskan pada pandangan yang sama yaitu melakukan pencegahan dan penanggulangan TB di Kota Malang secara efektif, tuntas, dan berkelanjutan. Pandangan yang sama tersebut diwujudkan melalui peran (kewenangan) dan posisi masing-masing stakeholders sebagaimana berikut ini.

1. Pemerintah dan DPRD Kota Malang adalah dua institusi yang memiliki otoritas penting dalam menyediakan layanan kesehatan pencegahan dan penanggulangan TB melalui kebijakan Anggaran Pendapatan dan Belanja Daerah (APBD) Kota Malang.
2. Dinas Kesehatan Kota Malang merupakan Satuan Kerja Pemerintah Kota Malang yang memiliki kewenangan langsung untuk melaksanakan pencegahan dan penanggulangan TB di Kota Malang.
3. Unit Pelayanan Kesehatan (UPK) Kota Malang merupakan unit kesehatan yang menjalankan program pelayanan kepada masyarakat luas khususnya penderita TB di Kota Malang.
4. Pimpinan Aisyiyah Kota Malang salah satu organisasi keagamaan yang memiliki program pencegahan dan penanggulangan TB di Kota Malang.
5. LSM KNCV merupakan organisasi swadaya masyarakat yang fokus pada program advokasi pencegahan dan penanggulangan TB di Kota Malang.
6. Perguruan Tinggi khususnya Universitas Muhammadiyah Malang merupakan bagian dari masyarakat sipil yang secara kelembagaan memiliki kemampuan ilmiah untuk menganalisa dan meneliti terkait perkembangan TB di Kota Malang.
7. Kelompok Dukungan Sebaya (KDS) dan kelompok penderita TB harus dijadikan mitra, bahkan ditempatkan di garda depan
8. Tokoh Agama dan tokoh masyarakat adalah seseorang yang memiliki pengaruh yang kuat dalam kehidupan masyarakat. Dengan pengaruh yang dimilikinya, mereka bisa dijadikan sebagai bagian untuk ikut mengkampanyekan hidup sehat, khususnya dalam penanggulangan TB.

Stakeholders tersebut di atas dipandang memiliki potensi besar dalam pencegahan dan penanggulangan TB secara efektif, tuntas, dan berkelanjutan.

Karena itu, kemitraan stakholders tersebut merupakan keharusan dalam pencegahan dan penanggulangan TB di Kota Malang. Kendati stakeholders di atas masing-masing memiliki kewenangan dan posisi yang berbeda namun dalam menuju visi yang sama dibutuhkan model kemitraan partisipatif sebagaimana bagan di berikut ini.



### Rekomendasi Rencana Program

Berdasarkan hasil analisa Akar Masalah sebagaimana yang dijelaskan pada bagian sebelumnya, kami merekomendasikan beberapa kebijakan strategis untuk diterapkan sebagai upaya melakukan pencegahan dan penanggulangan TB di Kota Malang, yaitu:

1. Pemerintah Kota Malang perlu membuat kebijakan pengobatan gratis bagi penderita TB disemua level layanan kesehatan terutama di Rumah Sakit Umum.
2. Pemerintah Kota Malang perlu menambah tenaga kesehatan di puskesmas sebagai upaya mengoptimalkan pelayanan publik khususnya bagi penderita TB.
3. Mengintegrasikan program pembangunan kesehatan yang saling terkait dengan pencegahan dan penanggulangan TB di Kota Malang.
4. Pemerintah Kota Malang perlu memperluas program pencegahan dan penanggulangan TB yang berbasiskan partisipasi aktif masyarakat.
5. Pemerintah Kota Malang perlu mendorong partisipasi stakholder secara luas sehingga persoalan TB bukan hanya tanggungjawab pemerintah Kota Malang.

6. Pemerintah Kota Malang perlu menyusun kebijakan anggaran yang berpihak kepada persoalan TB. Kebijakan anggaran harus mendukung secara nyata penanggulangan dan pencegahan TB di Kota Malang.
7. Pemerintah Kota Malang perlu melakukan publikasi data tentang TB secara transparan, terukur, dan dapat diakses oleh siapapun terutama bagi peneliti yang sedang mendalami persoalan TB di Kota Malang.
8. Organisasi masyarakat terutama Pimpinan Aisyiyah Kota Malang perlu membangun komunikasi intensif dengan pemerintah dan DPRD Kota Malang dengan harapan terbentuk kerjasama (kemitraan) untuk bersama-sama melakukan pencegahan dan penanggulangan TB di Kota Malang.
9. Pimpinan Aisyiyah Kota Malang perlu memperluas kerjasama dengan organisasi masyarakat lain sebagai upaya membumikan gerakan pencegahan dan penanggulangan TB di Kota Malang.
10. Pimpinan Aisyiyah Kota Malang perlu secara langsung bekerjasama dengan Komunitas Dukungan Sebaya, Tokoh Agama, Tokoh Masyarakat, Perguruan Tinggi, dan masyarakat umum sebagai bentuk upaya pencegahan dan penanggulangan TB secara berkelanjutan.

Tim Analisa TB Daerah Kota Malang menemukan beberapa point penting yang dapat ditindaklanjuti sebagai upaya percepatan pencegahan dan penanggulangan TB di Kota Malang. Beberapa point penting dimaksud adalah sebagai berikut:

1. Pada tahun 2013 angka TB mencapai 1610 Orang. Angka tersebut tersebar diberbagai wilayah kecamatan di Kota Malang, dan di berbagai sarana pelayanan kesehatan Kota Malang seperti rumah sakit, dan puskesmas. Kecamatan Klojen yang merupakan kecamatan terpadat dari kelima kecamatan lain di Kota Malang, justru menunjukkan angka TB terendah dari kelima kecamatan lain di Kota Malang. Pada konteks ini kami menemukan kepadatan penduduk tidak menunjukkan *linieritas* dengan tingginya angka TB di wilayah tersebut.
2. Penyakit TB di Kota Malang diakibatkan oleh minimnya kesadaran masyarakat untuk hidup sehat dan bersih.
3. Komunikasi petugas kesehatan yang masih kurang, mengakibatkan munculnya rasa takut bagi masyarakat maupun penderita TB.
4. Penderita TB di Kota Malang mendapatkan pelayanan obat gratis di puskesmas, namun obat gratis tersebut tidak tersedia di rumah sakit. Sehingga penderita TB merasa kesulitan untuk mendapatkan akses pelayanan di rumah sakit.
5. Penderita TB menaruh harapan besar terhadap pelayanaan puskesmas. Karena di puskesmas tersedia obat gratis. Namun penyediaan tenaga kesehatan masyarakat di puskesmas sangat terbatas. Tenaga kesehatan masyarakat di puskesmas tidak proporsional dengan jumlah puskesmas di Kota Malang.
6. Program pelayanan kesehatan terutama terkait pelayanan pencegahan dan penanggulangan TB di Kota Malang dinilai sangat jauh dari harapan untuk mewujudkan Kota Malang sebagai Kota Sehat atau terhindari dari penyakit TB. Program kesehatan Dinkes Kota Malang masih menjadi tanggungjawab Dinas Sosial, bersifat teknis (administratif), tidak terintegrasi antar program dan antar dinas untuk mendukung pencegahan dan penanggulangan penyakit TB di Kota Malang.
7. Kebijakan Anggaran Pemerintah Kota Malang dinilai belum berpihak pada pelayanan kesehatan. Dari total APBD Kota Malang Tahun Anggaran 2013, hanya 6,22 % untuk bidang kesehatan. Padahal menurut undang-undang kesehatan, pemerintah daerah harus mengalokasikan anggaran 10% untuk bidang kesehatan dari total APBD Kota Malang.

8. Anggaran 6,22% bidang kesehatan Kota Malang dari total APBD Tahun Anggaran 2013 tidak terdistribusi dalam program pencegahan dan penanggulangan TB, justru anggaran tersebut mengarah pada program yang tidak terkait langsung dengan bidang pencegahan dan penanggulangan TB di Kota Malang. Sedangkan anggaran untuk TB hanya mendapatkan alokasi sebesar 0,003% dari APBD.
9. Kerugian total yang dialami akibat penyakit TB adalah sebesar 1.415.050.875 (Satu milliar empat ratus lima belas juta lima puluh ribu delapan ratus tujuh puluh lima rupiah). Angka itu tergolong tinggi dan menyebabkan kerugian tidak saja bagi penderita TB saja, tetapi juga Kota Malang. Kerugian besar yang ditimbulkan akibat penyakit TB ini merupakan kerugian ekonomi, karena cukup banyak pasien dengan usia produktif, yaitu berjumlah sekitar 15.210 akibat sakit dengan jumlah presentase mencapai 8,25 untuk penderita yang meninggal dunia dan jumlah penderita yang berobat mencapai 589 orang. Hal itu diperkuat dengan total tahun produktif yang hilang dengan presentase mencapai 101,25 dan hari produktif yang hilang dengan presentase sebesar 1518,75. Dengan demikian dapat disimpulkan bahwa kerugian ekonomi yang besar menunjukkan bahwa upaya yang dilakukan pemerintah masih belum efektif dan belum sepenuhnya berhasil.
10. Kesenjangan antara kebijakan anggaran, program pembangunan kesehatan, dan minimnya fasilitas kesehatan untuk pencegahan dan penanggulangan penyakit TB di Kota Malang dianggap sebagai pemicu tercipta dan meluasnya penyakit TB di Kota Malang.

Persoalan di atas perlu diatasi dengan berbagai bentuk aksi diantaranya aksi utama, aksi kemitraan, dan aksi perumusan program strategis pencegahan dan penanggulangan TB secara efektif, tuntas, dan berkelanjutan sehingga persoalan sebagaimana temuan di atas dapat teratasi secara efektif, tuntas, dan berkelanjutan.

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# **SOCIALIZATION OF THE VALUE OF ‘LOVE’ (THEORY ANALYSIS OF ERVING GOFFMAN’S DRAMATURGY STRUCTURE TOWARDS KENDURI CINTA COMMUNITY)**

Luluk Dwi Kumalasari

## **ABSTRACT**

Our nation’s life is severely unstable. This can be seen from various issues occur, which causes crisis of trust. Rationally, every citizen’s thought has been led to accept and absorb problems of life that gradually teaches to have negative thinking. In all aspects of life, including economy, social, culture, politic, security defense, and law, universally legitimates the irrational thought. From the reality, several communities and organizations have been built in order to escape from the vicious sorrow. The question is whether those communities of people can give an enlightenment and change towards our society’s paradigm and behavior from now on? Is it a proper step to start over? Thus, the study aimed to observe one of the community in Jakarta, *Kenduri Cinta*. During the implementation, the show is held on Friday night every two weeks in each month at *Taman Ismail Marzuki* (TIM). It is a meeting forum in a simple stage setting, discussing (*sharing*) various inspiring topics (love concept) and performing art, such as poem, rhymes, short stories, songs, rebana or hadrah, and community gather. The forum is expected to bring some change and acceptable values for the audience during the show.

**Keywords:** community, change

## **INTRODUCTION**

Socialisation is such a general concept that refers to a process in which we learn through interactions with other people, including the way people think, feel, and behave. All of those are essential to create effective social participation. Socialisation is a lifelong process in our life which employs roles to be taught.

As humankind, we have a lot of status demanding us to some different roles. Moreover, we can do our roles as a further step of an interaction, from what we see, listen, feel, and etc, for we live as social humankind, not individual. Group or community is only a part of the nation’s concept.

Because socialization is a lifelong and essential process happening to us, as social humankind, the researcher was interested in investigating further about the socialization of the value of love in *Kenduri Cinta*. The other factor was *Kenduri Cinta* has a slogan to sustain love in order to preserve Indonesia as a noble country. The setting included stage, actors, and audience.

The value transferred by other communities, beggar community in Madura for instance, tends to legitimate descendant value from the parents to the children (the next generation). Another example is the transfer of value seen in P4 activities that emphasizes on doctrine. No exception, the ideology of *Pancasila* and the Constitution

acknowledged by every citizen, is contradictoy from the facts. Pancasila, our country's philosophy, were as if paralyzed for the citizens violate its noble values. How can a country strongly stand if it does not have any strong foundation? We can see an irony of the implementation of *Pancasila*'s principles in our surrounding.

Living in a chaotic stuation of our country, citizens are desperate, deeply concern, distrust towards a lot of government's roles. It is due to the government, as the role model, shows negative and destructive behavior. Thus, it is the challenge for the next generations to responsibly recover the society's spirit and perception in order to be skillfull, confident, and responsive persons in various conditions. The actions should be conducted through maintaining humanity and love values for a better and noble nation. Those are not only the responsibility of the young generations, but also all agents who have high morale and spirit. The increasing number of organizations, communities are somehow the proof of morale responsibility to recover the nation's condition regardless of their strength and weakness.

Fortunately, there are numerous communities whose members are eager to sustain love in order to preserve Indonesia as a noble country. In addition, they are willing to create mutual unity from many different groups and classes, including religion, education, class, social status, ethnic, ideology, and any others. In order to gain prestigious concept of a nation. Therefore, the researcher was interested in investigating further. This study was primarily focused on portraying closer about many things related to *Kenduri Cinta* at Taman Ismail Marzuki (TIM) in Central Jakarta. Specifically, this study observed on how effective the process of values socialization in *Pancasila* was conducted through stages of performance.

## **RESEARCH METHOD**

The study used qualitative approach, an approach that placed the researcher's point of view subjectively. The researcher highly concerned about subjective point of view from every subject of the study she took. Qualitative approach understands the individual understanding. Hence, the researcher conducted intensive interactions and communication with the subjects of the study. In addition, the researcher explored categories, patterns, and analysis towards the social process happening in society she observed (John Creswell, 1994).

The study applied descriptive analysis. The researcher tried to portray systematically and comprehensively about the profile of *Kenduri Cinta* and identify the process of the values socialisation in the community.

The data collection was conducted through indepth interviews, observation, documentations, and written check list. All the data needed by the researcher were all things related to the socialization of values in *Kenduri Cinta* at Taman Ismail Marzuki, Central Jakarta. Thus, the subjects of the study were all the people at Taman Ismail Marzuki during the performance, including the board members and the committee of *Kenduri Cinta*, the process during performance, and any other references.

## **FINDINGS AND DISCUSSION**

*Kenduri Cinta* has been built and has held several performances in 2000, this community is such 'a love movement' that has been conducted by Padhang Mbulan residents in various districts around Indonesia. The word 'love' is referred comprehensively and holistically. 'Clean government' for instance, is a manifestation of universal human love in a national scale in which some people paid by society are

responsible to create clean governance. Corrupt governance is a violation towards politic professionalism and love betrayal.

In life, love can be inserted into several essential aspects of life or disciplines, including social aspect. Love is the result of social order of society including advantageous relations between people, groups, affiliations, streams and etc. In politic, love is a form of the government's service to its higher authority, citizens. In economy, love is justice and proper distribution of prosperity. In law, love is when there is not any sorrow due to the manipulation of a truth. In culture, love is the freedom of everybody to explore their potential of positive humanity.

*Kenduri Cinta* does not discuss and feast prejudice, winning, and hatred. On the contrary, they share kindness for the sake of humanity's romance in order to keep the values. *Kenduri Cinta* is an event or forum that gives clean atmosphere. Its concept is not merely a performance or being audience. Everybody attending the forum should obtain meaningful advantages through knowledge, does not merely *show of force* particular affiliations, but maintain the nuance in order to build clear communication, objective thought, agar tercipta komunikasi yang jernih, pikiran objektif, feeling is positively embraced by pure heart.

The show is not only showing art performance, but also prioritizing the dimension of humanity's romance, resuscitating, educating, and freeing. The topics shared during the forum are various, from religious things, until sharing about feeling, idea, opinion, and any other things framed through interactive and refreshing dialogues. The show emphasizes humanity culture approach, and cross culture. Everybody can freely perform or show. Islamic idiom like *shalawat*, is recited as the religion contribution which is expected to grow better love among people.

Since the beginning of the study was implemented, there have been a lot of topics discussed, such as *ksatria jaya nusantara*, *penjajahan jenis ke-4*, *apakah bersama kita bisa*, *aku ingin hidup bebas*. *Keberdayaan di tengah ketidakberdayaan*, *Ada apa pluralisme*, *Indonesia siaga satu*, *Bangsa tanpa kiblat*, and any other attractive topics.

Motivation enforces people to be interested in *Kenduri Cinta*. From the result of the study through indepth interviews, it was proven that the motivation making the people interested in *Kenduri Cinta* was various. In short, they want to gain some essential, positive, meaningful, and socially functional knowledge.

People's perspective towards *Kenduri Cinta*. The findings of the study showed mostly on positive perspective. There has not been any negative point of view of the people towards *Kenduri Cinta*. The shows performed through sharing of 'love' values were very advantageous for the audience and systematically good in the concept. The people who are being looked down actively exist in *Kenduri Cinta* and get acceptance in the forum. The drunks, infidels and others can also be accepted well, without being restricted by feudalism and groups.

*Kenduri Cinta* was an attractive forum. It is like a sermon for citizens. The discussion in the community were honest and verbal, while this was hardly found in any other shows or art performances. The people delivering materials and arguments during the shows brought enlightenment for the audience in *Kenduri Cinta*. Although the execution of the forum or show was often forbid by other institutions, *Kenduri Cinta* can never be restricted by anybody.

The Jakarta-based community was often seen as a forum that teaches us to be open with a lot of perspectives when we face some problems in life. The topics discussed in *Kenduri Cinta* can change individual paradigm to be more open by managing impressions. Firmness, wisdom, love, patience, extremism, and others could be managed by Rasulullah's teaching (for Moslem), and any other religious teaching for each believer.

*Kenduri Cinta* is an alternative for different people to gather, present, and share many thoughts. It is a place for people from different social status to gather, from *grassroot* (lower social status) to the higher ones. In *Kenduri Cinta*, people can transform information each other. Being actively involved in the community, we can get calm and happiness, as if the burden has gone away. It is because *Kenduri Cinta* talks about nations, prosperity, with sincere prayers. Although metropolitan society tends to get social-politic issues, they can still learn other values through *Kenduri Cinta*.

Execution of the event. *Kenduri Cinta* performed every Friday night in the second week of each month in the form of an interactive two-way dialogue (speaker and audiences). Practically everyone has the same right and opportunity to state their opinion, without being discriminated, whether they were or were not the speaker, they could also carry out art performances (singing, reading poetry, reading stories, and so forth). The concepts and the settings for their performances was not so high stage so that it looked more humanists, the audiences faced with speakers (in the form of half a circle). The event was really independent, so it was not demand anything from anybody. For the audiences, *Kenduri Cinta* was not just a discussion forum, because there were other intertwined and interconnected experiences including art performances. *Kenduri Cinta* has never bored the audiences. This was evident in every performance took place every Friday night in the second week of each month starting from 2000 until now it could last for six hours or even more, from 20:00 WIB until 02:00 WIB. Then it could be dubbed as a successful show.

Socialized value (analysis of theory). Values that were being socialized in the community when the occasion took place were varies, according to the themes that were raised, and were supported by the critical thinking done by the speaker and the audiences. For example, one of the theme was 'a nation without a direction' (April 2006), the media; acted out by Emha Ainun Nadjib, Mohammad Sobari, Ichsanurdin Noorsy, Abdullah Shodiq, Ian L. Betts, Ms. Lena, KH. Hasan Abd. Sahal, Jose Rizal Manua, Mbah Surip, and Karungga Band. Attracted 300-400 audiences came (constant and very plural) from different genders, ages, tribes, religions, ideologies, statuses, occupations, activities, and groups. Values were being socialized; leadership, friendship, independency, the power of consciousness, love, wisdom, responsibility, kindness, morality, and pluralism (which could concern a wider problem).

The result; values were received by the audience; audiences were very attentive to the events, clapped hands, laughed (smiled), enthusiastically participated, felt pleasant and not felt tired, although it was a 6-hour event, the number of audiences remained constantly. It were happened similarly with other themes.

Actually, values carried out in *Kenduri Cinta* were not novel, it had already been discoursed in education and cultural, political, economic, social, and other speeches. Those were how all human beings with classes, religions, or the different settings were able to find a good meeting point for humanity, peace, for them all. It were not simple, because people in this modern era had already born in clusters (were not born universal).

*Kenduri Cinta* Community only facilitate those came from different groups, without the intention to design it. Because they were not inviting anyone who comes, the followers, all came spontaneously, anyone could attend, as long as they were able to mingle and able to open up the dimensions of communication as wide as possible.

Based on the interviews results, the values obtained from *Kenduri Cinta* was very helpful to be used as stepping stones, as the guidance for someone to behave in various situations and conditions. The values applied for the audiences in *Kenduri Cinta* were good values. Then, *Kenduri Cinta* provided the sense of togetherness, made a fellowship which interwove one person with others. It also taught appreciation of pluralism, because they did not see someone because of their religion, ideology, skin color, or other things. On the contrary, the spirit of awareness and togetherness made them united.

*Kenduri Cinta* community taught values which has already in accordance with what most people believe as good, for examples; love, humanity, dignity, democracy, egalitarianism, pluralism, tolerance, conscience, and others. Universally, the application of the values were interrelated and closely linked.

When we talk about love, it is known that every religious institutions promotes love as their ultimate goal. This value can be derived from local to universal dimensions. Equin policy actually is also a translation of love. Whereas agricultural policy cared the welfare of farmers, fertilized soil and environment also can be known as love. Thus, love actually is the lifeblood of all processes, the work of human being in this world.

Love in *Kenduri Cinta* community could be used in local context, also could be practiced contextually, because life shifts and sliding to fit with the necessities and requirements. As Emha Ainun Nadjib said; there is love in romance (the opposite sex), there is love in happiness, create justice is also an act of love, love is not possible to occur without justice presence. Take example, the arts, arts basicly built upon love, it is impossible for art to achieve beauty without love. On the other hand, *Kenduri Cinta* as a community showed that love not only occured between individuals, because the community members came from various settings, the people had many peculiar activities undergone, they also had their own differences in religious beliefs, the political backgrounds among them were diverse, so the only reason to love others was just becauce they are human beings who love.

Noble on the other hand valued more than culture, because its grace is only known in the vertical values. The grace itself shown by how human could concentrate on his life. In *Kenduri Cinta* community, grace always measured dinamically, for example, do Moslem women who wear veil have higher nobility than those who are not? Not necessarily, it needs to be measured since there is no fatwa that say yes or no. Is the cleverer somebody the more honorable he/she is? Not necessarily because it is need to be measured. Do people with high structural position also a noble? It also needs to be measured. This is actually what *Kenduri Cinta* were looking for, because there people were being undergone reeducation process so that they able to be more objective and have more thorough tp look for fundamental values in life.

Values socialized in the *Kenduri Cinta* community is essentially were consensus on humanity. It highlighted especially on equality, including equality in democracy and so forth which was supported by values such as; love, conscience, egalitarianism, pluralism, and others.

The socialization process. There were three socialization processes in *Kenduri Cinta* community, it were main permanent food, alternative food and instant food. The first one

covered the awokening people's awareness on democracy and other things that mentioned before, and it would occur in any situation. Secondly, it was quite applicative, it was associated with things that needed be done by officials, such as NGOs, it catered commitments and empathies toward community problems (it is sometimes either applicative or not, sometimes it can either help or not). Thirdly, acted instantaneously like a passion for change, if it did not happen, there is no problem because it is not main food. These main functions could vary, it could drive someone into their fated spouse, but that was not the goal. These values socialization in the form of transmission had two-way senses and had no intervening elements to the audience to accept values socialized. Recognition of the plurality gained through stage media as a means of transmission, using the concept of stage, actor and audiences settings. Here audiences learn through interaction with others (speakers with interactive dialogue and arts as the media), how to think, feel and act, all of which are things that are very important in creating an effective social participation, through the process of managing the effects of impression (impression management).

## **CONCLUSIONS AND RECOMMENDATIONS**

Based on the results of the research that has been described, it can be summed up as the following things: *Kenduri Cinta* community has existed and organized its events from 2000, this community is a form of "love movement" expression which for many years has been practiced by Padhang Mbulan society in various regions of Indonesia. *Kenduri Cinta* is an exciting event, it is a learning community for common people. Discourses that were discussed in *Kenduri Cinta* were honest criticisms or spontaneously verbally spoken, and this was very hard to find in other places and events (shows). The figures that conveyed arguments brought enlightenment to the audiences of *Kenduri Cinta* community. Although sometimes this kind of events often obstructed by the institution, the community of *Kenduri Cinta* showed that their presence in the community could not be expelled or debarred.

The motivation that encouraged people to join *Kenduri Cinta* is diverse, but in essence, they want to get useful, good, helpful, and have positive social function knowledge. When talking about their views, the research showed that there is not any bad label from the society to *Kenduri Cinta*. The show, which was served with occurring 'love' transfer, was beneficial for the audience and was a good team concept. This meant that people who are considered crazy (back stage), he existed in *Kenduri Cinta*, he was accepted there. Drunkers, those who were infidels and others could also be accepted very well, without any limitation from feudalism and class. Values that were socialized in the community at *Kenduri Cinta* varied.

In *Kenduri Cinta* community, socialization processes occurred in three ways, which were pointed to bring awareness in positive life changes. The transmission is bi-directional, and there is not any intervention elements directed to the audiences so that they accepted values being socialized. Recognition of the plurality conveyed through stage media, using the concept of stage, actor and audience settings.

The researcher suggests; for *Kenduri Cinta* community to improve their process of meaning transformation in order to sustain the community's militancy (its spirit and soul) and society in general when making the transfer process from this research. For the audiences, it is expected this research could provide input on how the process of situation definition that have to be faced and its impact management when there is a transfer of value, the audiences also knew that the stage is an effective media helps the transmission process, and the values obtained in *Kenduri Cinta* community could be beneficial for interaction in the wider community. *Kenduri Cinta* community could be an

icon of unity which could stimulate the growth of other similar forums that will raise the community awareness in mind mapping, sense, hope, and ambition. Generally, communities were expected to contribute more to society, especially in enhancing the dignity of the people, so that people could maturize themselves and they were ready to face the situation and condition of this twisted nation. This study was done with the hope of contributing scientific or practical input to policy makers in order to improve the social welfare of the Indonesian people.

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# **MEMBANGUN KELUARGA “RAMAH AUTIS” MELALUI TINDAKAN KOMUNIKATIF IBU DARI ANAK AUTISME**

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## **ABSTRACT**

This study is based on the complexity of the problems of families living with a child with autism. Families also face a big problem that is 'defeat' system that does not 'autism friendly'. A family living with an autistic child must first be able to "manage" a great family to be able to accept the presence of an autistic child, and involve all family members. The main focus of this study maternal communicative action in seeking acceptance and family support. The purpose of research is to reveal the experience of mothers of children with autism. Research subject is a mother of four who resides in the city of Malang. They are an entrepreneur, lecturer, homemaker, and social activist. The results showed that the husband, the mother tends to her husband communicative action through the involvement of the time of consultation with experts. While on sibling that are minors, mothers tend to prefer the term autism as a something unique of his brother who is autistic. The sibling who was a teenager, his mother more flexibility to exchange feelings and experience to get involved in social intervention. Mother communicative action to grandparents of children with autism, tends to reduce the complexity of the problems of children with autism on the issue of diet, and the willingness of treatment centers in children with autism. The need for the involvement of grandparents use of the article or story books experiences of others.

**Key words:** Family, Autism, “Autism Friendly”, Communicative Action, Children with autism,

## **PENDAHULUAN**

### **Latar Belakang**

Keluarga yang memiliki anak penyandang autisma memiliki persoalan yang kompleks. Tidak hanya persoalan intervensi medis-psikologis, melainkan juga persoalan-persoalan sosial yang harus mereka hadapi. Secara internal dalam keluarga inti, kenyataan hidup dengan anak penyandang autis bisa mengakibatkan keretakan rumah tangga. Saling menyalahkan diantara suami isteri, tuduhan siapa yang menjadi sebab anak autisma, dan keputusasaan dalam beberapa kasus menyebabkan terjadinya perceraian orang tua. Sedangkan dalam keluarga besar, penerimaan negatif keluarga masing-masing pihak juga menimbulkan pertengkaran, keputusan untuk menarik diri dalam aktivitas keluarga besar, dan bahkan lagi-lagi bisa meningkat pada perceraian orang tua.

Sementara itu, keluarga yang hidup dengan anak penyandang autis juga harus menghadapi masyarakat di luar keluarganya. Tetangga, rekan kerja, kolega, dan lingkungan sosial lainnya, seperti sekolah, mulai pra sekolah (PAUD), Taman Kanak-Kanak, Sekolah Dasar, Sekolah Menengah, dan Perguruan Tinggi. Juga lingkungan dimana terdapat area-area publik. Ketidak tahuhan masyarakat akan autisma, ketidak

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pedulian, prasangka, stigma, kesalah pahaman, dan bahkan penolakan secara terang-terangan dari lingkungan sosial adalah problem-problem yang harus dihadapi para keluarga dengan anak penyandang autisma.

Kompleksitas persoalan sosial yang dialami oleh keluarga yang hidup dengan anak penyandang autisma membuat setiap keluarga memiliki cara-cara dalam mendapat dukungan sosial. Demi mempertahankan keseimbangan keluarga sebagai bagian dari sistem masyarakat. Perasaan terkucilkan, teralienansi, ketidak berdayaan, diskriminasi, penolakan sosial, bercampur dengan terbatasnya akses ekonomi dan politik, menggerakkan beberapa keluarga yang memiliki anak penyandang autisma berhimpun dalam suatu wadah. Misalnya Parent Support Group (PSG) yang diprakarsai oleh Yayasan Autisme Indonesia. PSG ini telah menyebar di setiap kota-kota besar di Indonesia, seperti di Jakarta, Surabaya, Semarang, Yogjakarta, dan Malang.

Selain yang berskala nasional seperti PSG-Yayasan Autisme, ditingkat lokal juga muncul komunitas-komunitas serupa. Misalnya, di Kota Malang, Jawa Timur pernah terbentuk Himpunan Orang Tua Peduli Autisme (HOPA) sekitar tahun 1999-2000, SMART Parenting pada tahun 2011 hingga sekarang, dan Sahabat Autisme Malang (SAMA) pada tahun 2012 hingga sekarang. Begitu pula dengan berkembangnya media social. Muncul komunitas-komunitas online seperti grup LRD dan Grup Peduli Anak Berketuhanan Khusus.

Sebagian besar aktivitas komunitas-komunitas tersebut meliputi *sharing* pengalaman antar orang tua, konsultasi dengan pakar seperti psikolog, psikiater, teraphist, dan guru-guru inklusi, seminar dan pelatihan, serta unjuk karya anak-anak autisma dalam bentuk pameran dan gelar seni. Bahkan memanfaatkan kemajuan teknologi, komunitas-komunitas tersebut juga memiliki *website*, *microblog*, dan memperluas jaringan komunikasi melalui media sosial (*Facebook*, *twitter*, *BBM*).

Munculnya komunitas-komunitas ini dengan berbagai kegiatannya merupakan salah satu bukti upaya-upaya orang tua dalam mempertahankan keseimbangan sistem sosial. Tidak hanya bagi dirinya sendiri, melainkan juga bagi seluruh anggota keluarga, dan sistem masyarakat yang lebih luas yaitu Negara. Aktivitas-aktivitas mereka menunjukkan suatu tindakan komunikatif dalam merebut dukungan sosial bagi keluarga yang hidup dengan anak penyandang autisma, dan khususnya bagi anak-anak penyandang autisma itu sendiri.

Dikatakan sebagai tindakan komunikatif karena mereka menyuarakan kegelisahan-kegelisahannya melalui argumentasi-argumentasi rasional atas perlakuan sosial yang dialami. Tindakan komunikatif warga Negara merupakan suatu hal yang penting dalam proses demokrasi dan diskursus akan suatu kebenaran.

Jurgen Habermas berpendirian kritik hanya dapat maju dengan rasio komunikatif yang dimengerti sebagai praksis komunikatif atau tindakan komunikatif. Masyarakat komunikatif bukanlah masyarakat yang melakukan kritik melalui revolusi atau kekerasan, tetapi melalui argumentasi. Kemudian Habermas membedakan dua macam argumentasi, yaitu: perbincangan atau diskursus dan kritik. Relevansi pendirian Hubermas dalam riset ini adalah tindakan komunikatif keluarga dengan anak penyandang autisma melalui komunitas-komunitas akan memperoleh dukungan sosial.

Memahami tindakan komunikatif keluarga dengan anak penyandang autisma dalam upaya mendapatkan dukungan sosial dapat memberi kontribusi keilmuan dan praksis pembangunan demokrasi. Khususnya hak kaum minoritas. Sejauh ini hasil penelusuran riset terdahulu, topik-topik tentang autisma lebih banyak fokus pada intervensi medis,

biomedis, psikologis, *life skill*, dan pendidikan yang berpusat pada si anak penyandang autisma saja. Aspek sosial, yakni keluarga secara sosiologis masih sangat minim. Bahkan hampir tidak ada.

### **Fokus Permasalahan**

Fokus utama penelitian ini tindakan komunikatif ibu dalam mengupayakan penerimaan dan dukungan keluarga. Tindakan komunikatif yang dimaksud dalam penelitian ini adalah argumen-argumen yang dibangun oleh para ibu anak autis, sebab-akibat argumen yang dibangun tersebut, cara-cara menyampaikan argumen tersebut, dan kepada siapa argumen-argumen itu tujuhan?

Tahap pertama penelitian ini memilih tindakan komunikatif yang dilakukan ibu anak autis pada anggota keluarganya: Mulai dari sang suami, anak-anak lain yang menjadi saudara kandung anak autis (*sibling*), orang tua ayah ibu anak autis (*eyang*), dan saudara-saudara lain yang dekat dengan keseharian keluarga dengan anak penyandang autis (om, tante, sepupu, dsb.).

### **Tujuan Penelitian**

Mengungkap pengalaman ibu dari anak penyandang autisma dalam mengupayakan penerimaan dan dukungan keluarga melalui tindakan komunikatif.

### **Kontribusi/Manfaat Penelitian:**

Hasil penelitian ini bermanfaat untuk menemukan model yang berkaitan dengan tindakan komunikatif kelompok minoritas sebagai unsur penting dalam demokrasi dan klaim kebenaran pembangunan Negara.

## **KERANGKA KONSEP**

### **Tindakan Komunikatif**

Jurgen Habermas melukiskan tindakan komunikatif sebagai perbuatan yang dilakukan manusia ketika mereka terlibat dalam komunikasi berjenis khusus – dan luas-, dengan tiga ciri khas. Yakni komunikasi yang secara sadar dan sengaja dilakukan manusia untuk tujuan:

- (1) Mencapai kesepakatan intersubjektif sebagai landasan bagi
- (2) pemahaman timbal balik agar bisa
- (3) mencapai konsensus damai tentang langkah yang hendak ditempuh di dalam situasi praktis khusus tempat mereka berada (Kemmisis & Taggard dalam Denzin & Lincoln , 2010: 622).

Teori tindakan komunikasi Habermas terbagi menjadi *speech-act philosophy* filsafat seni pembicaraan, sosiolinguistik, dan khususnya dari ide keterlibatan percakapan (*the idea of conversational implicature*). Maka dari itu, yang pertama perlu dibuktikan oleh Habermas adalah bahwa struktur bahasa mengandung rasionalitas (*Mundigkeit*, harfiah kedewasaan, kemandirian). Dengan kata lain, Habermas mencoba mengembangkan sebuah teori kompetensi komunikatif. Ia meneliti kemampuan apa yang termuat dalam kemampuan (kompetensi) untuk berbicara. Teori ini juga disebutnya *pragmatika universal* (dari kata Yunani pragma, tindakan) karena bicara merupakan tindakan, dan “universal” karena yang diteliti adalah apa yang tersangkut dalam segenap pembicaraan (Suseno, 2005: 164).

Bertolak dari distingsi dasar antara *tindakan instrumental* dan *tindakan komunikatif*, Habermas membedakan antara *tindakan rasional-sasaran* (kemudian juga disebut *tindakan teleologis*), di satu pihak, dan tindakan komunikatif, di pihak lain. Tindakan instrumental yaitu mengenai dunia obyek; sasarannya adalah hasil obyektif yang diinginkan (orientasi pada hasil). *Tindakan instrumental* dibagi lagi ke dalam *tindakan instrumental* atau pekerjaan yang menghasilkan perubahan dalam dunia luar dan tindakan strategik yang bertujuan untuk mencapai hasil-hasil tertentu pada manusia. Artinya di mana hasil tindakanku harus memperhitungkan sikap yang diambil orang lain. Sedangkan Tindakan komunikatif dibagi dua: komunikasi (omong-omong lewat pagar) dan diskursus. Komunikasi dapat dianggap omongan spontan, berdasarkan kepercayaan dan pengandaian-pengandaian nonverbal yang biasa dalam lingkungan sosial itu, sedangkan diskursus bertujuan untuk menjelaskan norma-norma omongan spontan yang dipertanyakan. Ada tiga macam komunikasi murni, yaitu omong-omong atau percakapan (*coversation*), pernyataan yang mana kita bertindak menurut norma-norma dan dramaturgik (berbicara tentang diri kita sendiri) (Suseno, 2005: 164).

Menurut Habermas, dalam memahami dan memperhatikan apa yang terjadi apabila manusia berkomunikasi adalah sama artinya dengan memahami interaksi antar manusia yang dapat dimediasikan secara simbolis lewat bahasa dan *gesture* tubuh yang ekspresif (mengandung makna), sedangkan hakekat bahasa adalah komunikasi, dan komunikasi hanya mungkin dilakukan dalam keadaan saling bebas, karena tujuan komunikasi adalah menjalin saling pengertian, oleh karena itu rasionalitas dalam bahasa harus menjadi pusat perhatian (Suseno, 2005: 167). Komunikasi dalam bahasa akan berhasil jika memenuhi empat norma atau klaim yaitu:

1. Jelas, artinya orang dapat mengungkapkan dengan tepat apa yang dimaksud.
2. Ia harus benar, artinya mengungkapkan apa yang mau diungkapkan.
3. Ia harus jujur, jadi tidak boleh bohong.
4. Ia harus betul, sesuai dengan norma-norma yang diandaikan bersama.

Guna mencapai saling pengertian dalam komunikasi syarat yang harus dipenuhi adalah: *inevitably*, yakni keinginan untuk melakukan pembicaraan bersama, dan adanya saling ketertarikan dalam melakukan komunikasi itu, sehingga persetujuan/pengertian itu dapat mencapai hasil maksimal.

## METODE PENELITIAN

Penelitian dilakukan secara kualitatif deskriptif. Data dikumpulkan melalui wawancara dengan wali murid SLB River Kids. Subjek penelitiannya adalah empat ibu yang bertempat tinggal di Kota Malang. Mereka secara berturut-turut adalah seorang mantan pengusaha, dosen, ibu rumah tangga, dan aktivis sosial. Mereka hidup bersama keluarganya beserta anak penyandang autis yang berusia 7 tahun – 17 tahun.

## HASIL PENELITIAN

### Gambaran Subjek

**Subjek 1** adalah seorang ibu berusia 37 tahun, seorang dosen. Memiliki tiga orang anak. Anak pertama (13 tahun) menyandang autis yang terdeteksi sejak usia 1.5 tahun.

“...ItubarukecuringaansayapribadiMbak.

Sayamencobamencariartikelterkaitdenganautisme di internet”, pengakuan Subjek 1 kepada peneliti(sumberwawanacara, Sabtu 31 Mei 2014).

**Subjek 2** adalah seorang ibu rumah tangga, berusia 42 tahun, seorang ibu rumah tangga yang tidak berkarir di luar rumah. Memiliki anak tunggal yang menyandang

autisma, berusia 17 tahun. Sampai usia 3 tahun kemampuan berbicara anaknya tidak mengalami peningkatan. Cenderung tidak lancar hanya mengeluarkan suara-suara yang tidak jelas. Sampai pada usia anak 3 tahun baru diperiksakan ke dokter.

*“... karena dulunya saya juga tidak mengetahui apa itu autis Mbak, jadi saya tidak curiga kalau anak saya itu autis”. (Sumber wawancara, Selasa 17 Juni 2014).*

**Subyek 3** adalah seorang ibu rumah tangga berusia 47 tahun. Awalnya merupakan wanita yang bekerja di salah satu perusahaan yang ada di Surabaya. Namun ia memutuskan untuk berhenti bekerja sejak anak ketiga (8 tahun) di vonis oleh dokter akan mengalami kelumpuhan sampai dewasa. Ia mengatakan mulai curiga sejak anak berusia 8 bulan.

“Sejakusia 8 ulan... dia belum bias tengkurap dan angkat kepala. Saat itu sudah dilakukan pemeriksaan, pertama ia di vonis mengalami kekakuan saraf otak. Akan tetapi setelah diperiksa lebih lanjut ternyata mengalami kerusakan saraf otak”.(Sum berwawancara, Kamis 26 Juni 2014).

Selanjutnya ia juga menjelaskan bahwa pada saat anak berumur 3 tahun, baru bisa melangkahkan kaki pertamanya, tentunya setelah menjalani pengobatan dan terapi. Setelah itu dilakukan lagi pemeriksaan dan akhirnya juga dinyatakan sebagai anak penyandang autisme.

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### **Tindakan Komunikatif**

Tindakan komunikatif para subjek dalam penelitian ini meliputi pesan yang disampaikan kepada anggota keluarga, dan cara menyampaikannya (*What to says and how to says?*)

#### **a. Tindakan komunikatif dengan suami**

Subyek 1 mengaku menyampaikan kepada suami seperti berikut ini :

“Kalau kepada suami ya Mbak saya tunjukkan artikel-artikel terkait tentang autis. Awalnya artikel tentang ciri-ciri anak autis mbak. Soalnya suami juga tidak mengetahui bagaimana ciri-ciri autis. Setelah diperkuat dengan artikel, kemudian saya juga jelaskan kecurigaan saya kepada suami mengenai kondisi Jojo saat itu”.(Sumberwawancara, Sabtu 31 Mei 2014).

Subjek 2 mengatakan tidak menjelaskan apa-apa kepada suami, karena dari awal ia belum tahu tentang autis. Suaminya membaca di majalah mengenai autis.

*“....saya juga awalnya gak paham autis itu apa. Terus suami saya juga yang awalnya baca di majalah mengenai ciri-ciri autis. Jadi secara otomatis suami saya sudah mengetahuinya. Selain itu sejak awal memeriksakan anak kedokter juga saya sama suami Mbak”.*(Sumberwawancara, Selasa 17 Juni 2014).

Subyek3 mengatakan bahwa antara dirinya dengan suami memang tidak ada yang di sembunyikan, apalagi terkait dengan anak.

*“Saya menyampaikannya sesuai dengan kata dokter Mbak. Karena memang yang memeriksakan anak itu saya Mbak. Saya dan suami kalau*

*ketemu langsung hanya setiap sabtu dan minggu Mbak. Karena suami kebetulan saat itu kerja di luar Kota. Tetapi saya terus menjalin komunikasi lewat telepon dengan suami Mbak. Saya dan suami memang tidak ada yang disembunyikan, apa lagi terkait masalah anaknya Mbak. Jadi saya secara terbuka menyampaikan kalau kondisi anak saat itu seperti apa dan apa yang dikatakan oleh dokter kalau anaknya seperti ini dan harus begini, enak aja menyampaikan kepada suami Mbak".* (Sumberwawancara, kamis 26 Juni 2014).

**b. Tindakan Komunikatif dengan Sibling**

Subjek satu yang memiliki tiga anak, dimana anak sulung menyandang autis. Sibling masih berusia 5 tahun dan 3 tahun. Berikut pengakuannya:

*"Kalau ke adiknya, anak saya yang nomor 2 .....ya saya hanya menjelaskan kalau kakak sakitnya begini, gak boleh makan ini, kalau makan ini efeknya gimana. Adiknya hanya sebatas tahu kalau kakaknya gak bias ngomong. Dia gak tahu autis itu apa, karenanya memang usianya yang baru 5 tahun...".* (Sumberwawancara, 31 Mei 2014).

Subjek 3 menjelaskan lebih lengkap sebagai berikut,

*"Saya menjelaskan kepada kakaknya terkait kondisi adiknya yang berbeda, selain itu saya juga selalu menjelaskan bahwa kakaknya harus mempunyai rasa sayang dari awal. Karena rasa sayang gak bias begitu saja, harus dipupuk dari awal. Selain itu saya juga menjelaskan keanakan-anak saya bahwa adiknya yang terakhir adalah suatu anugerah yang harus disyukuri, jangan dijadikan beban. Selama mama papanya masih kuat akan berusaha semaksimal mungkin agar adiknya bias mandiri. Selain itu saya juga selalu mengatakan bahwa adik merupakan tanggungjawab bersama, tanpa ada bantuan dari kakak-kakaknya itu tidak akan mungkin. Kebetulan anak-anak saya mengerti. Selain itu dulu saat kakaknya yang nomor 1 masih SMP, saya memberikan tugas kedik. Saya bilang bahwa kalau kakaknya mau pergi atau main, tidak apa-apa, tetapi harus pulang kalau sudah waktunya adiknya makan dan mandi sore. Jadi saya kasih tugas seperti itu, biar rasa sayangnya terpupuk sejak dini".* (Sumberwawancara, Kamis 26 Juni 2014).

**c. Tindakan Komunikatif dengan Kakek-Nenek Anak Autis**

Keempat subjek tidak tinggal bersama kakek-nenek. Maksudnya mereka tidak satu rumah. Bahkan ada yang kakek nenek tinggal di luar kota. Berikut pengakuan para subjek.

Subyek 1 menjelaskan bahwa pesan yang disampaikan kepada kakek dan nenek sedikit ada perbedaan. Subyek mengaku bahwa lebih sulit menyampaikan pesan kepada orang tuanya sendiri daripada kepada mertua.

*"Kalau kakeknya ka ngak ada Mbak, jadi yang ada hanya nenek aja. Baik mertua maupun ibu saya. Kita ya bilang pelan-pelan Mbak, mencoba untuk menjelaskan mengenai kondisi anak. Ya kita jelaskan bahwa kita sudah kedokter dan anak harus terapi. Selain itu kita juga jelaskan bahwa*

*anak autis harus diet, tidak boleh makan ini, makan itu".  
(Sumberwawancara, Sabtu 31 Mei 2014).*

Subyek 1 menjelaskan bahwa memberikan pemahaman mengenai autisme itu apa kepada ibunya maupun mertua sejak anak berusia 3 tahun. Setelah usia menginjak 4 tahun, baru menjelaskan terkait tentang diet autis. Menjelaskan kepada orang tua tentang diet anak autis tidak kalah susahnya dengan mengkomunikasikan awal kondisi anak, karena neneknya takut jika cucunya tidak mendapat asupan nutrisi yang cukup apabila harus melakukan diet.

*"Iya Mbak menjelaskan tentang diet autis memang susah-susah gampang. Kadang neneknya mengatakan "lah cuma dikit aja loh gak mungkin ada efek yang gimana-gimana". Makanya saya dan suami selalu memberikan pemahaman mengapa anak autis harus diet".(Sumberwawancara, Sabtu 31 Mei 2014).*

Subyek 2 mengaku pesan yang disampaikan kepada kakek nenek sebagai berikut,

*"Namanya juga hidup di desa Mbak, Trenggalekkan kota kecil. Kalau saya langsung ngomong autis, saya rasa juga ga paham Mbak. Jadi saya ngomong kalau anak itu berbeda. Tetapi ya saya juga bilang sih Mbak, kalau dokter menyebutnya autis. Jadi harus sekolah di sekolah khusus, dulu sih menyebutnya puriasahdini ditempat dokter. Kalau kemertua juga sama Mbak, soalnya kan tetangga". (sumberwawancara, Selasa 17 Juni 2014).*

Subyek ketiga dalam penelitian inimen jelaskan bahwa dalam menyampaikan kepada kakek dan nenek bisa sangat terbuka:

*"Saya ya menjelaskan aja apa adanya Mbak. Bagaimana keadaan anak saat itu. Sambil menangis kepada orang tua karena memang saat itu saya merasa down Mbak".(Sumberwawancara, Kamis 26 Juni 2014).*

## KESIMPULAN

Hasil penelitian menunjukkan bahwa para ibu cenderung membangun komunikasi dengan suami melalui keterlibatan saat konsultasi dengan para ahli. Sedangkan pada *sibling* yang masih di bawah umur, sang ibu cenderung memilih istilah autisme sebagai suatu kelebihan atau sesuatu yang unik dari saudara autisnya. Kepada *sibling* yang sudah remaja, sang ibu lebih leluasa untuk bertukar perasaan dan berusaha memberi pengalaman kepada anak remajanya untuk terlibat dalam intervensi sosial bagi anak yang autis. Tindakan komunikatif ibu kepada orang tua atau eyang dari anak autis, cenderung mereduksi kompleksitas permasalahan anak autis pada persoalan diet makanan, dan kesediaan pusat-pusat terapi dalam membuat sang anak autis akan lebih baik kondisinya. Penjelasan tentang perlunya keterlibatan anggota keluarga juga menggunakan pihak kedua, yakni artikel atau buku-buku tentang autis.

Apabila dikaitkan dengan pendapat Habermas bahwa Komunikasi dalam bahasa akan berhasil jika memenuhi empat norma atau klaim yaitu:

1. Jelas, artinya orang dapat mengungkapkan dengan tepat apa yang dimaksud.
2. Ia harus benar, artinya mengungkapkan apa yang mau diungkapkan.
3. Ia harus jujur, jadi tidak boleh bohong.

4. Ia harus betul, sesuai dengan norma-norma yang diandaikan bersama.

Maka hasil penelitian menunjukkan bahwa para subjek memenuhi norma ketiga yaitu jujur dan tidak bohong. Namun masih ada kesulitan dalam mengungkapkan dengan tepat apa yang dimaksud, sehingga diambil jalan pintas yakni mempercayakan kepada dokter (ahli) dan artikel-artikel tentang autisma. Subjek juga nampak masih kesulitan dalam mengungkapkan apa yang mau diungkapkan, sehingga mereduksi autisma dengan sesuatu yang unik dan akan baik-baik saja.

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# **NGOs ADVOCATION AND GOVERNMENT INTERVENTION IN THE PROCESS OF SOCIAL REHABILITATION FOR LAPINDO MUDFLOW DISASTER VICTIMS IN SIDOARJO, EAST JAVA, INDONESIA**

Oman Sukmana<sup>1</sup>

## **ABSTRACT**

The Lapindo mudflow disaster has resulted in physical and non-physical tremendous, causing a crisis for the social life of citizens in Porong, and surrounding areas. To address the impact of the Lapindo mudflow disaster needed help advocacy NGOs and government intervention in various forms of social rehabilitation programs. This study aims to identify and describe how the Lapindo mudflow disaster impact and the role of advocacy NGOs and the government intervention in the process of social rehabilitation for victims of the Lapindo mudflow disaster. The results showed that the Lapindo mudflow disaster has resulted in the destruction of the physical form of settlement areas, rice fields, agricultural, and industrial area of 1,071 hectares, about 16 villages and 33 factories were destroyed, approximately 48,983 people were displaced, and 33 schools were destroyed, as well as non-physical impacts such as social, health, education, psychological, economic, and so on. Social advocacy by NGOs include mentoring programs and litigation efforts. While government intervention in the process of social rehabilitation for victims of the Lapindo mudflow disaster stated in the policy as stipulated by Presidential Decree, namely Presidential Decree No. 14/2007, Presidential Decree No. 48/2008, Presidential Decree No. 40/2009, Presidential Decree No. 37/2012, Presidential Decree No. 33/2013. Forms of government intervention include facilitation of policy, institutional, and budgetary allocations.

**Keywords:** Advocacy, Intervention, Social Rehabilitation, Lapindo Mudflow Disaster.

## **PRELIMINARY**

Dated May 29, 2006 to the beginning of the emergence of the Lapindo mudflow disaster. Mud with a volume between 100 thousand to 150 thousand M3 per day, out of the bowels of the earth and the area drowned residential areas, agriculture, and industry (Batubara & Utomo, 2012:3)<sup>2</sup>. The central location of the Lapindo mudflow in District of Porong, Sidoarjo regency, approximately 12 km south of the town of Sidoarjo. Mudflow central location about 15 meters from the Banjar Panji-1 (BJP-1), which is a gas exploration well owned by PT Lapindo Brantas Inc. (PT LBI), as the Brantas block operator. Brantas block area stretches from regency of Jombang, Mojokerto, Sidoarjo to Pasuruan, East Java Province. Lapindo mudflow location is a residential area and the main industrial area in East Java. Not far from the location of the mudflow there is a toll road-Gempol Surabaya, Surabaya-Malang highway and Banyuwangi-Surabaya-

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Pasuruan highway, and the cross-track Railways East Surabaya-Malang and Surabaya-Bayuwangi pathway.

According Prasetya and Batubara (2010:40)<sup>3</sup>, Lapindo mudflow disaster is a disaster that is very complex when viewed from the genealogy of the disaster. Theoretical debates involving experts from all over the world. Generally, expert opinion was split into two camps, who argue that the disaster was caused by drilling activity in gas exploration wells Banjar Panji-1 (BJP-1) belong to PT LBI, and among those who argue that the mudflow disaster caused by reactivation of regional faults Watukosek due Yogyakarta earthquake on May 27, 2006, two days before the Lapindo mudflow disaster occurs.

A meeting of petroleum geologists in South Africa, has concluded a mud volcano in Indonesia was caused by the drilling of a gas exploration well, not an earthquake that occurred a few days before. After debating new evidence, 42 out of the 74 American Association of Petroleum Geologists (AAPG) scientists in the audience were convinced the drilling was the trigger of the eruption and only three voted for the earthquake. A further 16 believed the evidence was inconclusive, and the remaining 13 felt that a combination of the earthquake and drilling was to blame. The finding of the AAPG conference adds weight to the opinion of several geologists who have found the mudflow from the volcano, dubbed 'Lusi' by locals, is the direct result of the drilling<sup>4</sup>.

The Government established that the phenomenon of the Lapindo mudflow in Sidoarjo as natural disasters. Based on the decision of the Central Jakarta District Court dated November 27, 2007, stating that the government and Lapindo not guilty of an unlawfull act. Jakarta High Court verdict on June 13, 2008, strengthen the Central Jakarta District Court judgement of November 27, 2007, that the Sidoarjo mudflow incident because the natural tendency is more dominant symptom, not a human error. Decision of the Supreme Court of (MA) cassation, Apel 3, 2009, stated that the mudflow was a natural phneomenon and not the fault of the industry and this decision has permanent legal force (*inkracht*).

Until 2013, Lapindo mudflow disasater has been running about seven years. However mudflow has not shown signs of stopping, although the volume is somewhat diminished. Not yet certain when the mudflow will stop. According to Richard Davies<sup>5</sup> and his colleagues, it is difficult to predict when the certainty of Lapindo mudflow will stop. However, the possibility of mudflows will be extinguished predicted about 26 years. Thus, the Lapindo mudflow disaster expected to stop in the year 2037 that will come.<sup>6</sup>

This study aims to describe and know how the Lapindo mudflow disater impact and how form and the role of governmmt intervention in the process of social rehabilitation of the victim of the Lapindo mudflow disaster.

## RIVIEW OF LITERATURE

Disaster is seen as a condition or a situation, whether caused by human actions or natural, that is sudden and occurs gradually, leading to chaos and widespread loss of life, material, as well as the environment such that it exceeds the capacity of affected communities to deal with the use of the ability of its own resources. In line with the

understanding of disaster, it is seen as a social disaster situation caused by human actions, which are sudden and occur gradually, leading to chaos and widespread loss of life, material, as well as the environment such that it exceeds the capacity of affected communities to handle using its own resource capabilities. Social disaster like this can be caused by social conflict openly and widely, war, or other social unrest<sup>7</sup>.

Rehabilitation is the repair and restoration of all aspects of the public service or a community to an acceptable level in post-disaster areas with the main goal for the normalization or goes fairly all aspects of government and society in post-disaster areas. Rehabilitation is done through the following activities: (a) improvement of environmental disaster areas; (b) improvement of public infrastructure and facilities; (c) relief society home improvement; (d) psychosocial recovery; (e) health services; (f) reconciliation ad conflict resolution; (g) socio-economic of culture; (h) restoration of peace and order; (i) recovery of the functions of government; and (j) the recovery function public service<sup>8</sup>.

Therefore, the social impact of the disaster exceeds the capabilities of the victims to deal with their own resource capability, then the necessary social rehabilitation to advocacy (assistance) and social intervention (interference) of social outsiders. According to Abdul Hakim Nusantara (Miller & Covey, 2005: vii)<sup>9</sup>, advocacy is defined as the act or process to defend or support. Support to community groups was intensified by weak individual, groups, non-Governmental Organization (NGOs), and community organizations that have a concern for the problems of human rights, the environment, poverty, and other forms of injustice. In a wider sense, advocacy is a political process by individuals or groups that are generally aimed at influencing public policy and resource allocation decisions within political, economic, or social institutions and systems. Advocacy can include many activities (form), such as: Budget advocacy, Bureaucratic advocacy, Health advocacy, Ideological advocacy, Interest-group advocacy, Legislative advocacy, Mass advocacy, and Media advocacy<sup>10</sup>.

Samuel (2007: 616)<sup>11</sup> states that public advocacy is a deliberate set of actions designed to influence public policy or public attitudes in order to beguile those who are marginalized. The main difference between public advocacy and human-centered advocacy is that the goal of human-centered advocacy to empower people, especially people who are marginalized. In the context of liberal democratic culture, is used as an instrument of public advocacy decoration by applying the meaning of non-violence and constitutional. Public advocacy as a political process driven by value, as it seeks to challenge and change the unequal power relationships that result in people marginalized socially, political, and economically. Advocacy process include: (1) reject unequal power relations in every level, including patriarchy, from a personal to the public, from family to government; (2) involve government agencies to empower marginalized parties; (3) create and use “space” in the system for a change; (4) strategies using knowledge, skills, and opportunity in influencing public policy; and (5) integrate the micro-level activity and macro-level policy initiatives.

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Furthermore, Samuel (2007: 616)<sup>12</sup> conducted a study on the process of advocacy in India. According to Samuel, in the Indian context, grassroots organization and mobilization is used to build awareness and demand rights as citizens, and ensure the credibility, legitimacy, and the bargaining power of public advocacy. In India, one of the many advocacy of social justice is the application of legislation (social injustice legislation) and social security programs. Including progressive legislation such as the Equal Remuneration Act, the Dowry Prohibition Act, the Bonded Labour Prohibition Act, and the Prevention of Atrocities against Schedule Caste and Scheduled Tribe Act.

The party that advocates departs from an understanding and belief that the injustices inflicted on the poor or oppressed communities, due to the birth order of asymmetrical social power relations are unequal. Power relations are unequal and undemocratic that could produce the decision-making process and mechanisms that deny the participation of the poor (marginalized groups). Decision-making processes and mechanisms that are not democratic in itself produces a variety of policies that harm the rights and interests of the poor (marginalized-groups). In this perspective, advocacy is an activity planned jointly by community groups, for the purpose of transforming the system of social relations that gave birth asymmetrical power relations are not democratic towards the realization of the social fabric underlying symmetrical power relations more democratic and fair. Toward the ideal society that advocacy activities are planned and performed.

In the Indonesian context, advocacy activities undertaken by NGOs and grassroots organizations include various forms of advocacy such as: education, awareness, and organizing groups of poor people, providing legal assistance activities that promote litigation or defense of the rights and interests of the poor in the front court. Lobbying activities to the centers of decision-making with respect to environmental management by NGOs engaged in advocacy and environmental law, such as the Indonesian Legal Aid Foundation (YLBHI), the Indonesian Environmental Forum (Walhi), and many other environmental organizations. Similarly, the consumer society of Indonesia through the Indonesian Consumers Foundation and other consumer NGOs have long been advocating the rights and interests of consumers through education and awareness programs, litigation, and lobbying to the centers of decision-making in order to birth a policy that is responsive and productive the rights of consumers.

Furthermore, Miller and Covey (2005:13)<sup>13</sup> states that the approach to advocacy can be varied depending on the political context in which the organization works. Advocacy strategies can vary from approaches that emphasize co-operation with the authorities to approach that focuses on education and appeals, and finally to openly oppose the approach and the use of combined strategies are mutually reinforcing. For example, one of the NGOs working in Africa under an authoritarian regime approaches behind the scenes to create change. In the Philippines, in the case of the Urban Land Restructuring where a broad coalition of NGOs, housing associations, and major church leaders using approaches that range from demonstrations in the street to a banquet held by the Catholic bishops to important commissions in Congress and the drafting of legislation to important committees in Congress. In Ecuador a strong national indigenous movement in collaboration with supporters of the ruling church as well as important international NGOs allied to overturn legislation that would eliminate legal protections on lands owned by indigenous. For fear that their land will eventually disappear, the Indian movement using a wide range of advocacy strategies and tactics to achieve their goals. First they ask the advice of the members on the impact of the law, gather knowledge and the findings of their grass roots and then mobilize the members to open up political space for

negotiation with the government. To expand the space, they blockaded highways, occupied government buildings, causing media coverage, using the court system to obtain a favorable decision when the army intervened, and spoke with officials from major bank in Washington. These actions ultimately led to negotiations with the country's president and other government leaders to produce significant concessions that eliminate most of the legal aspects of an unbearable it.

Meanwhile, referring to the process of social intervention intervention through changes in ongoing social relationships (Bennett, 1987:13)<sup>14</sup>. Social intervention process, including how to start a change, evolve, and survive in the social world. According to Parson (Bennett, 1987:13)<sup>15</sup>, social intervention related to the process of changing the system, not the process of change in the system. Change the system is related to changes or transformations that try to overcome problem in the system.

According to Loewenberg (1977:7)<sup>16</sup>, in the context of social work, the term social interventions emphasize the active participation, aim, and planned both by the client and social worker in every phase of the process of social intervention. Intervention activities are a response to a specific problem or condition the occurrence of an effort to prevent the development of problems in individuals, groups, or communities. Furthermore Loewenberg (1977: 25)<sup>17</sup> states that the processes of social intervention include: (1) Problem Recognition, (2) Request for Help, (3) Preliminary Assessment, (4) Problem Assessment and Goal Identification; (5) Strategy Development, (6) Contract Negotiation; (7) Implementation of Strategy; (8) Feedback and Evaluation, and (9) Termination.

Critical intervention is one of the techniques used in handling (rehabilitation) social disaster victims. Critical interventions, ie interventions that aim to provide as much support and assistance to individuals and families, in order to allow people who helped regain psychological balance as quickly as possible<sup>18</sup>. According to Roberts (Payne, 1997: 101), the steps in the critical interventions include: (1) to assess risk and safety of clients and others, (2) establish rapport and communication with clients; (3) major identity problems; (4) deal with feelings and provide support; (5) explore possible alternatives, (6) formulate an action plan; and (7) provide follow-up support.

## **RESEARCH METHODS**

This study uses an interpretive-constructivist paradigm. All research is characterized by an interpretive guided by a set of beliefs and feelings about the world and how to understand and study it (Denzin & Lincoln, 2009:16)<sup>19</sup>. According Denzim and Guba (Salim, 2001:71)<sup>20</sup>, the purpose of research of the interpretive-constructivist paradigm is to hold a reconstruction of understanding and social action. According Marvasti (2004:8)<sup>21</sup>, the purpose of the research constructionism is concerned with how cultural and situational variation in coloring (shape) a reality. The research approach used is

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qualitative approach. According Denzim and Lincoln (2009:6)<sup>22</sup>, the word qualitative implies an emphasis on processes and meanings that are not rigorously examined or has not been measured in terms of quantity, amount, intensity, or frequency. Types or methods used in this study is phenomenology. According Denzim and Guba (Salim, 2001:89)<sup>23</sup>, phenomenology is the method is a method of research with a qualitative approach. Similarly, Creswell (2007: 53)<sup>24</sup> which states that phenomenology is one of the five approaches to qualitative inquiry. Data collection techniques include interviews, observation, and documentation.

## **RESULTS AND DISCUSSION**

### **Lapindo mudflow disaster impact:**

Lapindo mudflow disaster on May 29, 2006 are already affecting people and the environment in the district of Sidoarjo, particularly in areas in three districts well into the Affected Area Map and outside the region Affected Areas map, namely: Porong, Tanggulangin and District Jabon. Lapindo mudflow disaster has destroyed about 16 villages, of which 1,071 acres area that includes the area of agriculture, aquaculture, industrial, and residential areas must be vacated, either by drowning or due to mudflow declared uninhabitable as a result of social, subsidence , and the danger of blowouts. While more than about 15,788 households or 48,983 people had to move from their home residence to a new place.

Lapindo mudflow disaster impact than in changes in the region Porong, Tanggulangin, and Jabon due to the loss of some areas due to drowning or uninhabitable mud, also has led to changes in various aspects, such as: economic, social, environmental, education, and so on.

Damaged assets consist of: (1) Land and building residential population, (2) productive crops, such as rice, sugarcane, and pulses, (3) building and plant equipment, and (4) infrastructure, such as highways, power lines, irrigation systems, water supply networks, telecommunication networks, gas pipelines, etc..

Economic losses due to mudflow at least divided into two, namely direct cost or indirect losses of Rp 50 billion per day, and the indirect costs or indirect losses of Rp 500 billion per day. According to the Governor of East Java, Soekarwo, with reference to the results of studies of the Faculty of Economics, University of Brawijaya, Lapindo mud disaster losses reach Rp 33 trillion per year.

The data in 2009, as many as 3,562 workers affected by layoffs from several companies closed and several other companies to make cuts workers/employees. 2,302 temporary workers mudflow victims still in limbo without a job due to the factory mud. According to the Indonesia National Human Rights Commission (Komna HAM), the public's right to work or create new jobs also disappeared mud. According to recent data (2013) as described by the chairman of the Association of Company Lapindo Mudflow Victims (GPKLL), Drs. S.H. Ritonga, that there are 33 companies/factories are forced to close due to waterlogged mud which caused approximately 10,000 employees (workers) lose his job. In the field of education, at least about 33 school buildings ranging from kindergarten to high school destroyed mud. As a result, 5,397 students have transferred

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to another school or studying at school emergency. Such conditions are a threat to the school dropouts.

The material losses triggered non-physical impacts on the communities that have resulted in loss of no less value to the loss of material, namely socio-cultural losses, and losses of psychology and public health. Non-physical impact is not yet a major concern those responsible, which should also provide compensation to the affected people affected by the damage, socio-cultural, psychological and health. For example, socio-cultural impact of the destruction of the social order, values, norms, and traditions that have already built dozens or even hundreds of years in the life of the community; health effects, namely the emergence of a variety of illnesses suffered by the victims of the Lapindo mudflow disaster, such as : Acute Respiratory inspections (based on reports of three health centers in the three districts affected, there is a significant increase in the number of patients with respiratory disorders), skin cancer, cough-cough, etc.; psychological impact, such as the emergence of feelings of worry, stress, and even depression.

### **Advocacy NGOs:**

Advocacy efforts of NGOs for victims of Sidoarjo mud conducted through the litigation process, which includes:

**First;** action lawsuit against the law and violations of Human Rights (Ham) in Sidoarjo hot mudflow case by the Indonesia Legal Aid Foundation (*YLBHI: Yayasan Lembaga Bantuan Hukum Indonesia*).

In December of 2006, approximately eight months after the Lapindo mudflow, Lapindo mudflow victims to take action in the form of tort claims and violations of Ham. Action of social movements the Lapindo mudflow victims in order to demand accountability to the government and PT. LBI violations of Human Rights. This action is supported and represented by a team, the "Humanitarian Advocacy Team Sidoarjo Mud Victims", which consists of 59 public advocates and assistant public advocate of the Indonesian Legal Aid Foundation (YLBHI). Victims Humanitarian Advocacy Team Lumpur Sidoarjo, take action lawsuit against the law in the case of Lapindo mud. Letter of claim submitted to the Chairman of the District Court (*Pengadilan Negeri*) Central Jakarta, on December 8, 2006, in case No.. 384/Pdt.G/2006/PN.JKT.PST<sup>25</sup>.

Victims Humanitarian Advocacy Team on behalf of the Sidoarjo mudflow victims of the Lapindo mudflow disaster, sued the defendant, namely: the President of the Republic of Indonesia (the first defendant), the Minister of Energy and Mineral Resources (the second defendant), the Minister of Environment (as the defendant III), Oil and Gas Executive Agency (as the defendant IV), the Governor of East Java (named as defendants V), Regent of Sidoarjo (named as defendants VI), and the PT. Lapindo Brantas Incorporated (as the co-defendant). According to the plaintiffs, the defendants have committed acts against the law in the case of Sidoarjo mud. According to the plaintiffs, that even from the beginning has to be taken into account would cause adverse impact on the environment and humanity, the defendant did not take the necessary measures to anticipate the impact of the mudflow in the early days of the mudflow. This shows that the defendants, as state officials have not acted in accordance with its legal obligations.

According to the Indonesia Legal Aid of Foundation (YLBHI), that the loss caused by the mudflow and protracted treatment include the following losses: (1) the right to life in the form of loss of life due to its gas pipeline explosion on November 22, 2006; (2) The right to life viable form of declining quality of life of people who suffer the hot mudflow direct and indirect victims of the wider community affected by the hot mudflow, (3) the right to freedom from fear experienced by victims and potential victims and society in Sidoarjo and surrounding areas including fishermen in the Madura strait, (4) the right to housing experienced by victims who have lost their homes due to hot mudflow, (5) the right to work in the form of loss of livelihood and employment due to hot mudflow, (6) the right to education in the form of loss of educational opportunities due to undergo hot mudflow; (7) children's rights in the form of dispossession of the rights of children to acquire good care of his parents, to play and be creative, and take part in education, due to hot mudflow; (8) women's rights a loss of protection to women, especially girls and women due to hot mudflow, and (9) in the form of loss of proprietary property belonging to victims of the hot mudflow.

The Indonesia National Human Rights Commission (Komnas HAM) concluded several human rights violations caused by the Lapindo mudflow in Porong-Sidoarjo, East Java. As for some of the violations of human rights such as the rights to life. Based on the findings of the national Commission on Human Rights, the government failed to meet the standards and the right to a decent environment. Another breach in terms of the right to information. It is focused on information related to disenfranchise the drilling project is done, then the right to security against the threat of a mud embankment collapse at any time submerge homes. In this case, the government also did not make the early warning system. Coupled with the emergence of gas bubbles that could potentially cause a fire. Not only that, Lapindo mud disaster in Sidoarjo Porong also eliminates the right of self-development, the right to housing, right to food, right to health, right to work, as well as the right to education. Because the mud disaster, carrying 2,288 people stopped working due to the factories where they worked was not operating. Then there are 33 schools are damaged so that 1,774 students from elementary, junior high, high school, and a boarding school lost a place to learn because they are inundated by mud<sup>26</sup>.

The Indonesia National Commission on Human Rights, also noted, due to the mud disaster, the victims lost welfare rights (property rights) of the assets they lost snatched away the mud. It also has implications for the loss of a family and the right to continue the descent. National Commission on Human Rights of Indonesia also mentioned that in the context in Porong Sidoarjo mud disaster, the government or the responsible party has also violated the rights of vulnerable groups such as the disability, the elderly, children, and women. Proven in the field, there is no special treatment for pregnant women and there is no guarantee of security against girls from violence or sexual abuse because there are no specific separation between men and women. With the violation of the rights of the victims of the mud, then it implies their right to social security is also not met at all.

Plaintiff appealed to the District Court Judge for the Central Jakarta deign hear and determine the following: (1) Receiving and for entirely in favor of PLAINTIFF, (2) stated that the Defendant and Co-defendant has done tort, (3) Punish THE DEFENDANT to issue a policy that co-defendant ordered to restore the rights of the victims of the mudflow in Sidoarjo with the provision that the affected communities regain their rights to equal or better value as the original state before the mud volcano coupled with full responsibility for the victims have not been met rights, (4) party defendant Ordered co-defendant issued a policy in order to be together soon stop the mudflow to mobilize all

available resources and consider the Peoples rights, including the right to a healthy environment; (5) order the parties Defendant issued a policy that can guarantee legally that co-defendant would bear the entire costs that have been and will be incurred related to the reduction in Sidoarjo hot mudflow and the restoration of the rights of victims, (6) Defendant ordered to instruct the ranks of law enforcement agencies explicitly take legal action expressly, law enforcement and prosecution of all those responsible, including responsible business leaders whose activities have triggered the mud volcano; and (7) Orders to the Defendant and Co-defendant to apologize in writing to the victims who announced through 5 (five) national television station, 5 (five) radio stations and 10 (ten) national print media for three consecutive days the contents of which reads as follows:

"We, the President, the Minister of Energy and Mineral Resources of Indonesia, the Minister of State for the Environment, Chairman of the Executive Agency for Upstream Oil and Gas RI; Governor of East Java; Sidoarjo Regent; Lapindo Brantas Incorporated, expressed deep regret over the illegal acts we do related to negligence and negligence do our legal obligations associated with the occurrence of mud volcano that claimed the human rights of the victims and the people of Sidoarjo and surrounding areas, as well as create environmental damage impact material and immaterial losses were large and widespread. Presumably a statement of regret over this tort form the starting point of respect, protection and fulfillment of human rights and environmental management system changes the quality and the quality of benefits used for the greater rights of Indonesian citizens".

Panel of Judges of the District Court (PN) Central Jakarta rejected claims the Indonesian Legal Aid Foundation (YLBHI) against the government and PT Lapindo Brantas Incorporated (Inc) about the handling of the mudflow. Central Jakarta District Court decision dated 27 November 2007 stated that the government rejected the lawsuit Legal Aid Foundation and PT. Lapindo Brantas Inc., Not guilty of an unlawful act. On hearing the reading of the verdict in the Central Jakarta District Court judges chaired Moefri just consider that PT Lapindo was quite a lot of money to cope with the mud flow. Assembly stated that the government and Lapindo not guilty tort unfulfilled due to the economic, social, cultural and the victims of the mudflow<sup>27</sup>.

Assembly rejected all claims defendant as a whole. Assembly considered that the government has issued a policy that needs to handle the mudflow that occurred in May 2006, by setting up an integrated management team mud. Meanwhile, PT Lapindo Brantas Inc., Was judged to have a lot of money, of which R1, 6 billion for the refugees and to handle the mudflow and to pay the cost of living allowance (rations) for the refugees. "Since the mudflow occurred at a drilling location on May 29, 2006, refugees have been evacuated to Porong Market with transportation provided by Lapindo. Lapindo also have to pay the contract fee and the cost of the displaced school children of the victims, "said Martini Mardja.

The Indonesian Legal Aid Foundation (YLBHI) formally appealed the decision of the Central Jakarta District Court, which refused Legal Aid Foundation lawsuit-related cases of Lapindo mudflow. Appeal itself is done by the decision of the judges is weak. Grounds of appeal do Legal Aid Foundation, because it still believes the decision of the judges have a substantial number of weaknesses. One of them was the judges not to consider any violation of rights fulfillment of economic, social, and cultural victims, such as the loss of homes, jobs, land, and so on. But the High Court (PT) in Jakarta on June 13, 2008 it upheld the verdict the District Court (PN) in Central Jakarta on November 27,

2007 stating that the Sidoarjo mudflow incident because of the tendency of nature is more dominant, not because of human error.

Furthermore the Indonesia Legal Aid Foundation (YLBHI) filed an appeal to the Supreme Court. However the decision of the Supreme Court on 3 April 2009 rejected the appeal stating that the Indonesia Legal Aid Foundation of the mudflow is a natural phenomenon and not the fault of the industry, and this decision has permanent legal force (inkracht). In his statement in the House of the Supreme Court (MA), Central Jakarta, Head of Public Relations of the Supreme Court, Nurhadi said that the appeals by the Legal Aid Foundation to Lapindo won Lapindo. Nurhadi also explained, that the rejection of an appeal by the Legal Aid Foundation repetition of the arguments that have been proposed previously, and the results of evidence submitted can not be considered on appeal<sup>28</sup>.

**Second;** Action Lawsuit Indonesian Forum for the Environment (Walhi). Along with the lawsuit in the District Court of Central Jakarta Legal Aid Foundation, Indonesian Forum for Environment (Walhi) also initiate a case in the South Jakarta District Court.

The Indonesian Forum for the Environment (Walhi) filed a lawsuit against PT Lapindo Brantas and the government because it is considered responsible for the environmental damage caused by the mudflow in Sidoarjo. Civil suit was filed to the South Jakarta District Court. While the lawsuit against the government, because the government has disregarded and deemed not to control. Walhi sued 12 parties, namely: Lapindo, PT Energi Mega Persada, Kalila Energy Limited, Pan Asia Enterprise, PT Medco Energy, Santos Australia Limited. From the government, which sued the President, the Minister of Energy and Mineral Resources, the Executive Agency for Upstream Oil and Gas, Ministry of Environment, the Governor of East Java and Sidoarjo Regent<sup>29</sup>.

But apparently Walhi lawsuit against PT. Lapindo Brantas Inc., and the government was rejected by the South Jakarta District Court in Jakarta. South Jakarta District Court, on the 27th of December 2007, dismissed the suit filed legal standing the Indonesian Environmental Forum (Walhi) on Lapindo mudflow case. In the verdict, the judges won 12 defendants, including PT Lapindo Brantas Inc., and the government. Judge considers, mudflow at the Banjar Panji-1, Sidoarjo, East Java, is a common natural phenomenon. This decision is considered Walhi as environmental injustice. The reason the panel of judges in a ruling that was read out yesterday because the defendant PT Lapindo Brantas Inc., acquitted of committing a tort in the mudflow case that resulted in damage to the environment as Walhi sued. Although rejected Walhi lawsuit, but the judge insisted that the defendants claimed to fulfill the moral responsibility that is designed to stop the mudflow.

Walhi subsequent appeal in the level of High Court of Jakarta. But the ruling High Court of Jakarta on October 27, 2008 the South Jakarta District Court upheld the verdict Desember December 27, 2007 stating that the mudflow in Sidoarjo caused by natural phenomena. South Jakarta District Court Clerk a letter dated January 14, 2009 which states each party not filed its objection, so the decision legally High Court of Jakarta on October 27, 2008 and binding (inkracht).

Advocacy efforts undertaken by the NGO of the Indonesia Legal Aid Foundation (YLBHI) and the Indonesian Environmental Forum WALHI in defending the interests of victims of the Lapindo mudflow disaster through litigation turned out a failure.

### **Government Intervention:**

Government intervention in the rehabilitation process of social facilitation manifested in three forms, namely: policy, institutional, and allocation of budget funds.

First; Facilitation Policy. The impact of government policy on the handling of the Sidoarjo mudflow mudflow since the events of 2006 to 2013, stated in Presidential Decree, as follows:

1. dated 8 September 2006 presidential decree (Presidential) No. 13 of 2006 on the National Team in the Sidoarjo Mudflow Mitigation (PSLs national team). This team has a duty to take operational steps in an integrated manner in order to control the mudflow in Sidoarjo which include: closure of the mud flow, mudflow handling, and handling of sludge problems. Establishment of National Team in Sidoarjo Mudflow Mitigation does not reduce the responsibility of PT. Lapindo Brantas to perform mitigation and restoration of environmental damage and social problems it causes. Costs required for the implementation of the National Team duties charged to the budget of PT. Lapindo Brantas.
2. dated 8 April 2007 issue Presidential Decree (Decree) Nomo 14 of 2007 on the Sidoarjo Mud Mitigation Agency. Presidential Regulation No. 14 of 2007 replaces the Presidential Decree No. 13 of 2006, thus the existence of the National Response Team Mudflow in Sidoarjo (PSLS) has ended and their duties taken over by the Sidoarjo Mudflow Mitigation Agency (BPLS). BPLS task is dealing with the mudflow mitigation efforts, handles mudflow, addressing social issues and infratsruktur caused mudflow in Sidoarjo, with attention to the smallest environmental risks.

In appendix Presidential Decree Number 14 of 2007 included the area that goes into the Affected Area Map, which is the area submerged in mud, as the proposed national team PSLs. The Affected Area Map entrance area includes four villages namely: Siring Village, Village Jatirejo, Kedung Bendo, and Renokenongo village, then in the Affected Area Map region plus six villages, namely: the village of Ketapang, Kalitengah Village, Village Glagah Arum, Gempolsari Village, Pejarkan, Mindi village, and the village Keboguyang. The total area in the Affected Area Map, ie the area of mud, their full covering 613.4 Ha. Under article 15, Presidential Decree No. 14 of 2007, PT. Lapindo Brantas Inc., required to buy the land and buildings owned by citizens who are in the Affected Area Map region through trading scheme with phased payments, ie 20% prepaid and the rest paid no later than one month before the contract period of 2 (two) years out. But until now the process of buying and selling land and building assets by PT Lapindo Brantas Inc., could not be solved completely. Based on the result of an agreement between the victims of the PT Lapindo Brantas Inc., it was agreed the value of the sale, namely: for the building of Rp 1.5 million per square meter, land for land for Rp 1 million per square meter, and to the land of rice fields Rp 150 thousand per square meter.

3. dated July 17, 2008, issued Presidential Decree No. 48 Year 2008 on Amendment of Presidential Regulation No. 14 Year 2007 on the Sidoarjo Mud Mitigation Agency. One consideration of the issuance of Presidential Decree No. 48 of 2008 is that the mudflow in Sidoarjo have social impact for the community outside the Affected Area Map dated March 22, 2007 (Attachment Presidential Decree No. 14 of 2007). Furthermore, the process of

buying and selling of land and buildings owned by citizens who enter the area outside the Affected Area Map performed by the Sidoarjo Mudflow Mitigation Agency (BPLS) with reference to the amount of the sale price paid by PT. Lapindo Brantas Inc., to ground and the building of community members who are in Affected Area Map. Costs of buying and selling outside the PAT as Presidential Decree No. 48 of 2008 was charged to state funds. As such, since the Presidential Decree No. rises. 48/2007 the areas affected by the Lapindo mud grouped into two categories, namely: in the Affected Area Map region and outside Affected Area Map region.

4. Further, dated 23 September 2009 published Presidential Decree Number 40 Year 2009; later dated 27 September 2011 published Presidential Decree Number 68 Year 2011; dated 5 April 2012 rose Presidential Decree No. 37 of 2012, and last, on May 8, 2013 issue Presidential Decree Number 33 of. The core of this regulation is different to the addition of an area outside the Affected Area Map (PAT). Specialized in Perpes No. 33 of 2013 has started to set about the mechanism panggantian / exchange waqf land.

**Second**, Institutional Formation. In particular, to address various issues related to the Sidoarjo mudflow disaster, the government set up an agency, namely: the Sidoarjo Mudflow Mitigation Agency (BPLS: Badan Penanggulangan Lumpur Sidoarjo) which is regulated by Decree of the President of the Republic of Indonesia Number 14 Year 2007 concerning the Sidoarjo Mud Mitigation Agency. This regulation established by the Sidoarjo Mudflow Mitigation Agency (BPLS) in charge of the response to the mud flow, mudflow handling, dealing with social issues and infrastructure caused by the mudflow in Sidoarjo, with attention to the smallest environmental risks. Furthermore the Sidoarjo Mudflow Mitigation Agency (BPLS) reported performance of its duties to the President.

BPLS consists of the Governing Board and the Executive Board. The Steering Committee is responsible for providing direction, guidance and supervision of the implementation of the mudflow prevention efforts, mudflow handling, handling social issues and infrastructure caused by the mudflow in Sidoarjo, which implemented Executive Agency. The Steering Committee consists of: Chairman: Minister of Public Works, and member; Vice Chairman: Minister of Social Affairs; concurrent Member; Members: Minister of Finance, Minister of Energy and Mineral Resources, Ministry of Home Affairs, Minister of Marine and Fisheries, Minister of Transportation, Minister of State for Planning National Development Planning / Head of National Development Planning Agency, Ministry of Environment, the National Land Agency, the Governor of East Java, the regional military commander V / Brawijaya, East Java Regional Police Chief, and Regent of Sidoarjo. The organizational structure of the Executive Board consists of: Head of the Executing Agency, Deputy Head of the Executing Agency, the Secretary of the Executive Board, Deputy for Operations, Deputy Social Affairs, and Deputy of Infrastructure.

Efforts made by BPLS include handling the Lapindo mudflow and handling socio-civic problem solving as the impact of the Lapindo mudflow. In efforts to address problem solving social, BPLS program include: social assistance, social protection, and social recovery. Social assistance is given in the form of: medical aid and clean water and aid money contracts, cash evacuation and life assurance money. Social protection is given in the form of the process of buying and selling land and buildings owned by Lapindo mudflow disaster victims both by PT MLJ or by BPLS. While the process is given in the form of social recovery: training activities (sewing shoes, ribbon embroidery, gold carpentry, automotive, modes, processed food, sewing machine technician,

entrepreneurship, disaster response, and poultry), and extension activities and dissemination of information.

**Third, Budget Allocation.** Determination of Sidoarjo mudflow affected areas are divided into two categories, namely: First, areas that belong to the Affected Area Map, and Second, outside the regions including Affected Area Map. The impact of the mudflow handling funds in the Area Affected Map region is the responsibility of PT. Lapindo Brantas Inc., While the mudflow handling funds that are outside the region Affected Area Map is the responsibility of the government through the state budget.

The total government budget to absorb state budget funds, to control the Lapindo mudflow has as much 6.2 trillion rupiah. Budget was calculated from 2008 to 2013. While budget allocations in 2007 amounted to 505 billion rupiah taken from the emergency budget item. The details are as follows: 2008 budget of 1.1 trillion rupiah, 2009 amounted to 1,147 trillion rupiah, 2010 amounted to 1.216 trillion rupiah, 2011 amounted to 1.286 trillion rupiah, 2012 amounted to 1.533 trillion Rupiah dan 2013 amounted to 2,256 trillion rupiah<sup>30</sup>.

In accordance with the mandate of Law No.. 24 Year 2007 on Disaster Management, the Indonesia Central Government was in charge of the implementation of disaster management, both in the event of natural disasters, non-natural disasters, and social disaster. Responsibility of the Indonesia Central Government in Disaster Management include: (1) integration of disaster risk reduction and disaster risk reduction into development programs, (2) Protection of the public from the effects of disasters, (3) Guarantee the fulfillment of rights and refugee communities affected fairly and in accordance with the minimum service standards, (4) recovery from disaster conditions, (5) Allocation of budget disaster management in the state budget revenues and expenditures are adequate; (6) Allocation of budget disaster management in the form of ready-made funds (funds that backed the government is ready to use funds in case of a disaster), and (7) Maintenance of records / documents authentic and credible than the threat and impact of disasters.

While the authority of the Indonesia Central Government in Disaster Management include: (1) Establishment of disaster management policy in line with national development policies, (2) Preparation of development plans that incorporate elements of disaster management policies, (3) Determination of the status of disaster and national and regional levels; (4) Determination of policy cooperation in disaster management with other countries, agencies, or other international parties, (5) Formulation of policies on the use of technology as a potential source of threat or hazard; (6) Formulation of policies to prevent and control dewatering natural resources exceeds the natural ability to do the recovery, and (7) Control of collecting money or goods that are national (including the granting of collecting money or goods that are under the authority of the national Minister of Social Affairs).

From the above explanation, the government intervention in handling the Sidoarjo mudflow disaster problems can be summarized as follows:

**Table:**  
**Government Intervensi Descriptiton**  
**In Sidoarjo Mudflow Disaster**

No.	Intervention	Specification	Evaluation Form
1.	Facilitation Policy.	Government issued Presidential Decree No.. 13/2006. Then Perpres. 14/2007, Presidential Decree No.. 14/2007, Presidential Decree No.. 48/2008, Presidential Decree No.. 40/2009, Presidential Decree No.. 37/2012, and Perpes No. 33/2013.	In principle this government policy regulates matters relating to: the division of the territory outside PAT & PAT, payment mechanisms sale of land and building assets, BPLS basic formation, and guarantee the allocation of the state budget.  <b>Notes:</b> (1) This policy suggests residents as the seller is not a victim, and (2) Nothing in the regulation governing the recovery of social-ecological life damaged by Lapindo mudflow disaster.
2.	Institutional formation.	PSLs National Teams formed then replaced with BPLS.	Task: dealing with the mudflow mitigation efforts, handles mudflow, dealing with social issues and infrastructure.
3.	Facilitation Fund / Budget Allocation.	Government to allocate funds through the State Budget: 2007, 2008, 2009, 2010, 2011 & 2013.	<b>Note:</b> Focus BPLS in tackling socio-civic issues is still lacking.  Until the year 2013 the total budget allocation of Rp 6.2 trillion. These funds are mostly used for: payment of the sale of land and buildings owned by the victim's out PAT, closing burst and jetting mud, and handling social issues. <b>Note:</b> Portions of the budget for social-community problem-handling is still a relatively small.

## CONCLUSIONS AND SUGGESTIONS

From the description of the results of the study as described above, it can be concluded as follows:

Social advocacy to victims of the Lapindo mudflow disaster take place by NGOs in the form of litigation and advocacy. NGOs active in social advocacy to victims of the Lapindo mudflow disaster such as Indonesian Environmental Forum (Walhi) East Java, and the Indonesian Legal Aid Foundation (YLBHI).

While government intervention in the form: policy, institutional formation, and the allocation of funds. Government policies in an effort to overcome the problems stated Lapindo mudflow disaster in the form of Presidential Decree, such as: (1) of Presidential

Decree No.13/2006, (2) Presidential Decree No.. 14/2007, (3) Presidential Decree No. 48 of 2008, (4) Presidential Decree No. 40 of 2009, (5) Presidential Decree Number 68 Year 2011; (6) Presidential Decree No. 37 of 2012, and (7) Perpes No. 33 of 2013. From the institutional aspect, manifested in the form of government intervention team formation Sidoarjo Mudflow Management Agency (PSLs), which is then replaced with the Sidoarjo Mud Mitigation Agency (BPLS). In terms of budget, the government intervention is realized in the form of a Budget allocation policies in the state budget until 2013 is already absorb about 6.2 trillion rupiah.

While the advice that can be given is associated with subsequent research program, which is essential for the observed and studied in detail matters relating to the implementation of disaster management in handling the Lapindo mud disaster issues, which include: mitigasi phase, the phase of emergency response, and recovery phases.

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# **ADDRESSING THE HUMAN RIGHTS IMPACTS OF ECONOMIC GLOBALISATION: AN ANALYSIS FROM SOFT LAW AND ISLAMIC PERSPECTIVES**

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## **ABSTRACT**

The recent trend of economic globalisation has resulted in massive emergence of international business corporations such as the multinational corporations (MNCs). The inherent aim of their establishment which was based mainly on profit-making has, to a certain extent, put social and human rights interests of their stakeholders at stake. The adverse human rights violations committed by MNCs worldwide, despite responded with mounting protests and concerns by global communities, are not readily addressed. Among the rights mostly affected by business operations include civil and political as well as economic, social and cultural rights. Aiming to enhance human rights compliance by business entities and thus to address the human rights impacts of economic globalisation, this paper seeks to analyse the solution mechanism from the perspectives of soft law approach and Islamic principles. This paper uses the library-based research method by analysing relevant materials such as the UN documents, legal journals, court cases and judgments, academic textual materials as well as internet sources. This paper concludes that there is no divergence between the tenets of Islam and the adoption of corporate responsibility through soft law approaches. Both soft law and Islamic principles could formulate viable solutions to address the mounting events of corporate human rights violations that feature the current era of economic globalisation. This paper believes that a success in harmonising economic growth and protecting human rights principles will harness the great power of economic development to align with the great principle of human dignity.

**Keywords:** Economic globalisation, business and human rights, multinational corporations, soft law and corporate responsibility, Islamic principles.

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## **INTRODUCTION**

The development of transnational business operations through the establishment of massive multinational corporations (MNCs) has prompted the current phenomenon of economic globalisation. This phenomenon has led to the situation where the states are, first among equals, no longer the main providers of facilities and basic needs of people nor they are the main source of violence against individuals. What we are facing today are the powerful multinational business entities whose business operations have directly affected the people's enjoyment of human rights. The shift of powers from state to non-state actors is the result of mainly two new developments in international political and economic order: a strong wave of democratisation of governance and economic globalisation committed to the ideas of free market and trade liberalisation.<sup>6</sup>

It is acknowledged that many literatures<sup>7</sup> suggest the need to empower binding legal mechanisms that mandate oversight of corporations as a truly successful process to hold business accountable for their alleged human rights violations. Nevertheless, this paper believes that the legally binding approach alone would not produce effective solution to this issue. This is because it was proved that there have been inadequacies in international and domestic legal standards which govern business entities. In addition, the state actors who hold political and judicial powers are either unable or reluctant to impose strict legal action on business and corporations for their human rights violations. As such, this paper suggests the need to explore the adoption of soft law mechanisms as alternative or complementary approaches. The soft law, which is based on self-regulatory and social responsibility, is very much interconnected with the principles of *maqasid syariah* under the Islamic syariah which uphold the principles of justice, fairness, accountability and transparency.

This paper is divided into a number of sections. At the onset, this paper aims to provide an explicit understanding of the phenomenon of economic globalisation, its human rights impacts and Islamic perspectives. Accordingly, this paper deals with soft law mechanism to explore the viable approach to address the issues of corporate human rights violations which underlie the current's era of economic globalisation. To this end, a number of soft law initiatives, mostly those developed by the United Nations, will be evaluated. The following section further expands the discussions by analysing the Islamic principles concerning corporate responsibilities. Finally, the concluding remarks summarise the paper by providing some recommendations as the way forward.

## **ECONOMIC GLOBALISATION: A THREAT TO HUMAN RIGHTS?**

### **Economic Globalization and Human Rights**

It is evident that, instead of spreading economic growth and wealth, globalisation has brought in its train, great inequities, mass impoverishment and despair. It has fractured society along the existing fault lines of class, gender and community while, almost irreversibly, widens the gap internationally between the rich and the poor nations. This development, being stimulated by the emergence of MNCs, has sparked escalating concerns over its threat to major human rights principles. The MNCs are increasingly subject to high-profile consumer boycotts over their alleged complicity in human rights abuses. The resource extraction companies, for example, have been accused of

<sup>6</sup> See Natsvlishvili, A. (2007). *The Impact of Globalization on Human Rights in the Developing World: Transnational Corporations and Human Rights—The Masterpieces of Globalization in the Era of Democratized Violence*. Retrieved October 14, 2014, from: [http://www.nottingham.ac.uk/shared/shared\\_levents/conference/2007\\_March\\_PG\\_Natsvlishvili.pdf](http://www.nottingham.ac.uk/shared/shared_levents/conference/2007_March_PG_Natsvlishvili.pdf)

<sup>7</sup> See for example Connie de la Vega, Amol Mehra, and Alexandra Wong. (2011, July). "Holding Businesses Accountable for Human Rights Violations: Recent Developments and Next Steps" Friedrich Ebert Foundation. Retrieved October 14, 2014, from: <http://library.fes.de/pdf-files/iez/08264.pdf>

providing logistical and financial assistance to repressive state security forces and relying on those forces for protection in countries such as Burma, Colombia, Nigeria and Sudan.<sup>8</sup> In general, the major threats of economic globalisation can be divided as follows;

a. *Widening the gap between the rich and the poor*

A primary effect of economic globalisation is the exacerbation of gaps between the rich and the poor. In other words, due to this phenomenon, the rich get richer and the poor get poorer. International Statistics prove this fact.<sup>9</sup> It shows that:

- Half of the world (nearly three billion people) – live on less than two dollars a day.
- The wealthiest nation on earth has the widest gap between rich and poor of any industrialized nation.
- The top fifth of the world's people in the richest countries enjoy 82% of the expanding export trade and 68% of foreign direct investment – while the bottom fifth, barely more than 1%.
- In 1960, the 20 % of the worlds people in the richest countries had 30 times the income of the poorest 20%--in 1997 , 74 times as much.
- A few hundred millionaires now own as much wealth as the world's poorest 2.5 billion people.
- The combined wealth of the world's 200 richest people hit \$ 1 trillion in 1999; the combined incomes of the 582 million people living in the 43 least developed countries is \$ 146 billion.

Few studies doubt that the giant transnational corporate enterprises have played their part in creating both strands of this 'globalisation of poverty',<sup>10</sup> in particular because of their embrace of the free market classical economic theories, which underpins so much of corporate activity. The weakness of international rules, bad policies and weak governance in developing countries, and corporate practices which prioritise short-term profit over long-term human development are undermining the capacity of poor countries and poor people to benefit from international trade. In many cases, economic liberalisation has been accompanied by greater inequality and people are left trapped in utter poverty. The Human Development Report of 1997 revealed that poor countries and poor people too often find their interests neglected as a result of globalisation.

b. *Violation of fundamental human right*

Economic globalisation has resulted in the violation of the internationally proclaimed human rights underlined by the Universal Declaration of Human Rights (UDHR). The rights most likely to be violated by the MNCs include non-discrimination, women rights, life, liberty and physical integrity of the person, civic freedoms, employees' rights, child labour, slavery, forced and bonded labour, right to food, health, education and housing and lastly, the environmental rights.<sup>11</sup> On the other hand, in their drive for profits, the MNCs have been restructuring their operation on a global scale. This has resulted in massive unemployment and underemployment, the worst situation since the 1930s. Similarly, in many industrialised countries unemployment has soared to levels not seen

<sup>8</sup> Pegg, S. (2003). An Emerging Market for the New Millennium: Transnational Corporation and Human Rights. In Jedrzej George Fynas and Scott Pegg (eds.), *Transnational Corporation and Human Rights*, (Hampshire, UK: Palgrave Macmillan, 2003), 1.

<sup>9</sup> Global Issues , Poverty Facts and Stats, <<http://www.globalissues.org/TradereLATED/Facts.asp>>

<sup>10</sup> See United Nations Development Programme, *Human Development Report 1992* (Oxford University Press, 1992).

<sup>11</sup> International Council on Human Rights Policy. (IChRP). Beyond Voluntarism-Human Rights and the Developing International Legal Obligations of Companies. (February 2002), p.15. Retrieved April 15, 2008, from: <[www.ichrp.org](http://www.ichrp.org)>

for many years and income disparity to levels not recorded since last century. The collapses of the economies of the Asian Tigers are examples of this. Because of this, more people are crossing borders in search of jobs and in most conditions people are forced to work in inhuman conditions for lower wages.

Some consequences of these deprivations of human rights are social and political unrest and even violence and counter violence. It also leads to an increasing resort to suppression and to chaos. Paradoxically the expenditure on suppressing protest and violence may be equal to or even exceeds the ought to be expenditure on implementing economic, social and cultural human rights for all the peoples of the world. What matters more is the loss of human lives and the loss of constructive contributions which all the deprived could have offered to the economic, social, scientific and cultural advancement of humanity if they were granted their basic human rights. Racism, prejudices, and discrimination are negatively associated with justice and implementation of human rights.

According to Nicola Jagers<sup>12</sup>, MNCs play a threefold part regarding human rights. First, they can be direct violators of human rights such as by depriving the rights of their workers or violating the environment within their business operations. Secondly, they can indirectly violate human rights by supporting a regime that violates human rights. A clear example to explain this was that the violations of human rights by The Royal Dutch/Shell in the Delta Niger, Nigeria. Thirdly, beside the fact that MNCs may threaten an effective enjoyment of human rights, they can also be a positive influence, albeit very little, by raising the standard of living and improve respect for economic, social and cultural rights.

c. *Inflicting the demise of states sovereignty and democracy*

There has also been what could be termed normative constraints on state sovereignty. These have come about through the process of globalisation, which to a large extent is a form of Westernization.<sup>13</sup> Some people also have termed this process as “Americanization” or “McDonaldization” due to tremendous participation of MNCs from the United States. This process naturally affects non-Western societies more than Western ones. Globalisation therefore has created a situation where the role and importance of nation-state is becoming irrelevant. In addition, the globalisation of recent decades was never a democratic choice by the peoples of the world. The process has been business-driven, by business strategies and tactics, for business ends. Globalisation has also steadily weakened democracy, partly as a result of unplanned effects, but also because the containment of labour costs and scaling down of the welfare state has required the business minority to establish firm control of the state and remove its capacity to respond to the demands of the majority. Another well-known and important antidemocratic force is the power of global financial markets to limit political options. Financial market effects on exchange and interest rates can be extremely rapid and damaging to the economy.

### **Economic Globalisation from an Islamic Perspective**

Many people, especially Muslims tend to say that globalisation - including its economic facet, is a ‘Western’ product. As such, it has nothing to do with Islam. However, this paper argues that globalisation is actually different from Westernization although the impetus of the former mainly comes from the West. Globalisation is a process in which

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<sup>12</sup> Jagers, N. (1999). The Legal Status of the Multinational Corporations under International Law. In Addo. M. K. (ed.), *Human Rights and Transnational Corporations* (p. 260) The Hague: Kluwer.

<sup>13</sup> Pendleton, M. D. (1998). A New Human Right--The Right to Globalisation, *Fordham Int'l L.J.* vol. 22, issue 5, p. 2056.

"the whole world becomes like a small village, where the less advanced communities can develop their capacities" and that "tends to be a two-way street process, which makes it possible for each community to take as well as to give."<sup>14</sup> Westernization, on the other hand, tends to be a one-way street, meaning that one region attempts to dominate and control other regions in the name of globalisation. Moreover, while globalisation occurs through the free will of different communities, Westernization is characteristically imposed upon other regions.<sup>15</sup> As such, based on several factors, this paper believes that Islam is compatible with the globalisation process.

First of all, it is important to note that Islam orders people to cooperate, to be helpful to one another according to goodness and piety, and not to be helpful in evil and malice.<sup>16</sup> This principle is fully endorsed by Prophet Muhammad on the local level, regardless if your neighbour is a Muslim or not. Surely this principle can be extended into the international level, where a neighbouring country can be defined as any country that has normal economic and political relations with the Islamic world.<sup>17</sup> Other factors illustrate Islam's acceptance and predominant role in the process of globalisation. "For several centuries, Arabic was the world's leading language in sciences. Muslims made important advances in mathematics, astronomy and medicine - a legacy from which European scholars derived great benefit," and which led to the Renaissance.<sup>18</sup> Globalisation is not only a Western phenomenon, for "the agents of globalisation are neither European nor exclusively Western, nor are they necessarily linked to Western dominance. Indeed, Europe would have been a lot poorer - economically, culturally, and scientifically - had it resisted the globalisation of mathematics, science, and technology [from the East]."<sup>19</sup>

We therefore have to differentiate between the gifts of globalisation and the products of Westernization. Islam encourages partnership and interaction gifted by globalisation which can bring good to humanity but opposed the culture produces by Westernization process that contradicts its principle. More specifically, the Islam-globalisation debate in itself is built upon a number of mistaken diagnoses that misconstrue Islam's place in the globalized world - one that has been quite productive in the past and has the potential to be productive in the future. The misguided assumption that Islam opposes globalisation and modernization is dangerous, because it could potentially result in the loss of Islam's significant contributions to the rest of the world.

## **ADDRESSING HUMAN RIGHTS IMPACTS OF ECONOMIC GLOBALISATION VIA SOFT LAW MECHANISM**

### **The Concept of Soft Law and its Development**

There is no universally-agreed definition of the term 'soft law'. McNair<sup>20</sup> defines it as a 'transnational stage in the development of norms where their content is vague and their scope is imprecise.' In addition, Gold, in his analysis, further explained the essential ingredient of the term as an 'expectation that the states accepting these instruments will

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<sup>14</sup> Maisami, M.. Islam and Globalisation. *The Fountain Magazine*, THE LIGHT, INC., USA. <<http://www.fountainmagazine.com/article.php?ARTICLEID=33>> 12 August 2011 cited [www.IslamOnline.com](http://www.IslamOnline.com).

<sup>15</sup> *Ibid.*

<sup>16</sup> The Holy Quran. *Al-Maidah* verse 2.

<sup>17</sup> *Ibid.* cited Choudhury, [www.Islamic-finance.net](http://www.Islamic-finance.net).

<sup>18</sup> *Ibid.* cited Hardy, <http://news.bbc.co.uk>.

<sup>19</sup> *Ibid.* cited Sen, [www.prospect.org](http://www.prospect.org).

<sup>20</sup> Jiang, L. (2009). "An Evaluation of Soft Law as a Method for Regulating Public Procurement from A Trade Perspectives," (PhD thesis, University of Nottingham, UK), cited Godefridus J. H. van Hoof (1983) Rethinking the Sources of International Law, (Deventer, Netherlands: Kluwer Law and Taxation Publishers), 187.

take their content seriously and will give them some measure of respect.<sup>21</sup> However, according to Dupuy, soft law is a paradoxical term for defining an ambiguous phenomenon. This is because, from a general and classical point of view, the rule of law is usually considered "hard" i.e. compulsory, or else there is no law at all.<sup>22</sup> There is no other category exists between hard law and non-law. In short, it can be concluded that soft law is distinguished from hard law mainly because of its voluntary and non-enforceable nature. In other words, any rules or codes can be considered as falling under the category of soft law if they adopt a non-binding form, contain vague and ambiguous provisions embodying merely hortatory,<sup>23</sup> aspirational, voluntary in nature or promotional obligations.<sup>24</sup>

Generally speaking, the development of soft law has been engendered through a number of sources. First is the public international instrument. These instruments are either recommendations addressed by Inter-governmental Organisations (IGOs) or directly by governments to MNCs and business entities. Among the examples of soft law promulgated through this source are the collective voluntary approaches undertaken by the UN agencies and other IGOs such as the OECD Guidelines, the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the Declaration of the ILO on fundamental principles and rights, the Rio Declaration from the 1992 UN Conference on Environment Development and the UN Convention Against Corruption. These instruments, though 'soft' and non-binding in nature, contain influential follow-up mechanisms, supplemented by strict disclosure requirements to which a significant number of companies have so far adhered.<sup>25</sup>

The second source through which soft law could be promulgated is guidelines by NGOs on corporate social responsibility or CSR. There are a number of NGOs working on environment, human rights etc which have contributed towards the creation of corporate codes of conduct in MNCs and business entities. Those NGOs includes Amnesty International, Human Rights Watch and Oxfam.<sup>26</sup> Accordingly, the third source of soft law has been the voluntary, self-regulated codes of conduct initiated by individual companies and MNCs. An inventory by the OECD, for example, lists up to 246 individual corporate codes of conduct.<sup>27</sup> The codes generally represent a company's voluntary or self-regulatory approach in complying with certain regulations or relevant legal standards, for instance, international human rights law, national laws and regulations. Among notable companies that have adopted their own codes of conduct were Adidas, Nike, The Gap, Royal Dutch Shell, Rio Tinto Group and BP.

In a nutshell, there is not much difference between the substance of the codes, especially those initiated by the UN and individual companies/NGOs. Most of the individual codes of conduct make reference to the existing international documents such as the UDHR. Indeed, many MNCs and business entities view CSR and human rights

<sup>21</sup> Jiang, L. (2009). *Ibid.* cited Gold (1983). Strengthening the Soft International Law of Exchange Agreements. *AM. J. INT'L L.* 77 at 443.

<sup>22</sup> Dupuy, P.M. (1990-1991). Soft Law and the International Law of the Environment. *Mich. J. Int'l L.* p.420.

<sup>23</sup> "Hortatory" refers to a word used to describe a behaviour or an act that is encouraging but not forcing or compelling.

<sup>24</sup> Jiang, L. above, pp.11-12.

<sup>25</sup> Choudhary, V. (August 31, 2010). Corporate Social Responsibility of a Corporation Under International Law: A Critical Study. *Working Paper Series.* Retrieved on 24<sup>th</sup> September 2013, from: <http://ssrn.com/abstract=1669533> p.3.

<sup>26</sup> See for example Amnesty International. (January 1998). *Human Rights Principles for Companies.* Guidelines, AI Index: ACT/70/01./98. Retrieved on 18 August 2008, from; <<http://www.Amnesty.org/en/library/asset/ACT70/001/1998/en/dom-ACT700011998en.pdf>>

<sup>27</sup> Gereffi, G., Garcia-Johnson, R. and Sasser, E. (July-August 2001). The NGO-Industrial Complex, *Foreign Policy*, no. 125, p. 57.

voluntary initiatives as important and compatible with their profit-making agenda. Some studies indicate that there is improved financial performance as a result of social responsibility. There are also success stories, such as The Body Shop, that have succeeded in making ethics an important and profitable part of business.<sup>28</sup> In addition, many have seen codes as useful tools to familiarise business entities with human rights standards. By setting out the values, ethical standards and expectations of the company concerned, the codes of conduct might have a legal significance and therefore be used as evidence in legal proceedings with suppliers, employees and consumers.<sup>29</sup>

### **Identifying the Relevant Soft Law Instruments**

For the purpose of this paper, a number of soft law mechanisms – mostly developed at international level by inter-governmental organisations (IGOs) shall be briefly analysed in turn.

#### **a. UN Guiding Principles on Business and Human Rights**

The UN Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights in June 2011. The Guiding Principles serve to implement the UN “Protect, Respect and Remedy” Framework proposed by John Ruggie, the UN Special Representative on Business and Human Rights and endorsed by the Human Rights Council in 2008. The Guiding Principles provide an authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activities. They also provide tools to measure progress by business in meeting their human rights responsibilities.<sup>30</sup> Both the “Protect, Respect and Remedy” Framework and its Guiding Principles are the outcomes of six years of paper and consultations led by Ruggie involving governments, companies, business associations, civil society, affected individual and groups, investors and others around the world.

Ruggie, a Professor at Harvard University was appointed as the Special Representative of the UN’s Secretary-General (SRSG) on the issues of human rights and transnational corporations and other business enterprises in July 2005.<sup>31</sup> The mandate was created in an effort to move beyond what had been a long-standing and deeply divisive debate over the human rights responsibilities of business entities. Ruggie’s aim was to build meaningful consensus among all stakeholders about the roles and responsibilities of both States and companies with regard to business’ impact on human rights.

Furthermore, the Guiding Principles also *highlight what steps States should take* to foster business respect for human rights; *provide a blueprint for companies* to know and show that they respect human rights, and reduce the risk of causing or contributing to human rights harm; and constitute a set of *benchmarks for stakeholders* to assess business respect for human rights.<sup>32</sup> The principles are organized under the UN three-pillar – ‘protect, respect and remedy’ framework which ‘rest on the differentiated but complementary responsibilities’. Such responsibilities include; the state duty to protect

<sup>28</sup> McCrudden (2000). Human Rights Codes for Transnational Corporation: The Sullivan and MacBride Principles. In Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*. Oxford: Oxford University Press. pp.418-449

<sup>29</sup> Gatto, A. J. C. (September 2002). The European Union and Corporate Social Responsibility: Can the EU Contribute to the Accountability of Multinational Enterprises for Human Rights. *Working Paper No. 32 – Institute for International Law, K.U. Leuven*, p.42

<sup>30</sup> Ruggie, J. (9 April, 2011). *UN Guiding Principles for Business and Human Rights*. The Harvard Law School Forum on Corporate Governance and Financial Regulation. Retrieved February 28, 2012 from; <<http://blogs.law.harvard.edu/corpgov/2011/04/09/un-guiding-principles-for-business-human-rights/>>

<sup>31</sup> Černič, J. L. (2011). United Nations and Corporate responsibility for Human Rights. *Miskolc Journal of International Law*, 8(1), p. 27. Retrieved in December 2011, from; <<http://ssrn.com/abstract=1796962>>

<sup>32</sup> Ruggie, J.

against human rights violations by or involving corporations; the corporate responsibility to respect human rights; and effective access to remedies.<sup>33</sup>

Since its endorsement by the UN Human Rights Council, the UN Guiding Principles have been adopted and implemented by various States, IGOs and companies in many ways. Such implementations are made through; the incorporation of Guiding Principles into CSR policies, the development of specific industry sectors through new multi-stakeholder accountability approaches, the realisation of State mandatory human rights due diligence and reporting, the use of leadership in striving for policy coherence and finally the regular review to identify potential gaps.<sup>34</sup> For example, in October 2011, the European Commission (EC) issued a new CSR-based strategy by explicitly referring to the guidelines and principles contained in the Guiding Principles. The EC "expects all European enterprises to meet the corporate responsibility to respect human rights, as defined in the UN Guiding Principles."<sup>35</sup> Also, in June 2012, European Member States have included Guiding Principles in the European Union's Framework and Action Plan on Human Rights and Democracy.<sup>36</sup>

*b. UN Global Compact*

The Global Compact was initially proposed by the Secretary-General Kofi Annan in his remarks to the Davos World Economic Forum on 31 January 1999.<sup>37</sup> The initiative's operational phase was later officially launched at the UN New York Headquarters on 26 July 2000. In general, the Global Compact is a 10-principle framework that directly addresses MNCs and business entities covering four fundamental matters concerning human rights, environmental protection, labour rights and anti corruption. The principles enjoy universal consensus as they are derived from leading intergovernmental instruments namely; the Universal Declaration of Human Rights (UDHR), the International Labour Organisation (ILO)'s Declaration on Fundamental Principles and rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption. It was initially nine principles when the Compact was devised in 1999 while the tenth principle was added in 2004.<sup>38</sup>

Despite being far less detailed than that of other international initiatives and frameworks like the ILO Tripartite Declaration, the UN Sub-Commission on Human Rights code or the OECD guidelines, the central aim of Global Compact should be perceived as putting those codes in another direction, that is by inviting MNEs to join in the collective efforts of governments, international organisations and NGOs in projects that will advance social

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<sup>33</sup> Amao, O. (undated). Review of the Report of the Special Representative of the Secretary-General on the issue of human rights and Transnational Corporation and other business enterprises; Professor John Ruggie to the United Nations Human Rights Council, 'Protect, Respect and Remedy; a Framework for Business and Human Rights' HRC/8/5, 7 April 2008. Retrieved from; <<http://ssrn.com/abstract=1131682>> p.5.

<sup>34</sup> UN, Human Rights Council. (16 April 2013). *Uptake of the Guiding Principles on Business and Human Rights: practices and results from pilot surveys of Governments and corporations*. Report of the Working Group on the issue of Human Rights and transnational corporations and other business enterprises UN. Doc. A/HRC/23/32/Add.2. pp. 14-18.

<sup>35</sup> European Commission (25<sup>th</sup> October 2011). A Renewed EU strategy 2011-2014 for Corporate Social Responsibility, COM 681, Brussels. p. 6.

<sup>36</sup> The Council of the European Union. (25<sup>th</sup> June 2012). EU Strategic Framework and Action Plan on Human Rights and Democracy, 11855/12, Luxembourg.

<sup>37</sup> UN Global Compact. Retrieved on 15 February 2012, from; <[http://www.unglobalcompact.org/issues/human\\_rights/The\\_UN\\_SRSG\\_and\\_the\\_UN\\_Global\\_Compact.html](http://www.unglobalcompact.org/issues/human_rights/The_UN_SRSG_and_the_UN_Global_Compact.html)>

<sup>38</sup> Tully, S. (ed), (2005) *International Documents on Corporate Responsibility*. Cheltenham, UK: Edward Elgar Publishing. p.3

and economic development.<sup>39</sup> After all, the universal values being rooted in business practices, although quite sceptical in the beginning, will bring massive and profitable social and economic gains. Many have seen the values being conveyed by the Global Compact principles being significant in the quest to improve the company's CSR standards. This fact was proven by the universal acceptance given to this initiative. By July 2011, which is exactly 11 years after its official launch, it was recorded that the initiative has grown to more than 8000 participants, including over 6000 businesses in 135 countries all over the world, making it the largest corporate citizenship network in the world.<sup>40</sup>

c. OECD Guidelines

Initially drafted in 1976, the OECD Guidelines were the first intergovernmental CSR initiative whose general application aimed at Multinational Enterprises and business entities. The guidelines are the product of an international organisation comprising 30 of the richest states in the world. The Guidelines are directed primarily at the OECD member states and provide guidance as to how national policies ought to contemplate the regulation of MNCs that are nationals of such states. One of the unique features of the Guidelines is that, unlike many of the other soft law instruments and codes of conduct surrounding business activity, they are the only international CSR initiative that obliges member-states to monitor their implementation.<sup>41</sup> In so doing, every state adheres to the Guidelines is required to provide a national contact point (NCP). The NCP are the government offices charged with promoting the Guidelines, handling inquiries and investigate any complaints or issues raised at the domestic level (known as "specific instances").

Even though the Guidelines only apply to 30 OECD member states, it has to be borne in mind that, according to the 2005 Annual Report on the OECD Guidelines, 97 out of the world's top 100 multinationals originate from any of adherent states (the term adherent states refers to member states and non member States of OECD which adhere to the Guidelines).<sup>42</sup> In fact, the Guidelines' scope was further widened when 11 non-OECD member states<sup>43</sup> have become parties to the Guidelines. In addition, the Guidelines also have influence beyond the borders of its adherent countries. To quote the Guidelines directly; "*Since the operations of the multinational enterprises extend throughout the world, international co-operation in this field should similarly extend to all countries. Governments adhering to the Guidelines encourage the enterprises operating on their territories to observe the Guidelines wherever they operate, while taking into account the particular circumstances of each host country.*"<sup>44</sup> This is probably where the Guidelines have the potential to make the most impact.

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<sup>39</sup> Murphy, S. D. (2005). Taking Multinational Corporate Codes of Conduct to the Next Level. *Colum. J. Transnat'l L.*, 43, p. 399.

<sup>40</sup> UN Global Compact, above, "Participants and Stakeholders."

<sup>41</sup> Grene, H. (2009). Corporate Accountability for Human Rights: Using the OECD Guidelines for Multinational Enterprises as a Tool. *Trocaire Development Review*. 37-54, p.38.

<sup>42</sup> See OECD (2005). *Annual Reports on the OECD Guidelines for Multinational Enterprises 2005: Corporate Responsibility in the Developing World*. OECD: Paris.

<sup>43</sup> Argentina, Brazil, Chile, Egypt, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia.

<sup>44</sup> OECD Guidelines (2008). Section I, Concepts and Principles, § 2.

*d. Global Business Initiative on Human Rights*

The Global Business Initiative on Human Rights (GBI) is an initiative pioneered by a group of 18 major corporations domiciled in Asia, Europe, Latin America, Middle East, North Africa and North America. Being officially launched in 2009, the initiative aims to advance human rights in a business context around the world. It also shows the participants' commitment to respect the dignity and rights of the people they impact and interact with. Despite only participated by 18 MNCs, the member companies represent a vast number of workforces of approximately 1.75 million employees, and hundreds of thousands of business partners located in over 190 countries. Business activities of GBI members cover areas as diverse as agriculture, automation and power, chemicals, electronic, food and beverages, healthcare, mining, oil and gas, property development and shipping.<sup>45</sup> In operating and organizing its work plan, two parallel tracks have been used.

First, the *Member Peer Learning* offers a platform for member companies for experience-and knowledge-sharing on best practices and specific issues regarding business and human rights as well as in the implementation of UN Guiding Principles. Second, *Global Business Outreach* concentrated on awareness-raising and capacity building for business in diverse regions in the world, particularly in emerging and developing markets. In so doing, GBI works with local business and human rights, CSR and other diverse organisations alongside UN Global Compact Local Networks to catalyze awareness and commitment regarding corporate respect for human rights. In the past four years, GBI has played an active role in supporting leadership from the United Nations in clarifying the role and expectation on corporations regarding human rights.

In 2010/11, during the final year of the mandate of the United Nations Special Representative on Business and Human Rights, Professor John Ruggie, GBI members made statements (individually and collectively) in support of the UN Guiding Principles on Business and Human Rights. On the occasion of international human rights day 2011, GBI submitted written input to the UN regarding the priorities of the newly formed UN Working Group on Business and Human Rights.

#### **ADRESSING ECONOMIC GLOBALISATION FROM AN ISLAMIC PERSPECTIVE**

Indeed, the violations of human rights committed by the MNCs and corporate entities discussed earlier are totally against the Islamic teaching and principles. Despite there has been a general view, especially in the West, that Islam as incompatible with the ideals of the internationally-recognised human rights principles<sup>46</sup> such generalisation, however, is not true as Islam is actually a strong proponent to the full enjoyment of human rights. In fact, the first major contribution of Islam is a paradigm shift towards human rights. As globalisation implicates interactions between people, Islam offers a holistic view in which the rights and obligations of human beings over one another help in forging a social reality reflective of commitment to and a sense of social responsibility. The individual, without being marginalized, becomes part of a whole. The key terms used by the Qur'an and the Sunnah in this regard are *huquq Allah* and *huquq al-'ibad*, the rights due towards the Creator and the Sustainer and the rights of Allah's servants, i.e., human beings. In addressing the human rights violations resulted in the economic

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<sup>45</sup> Global Business Initiative on Human Rights (GBI) (2012). *About*. Retrieved on 24<sup>th</sup> September 2013, from: <http://www.global-business-initiative.org/about/>

<sup>46</sup> Baderin, M.A. (2003). *International Human Rights and Islamic Law*, Oxford Monograph in Islamic Law. Oxford: Oxford University Press. p.3

globalisation, this paper underlined six global ethical principles<sup>47</sup> advocated by Islam as the key foundations to be incorporated within the business structures of business and corporate entities to establish good respect to human rights principles;

The first global ethical principle is the principle of Unity in life. Contradictions in one's personality, family and social life, professional dealings or international relations are to be avoided. Realization of a unified personality, irrespective of colour, creed and ethnicity, leads to a unified vision of life. It liberates a person from double standards, contradictions and fragmentation in life. Similarly, application of one and the same criterion in one's economic activities results in total quality management of resources, with the highest standards of fairness and transparency in transactions. In the Islamic framework of thought and culture, the term used for unity in life is *tawhid*. In its wider generic connotation, it stands for unity in the cosmos, in society, and in humankind, as well as in the life of the individual. The resultant coherence and order is realized with a clear vision of meaning and purpose of life and without a conflict between the individual interest and the collective good.

The second vital principle, which provides an axiological basis for human rights in Islam, is the value of equity, "adl" or justice. It begins from the point that a human being must act with justice towards and cause no harm or danger to his/her own self. It also requires the observance of justice towards parents, spouses, children, servants, neighbours, even strangers who may be in need of help and assistance. Observance of 'adl' or justice as the second pillar of the Islamic concept of human rights implies fair and equitable fulfilment of one's duties and obligations and not simply demand of certain rights.'Adl' in the Qur'an is a positive and substantive value. The purpose of human presence on earth, in the Islamic world view, is to realize 'adl' in individual life, family, society, economy, polity and culture, or observance of human rights. 'Adl' also refers to fair and sincere observance of human rights even for those one may not like.<sup>48</sup>

The Qur'an reminds its followers: "*O you who believe, be steadfast witnesses for Allah in equity, and let not hatred of any people deviate you from justice that you deal not justly. Deal justly that is near to your duty (taqwa). Observe your duty to Allah. Lo Allah is informed of what you do...*"<sup>49</sup> It elsewhere tells us that absence of 'adl' invites Allah's displeasure and punishment on people. To benefit and enjoy justice in society one does not have to be a Muslim. As a universal ethical value it is to be realized at individual and collective level irrespective of colour, denomination, culture, or economic and political status. Social justice, fairness, and equity lead to creation of an unbiased, honest, open, and reasonably global human community.

The third global ethical principle on which human rights in Islam are founded is the value pertaining to protection of life (the rights to life). Perhaps nowhere has the sanctity of human life been so emphatically established as in the Qur'an, which says: "*Whosoever killed a human being for other than manslaughter or corruption into earth, it shall be as if he had killed all mankind, and whoso saves the life of one, it shall be as if he had saved the life of all mankind...*"<sup>50</sup> Sanctity of life, in the Qur'anic context, is not particular to any cultural, religious or ethnic group of people. Preservation, protection, and promotion of life is a universal value to be observed at global level.

<sup>47</sup> Ahmed, A. *Human Rights: An Islamic Perspective*. Policy Perspectives Vol 3 No.(1) available at <[http://www.ips.org.pk/faith-a-society/islamic-thoughts/1128-human-rights-an-islamic-perspective.html#\\_ftn3](http://www.ips.org.pk/faith-a-society/islamic-thoughts/1128-human-rights-an-islamic-perspective.html#_ftn3)

<sup>48</sup> See generally, Mohamed Adil, M. A. & Ahmad, N. M. (2014). "*Islamic Law and Human Rights in Malaysia*". *Islam and Civilisational Renewal*, Vol. 5 No. 1, (January 2014): 43-67.

<sup>49</sup> The Holy Quran, Al-Ma'idah 5:8.

<sup>50</sup> *Ibid*, Al-Maidah 5:32.

The fourth primary global ethical foundation of human rights in Islam relates with the dynamic role and value of the intellect ('aql) (freedom of expression). 'Aql, as a faculty, stands for responsible rational conduct confirming the need and transcendence of *wahy* (revealed knowledge) as well as legitimacy of intellect. Many rationalist approaches uphold ultimacy of reason, but, with all their calls for rationalism, some lead to scepticism and agnosticism – denial of knowledge as such. Islam, however, is very clear about the limits of human knowledge. In Islam, it is intellect and reason that discover their own limitations and arrive at the justification for *wahy*. The promotion of the intellectual attitude or exercise of reason in ethical judgments liberates a person from the grip of scepticism, agnosticism and from the finitude of experiences. It promotes an environment of dialogue, understanding, coexistence, cooperation and interaction. Respect for human rights and for difference of opinion creates a friendly and conducive environment for sincere and meaningful realization of justice and human rights.

The fifth global ethical value relates to preservation of honour, dignity and lineage of humankind in order to maintain, secure and sustain the identity of the members of a society. Islam insists on the human rights of the child to be identified and known through his biological relationship and genetic lineage. It even refers to the sanctity and human right of the gene. Therefore, it does not permit confusion of a gene except through the ethical and legal bonds of marriage. The first family on earth is recognized and honoured by Islam in the person of Adam and Eve. Finally, the sixth global ethical principle is on the sanctity of ownership and property (*mal*) or the right to property. No human being is, consequently, allowed to deprive a person of property in any way. This right to ownership of the men and women in a society applies equally to the resources of nations. No one is allowed to deprive others of their economic independence by imposing a so-called economic world order.<sup>51</sup>

These six global, universal and primary ethical values provide the basis for human rights in Islam. As far as economic globalisation issues are concerned, the six principles can establish a clear bottom-line towards which the business activities should operate. The specific human rights identified by Islam translate the philosophy of these seven values in tangible human conduct and behaviour which will finally create human rights- and socially-responsible business activities.

## **CONCLUSION AND THE WAY FORWARD**

This paper examines the important roles played by the soft law mechanism in bridging the accountability gap between business entities and human rights which was resulted in the phenomenon of economic globalisation. Taking into consideration the insufficient nature of the existing binding human rights standards in monitoring corporate behaviour – including their human rights violations, a more social-based enforcement through the use of soft law instruments could serve as an alternative option. This paper explains the meaning, development and examples of soft laws through which the public and civil society can make use to put pressure on alleged companies to ensure better human rights compliance. The 'soft' approach in such instruments is seen as more effective due to its non-rigid nature, speedy remedy, cost-effective and less bureaucracy.

In this paper also, it was argued that Islam does not oppose economic globalisation as well as the full enjoyment of human rights. The six basic principles provided could serve

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<sup>51</sup> See John Zinkin and Geoffrey Williams. (February, 2006). Islam and CSR: A Study of the Compatibility between the Tenets of Islam and the UN Global Compact. Working Paper, Nottingham University Business School, Malaysia Campus. p. 8.

as guidelines for business entities in creating and carving their corporate code of conducts which will eventually help them enhance their respect and compliance with the human rights principles of the people within their sphere of influence. A business entity that respects human rights will give rise to the notion of “globalisation with responsibility” that will benefit the people at large without any discrimination. Indeed, Islam is not only to be seen as a religion of worship or ritual but also a religion that support human rights for the benefit of humanity and this in line with its purpose as a mercy to the whole universe.

In a nutshell, this paper concludes that there is no divergence between the tenets of Islam and the adoption of corporate responsibility through soft law approaches. The soft law approach, which based on human rights principles, is consistent with the principle of *maqasid syariah* and Islamic teaching. Both soft law and Islamic principles could formulate viable solutions to address the mounting events of corporate human rights violations. This paper believes that a success in harmonising economic growth and protecting human rights principles will harness the great power of economic development to align with the great principle of human dignity.

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# STRENGTHENING POLITICAL EDUCATION THROUGH AN INTEGRATIVE-PARTICIPATIVE MODEL FOR POLITICAL PARTIES IN INDONESIA

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Dr Wahyudi<sup>2</sup>

## ABSTRACT

National knowledge (*Wawasan kebangsaan*) for Indonesians today seems relatively decreasing, including for politicians. The relations between political parties and their constituents is becoming greater because in the political life, peoples always support a political party and hope that the political party can accommodate their aspirations to fulfill their need and improve their lives. In local, regional and national elections, the conflicts often happen among political party supporters and it shows a relative low political education among them. From those description, it is interesting to study: (1) how is the national knowledge of political party's cadres and constituent ? (2) How is the political education for the cadres and constituent? From the study in East Java province, we found that the national knowledge and political education for political party's cadres and constituents are not optimal. Their knowledge about politics is still limited and more pragmatism. It is caused by the lack of political education from the political party. Based on these findings, we develop a solution to solve those problems by strengthening political education using an the integrative-participative model. The model includes a synergy between political party committee, universities and NGOs as part of civil society. Political parties have responsibility to give national knowledge and right political consciousness to their constituents. If it can be done, it will create qualified constituents and develop the constituents with good national knowledge and political consciousness.

**Keywords:** integrative participative model, political education, national knowledge, cadrerisation, political consciousness.

## INTRODUCTION

Dealing with political life, people always support their political parties that are aexpected to be able to channelize their aspiration in order to fulfill their needs and to improve their life. Political parties, therefore, as references to their constituents, are very vital in giving information and building public opinion, but in reality, either cadres of political parties or constituents tend to behave emotionally during either local heads, legislatives or presidential elections. Anarchistic conflicts often happen. In order to avoid such an anarchy, a firm system of parties is needed.

Conceptually, to establish such a firm system of parties, at least, two capacities should exists. Second, it is necessary to smoothen political participations through political channels, so that this may shift any forms of political activities containing elements of

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anarchy. Second, it is important to involve and to channelize participations of newly-mobilized groups to reduce the a strong degree of tension a political system has (Vina Salviana and Wahyudi, 2013).

Based on the above-mentioned concept, some attention of political parties to their constituents is vital, especially in densely-populated areas such as East Java with the population of 237.641.326 persons based on the 2010 Census where a political map in East Java can be seen from the number of chairs in the parliaments. The table below presents a political party that occupies the highest rank in the results of chairs in the parliament.

#### **A LEGISLATIVE MEMBERSHIP COMPOSITION IN EAST JAVA IN THE 2014 - 2019 PERIOD BASED ON POLITICAL PARTIES**

<b>POLITICAL PARTIES/ FRACTIONS</b>	<b>Results of chairs</b>	<b>Percentag e</b>
Nasional Demokrat	4	5
Partai Kebangkitan Bangsa	20	19,10
PKS	6	5,08
PDIP	19	18,92
Partai Golkar	11	9,35
Partai Gerindra	13	12,68
Partai Demokrat	13	12,06
Partai Amanat Nasional	7	6,20
Partai Persatuan Pembangunan	5	6,19
Partai Hati Nurani Rakyat	2	3,74
Partai Bulan Bintang	-	1,14
Partai Keadilan dan Persatuan Indonesia	-	0,54
<b>Total</b>	<b>100</b>	<b>100</b>

Source: <http://pemilu.tempo.co/read/news/2014/05/12/269577243/>  
DPRD-Jawa-Timur, accessed on September 5, 2014

#### **RESEARCH PROBLEMS**

Based on the background and existing reality in East Java Province, the research problems are formulized as follows:

1. How is the national knowledge of cadres of political parties and their constituents in East Java province?
2. How is the political awareness of constituents of the political parties in East Java province?
3. How is the chance to build a model of political education for political parties and their constituents?

#### **RESEARCH METHOD**

A field study is given more emphasis in the paradigm synthesizing Micro-macro sosiology (micro-macro link). Sociologically, this paradigm views that reality is built in the process of relation between agent and structure. The consequence of this paradigm is the use of a theory under the metatheory category namely Anthony Giddens' theory of Structuration. Techniques included in this present research methods are as follows:

## **RESEARCH LOCATION**

The research locations chosen were Malang regency, Malang city, Batu city and Blitar regency because the four areas posses potentials of local values that may be raised into values to improve national knowledge (integration in solving various frictions or conflicts happened).

## **THE DETERMINATION OF RESEARCH SUBJECT:**

The subjects of this research are:

- a..The boards of big parties (PDIP, Golkar Party, Democrat Party, PKS) in three (3) locations (the first year) chosen based on criteria as the main board members such as the chairs, secretaries and heads of fields of building cadres, which were added with Amanat Nasional Party (1 location) in the second year.
- b. Caddres of big political parties in 3 locations chosen using purposive and snow ball principles, which were then aded with Partai Amanat Nasional (1 location) in the second year
- c. Constituents of bigh political parties in 3 locations, which were added with Partai Amanat nasional (1 location) in the second year.

## **TECHNIQUES OF DATA COLLECTION**

The techniques of data collection in qualitative reseacrhers commonly used according to Denzin and Lincoln (2009) are as follows:

- a. **Participative Observation**  
The researchers made direct observations on each location using a manual that had been created before covering: (1) the condition of political parties in terms of the facility of internally held- political education; (2) the process of the political education in the parties; the data were obtained by visiting the offices of each party and some activities made by the parties. Using this technique, the researchers got a picture of the material, methods and atmosphere developed during the process of internal political education in the parties, and (3) activities of the cadres when they got in touch with their constituents.
- b. **In-depth Interviews**  
The use of this technique was intended to collect the data on: (1) national knowledge the cadres of politial parties, obtained in-debt interviews with the boards and cadres of political parties; (2) political awareness of constituents, where the data were obtained through in-debt interviews with the constituents; and (3) political education in the political parties and political education of the internally held-political education for their constituents, where the data were got from interviews with cadres of the political parties.
- c. **Documents**  
This present research needed a number of data in the forms of documents such as books used in implementing the internally held- political education, materials presented to the constituents and writings or archives of speeches of the board members of the political parties containing national knowledge.
- d. **Focus Group Discussion (FGD)**

FGD according to Irwanto (2006) is a systematic process of collecting data and information on a very specific problems through group discussions. FGD was employed because of philosophical, methodological and practical reasons. In the philosophical reason, it means that FGD may supply information from various perspectives that may enrich the findings of the research. Methodological reasons means that if in this present research data cannot be obtained through a certain technique, another technique may be employed. The practical reason is that any parties involved in the FGD would not feel as 'objects' but 'subjects' who are actives and free and are really involved in finding research results.

In this FGD, it is necessary to have a team consisting of 1 moderator, 1 jotter of the process, and 1 linker of participants of the discussion, 1 blocker anticipating negative influences in the FGD, 1 or 2 persons who manager logistics that may facilitate the transportation and other needs.

In this present research, data collected through the FGD were those on the model of internal political education for constituents that may anticipate any frictions and conflicts in the society. Before the FGD was made, the researchers prepared a draft of discussion to make the process of discussion may be really focused.

### **TECHNIQUES OF DATA ANALYSIS**

The collected data through observation, interview and document were then analyzed with stages of data reduction, data display, verification or conclusion (Miles and Huberman, 1992).

The data reduction stage is the stage of simplifying, abstracting and transforming "raw" data collected from any written notes in the field. Data reduction continually progressed during the research even it started before the researchers decided a conceptual framework of the research area, research problems and approaches to the data collection chosen in this research. This data reduction continued after the field researches made in the locations namely in PDIP and Partai Golkar in Malang city, PKS in Malang regency and Partai Demokrat in Batu city.

The data display stage is a group of arranged information that enables the conclusion drawing. The mostly-often used data display form is narrative text. At first the information was in the form of disperse texts such as data from the results of interviews with board members of political parties, secondary data in the forms of archives and papers during briefing to cadres that had not been well arranged, and then the researchers simplified complex information in a unity form (gestalt) in to an easily understood configuration in the form of narrative.

The verification or conclusion drawing stage is a part of an activity from the whole configuration. The existing conclusions were verified during the research so that the principle of this data analysis is circular in nature. The whole sequence of the data analysis in this present research may be shown as follow.

### **TECHNIQUES OF DATA VALIDITY**

As in the quantitative researches, qualitative researches also employ procedures of data validation involving the following stages: (1) lengthening the observation time; (2) making the source triangulation by checking among one data source with another; (3) making member check, where data were reconfirmed with informants namely board members of political parties and (4) making peer debriefing, where the researchers made discussion

with some colleagues in Malang, especially active lecturers in the Center for Social and Political Study, in University of Muhammadiyah Malang.

## CONCEPTUAL FRAMEWORK

The 2004 research by Salviana et all showed that internally held- political education contained cognitive loads with the forms of trainings, seminars or elucidations. Such political education was still general knowledge transfer in nature on the definitions, bases, and uses of politics and also significant meaning of using rights to vote, political education that had not touched affective and psychomotoric domains, even problems on national knowledge. Anyhow, the role of political education is to give content, direction and meanings to the process of internalizing prevailing values. Related to the political education, it is meant to be an effort to get an understanding of normative ethical values namely implanting values and norms as a base and motivation of Indonesian people and a base to construct and develop themselves and to take part in the life of state and nation. The research in Malang Raya showed that activists of political parties possessed interest in political education.

In the theory of structuration, the relation between the doer (action) and the structure is in the form the duality, instead of, dualism relation. This duality relation happens in the "recursive and patterned social practices across space and time" (Herry Priyono, 2002). Duality lies in the fact that a "structure" resembles a guideline that may be used as principles for practices in various places and times that are the recurrent results of various actions, and on the contrary, schemata which resembles the "rule" also becomes a medium for taking place the social practices, and in Giddens terminology the schema is structure. Giddens divides three main clusters of structure. *First* is the structure of signification covering symbolic schemata, making meaning, designation, and discourse. *Second* is the structure of governance or domination covering schemata of domination of people (politic) and goods (economy). *Third* is structure of legitimization concerning schemata of normative regulations expressed in the law order. In the social practice, the three clusters of structural principles are related one another. The structure of signification then covers the structure of domination and legitimization (Herri Priyono, 2009). The following is a scheme describing the relation pattern among the three.

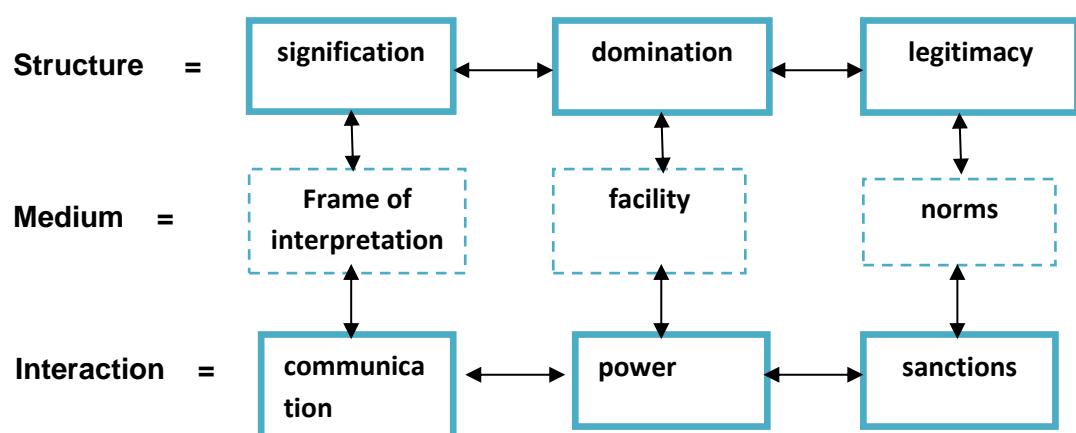


Figure1. Scheme of Structuration

This theory of structuration will be used to analyse and also apply this theory in order to study the relations between political parties and their constituents. For example, actions in the forms of social practices such as speaking, discussing, or writing and even demonstrating are assumed as a certain structure of signification for instance the

grammar understood by people in the society that becomes the destination of the act of speaking or demonstrating. This also happens to the governance or control of the board members of political parties over the cadres or constituents who is assumed as the schemata of domination and also legitimization of the political parties to hold political education for their cadres and also constituents.

### **VALUES OF DIVERSITY AND NATIONAL KNOWLEDGE**

According to Irwan Abdullah (2010), a conception of Diversity in Unity (*Bhinneka Tunggal Ika*) is separable with an insight of *Nusantara* (the Indonesian Archipelago), since they support one another in development. Starting from values giving a priority of coalescence and unity, supported by the implementation of insight of *nusantara* in political, economic, social and cultural life and also defense and security, the quality and capability of human resources will be improved. Improvement of the insight of *nusantara* and the conception of unity in diversity will make them become a basic reference in nation and state buildings where the youth possess strong characters as actors that promote peace and welfare.

It can be denied that since the reformation, degradation of diversity and of national insight, including separatist movement, may be clearly seen. According to Irwan Abdullah (2010), such separatist movement is due to 3 causes. *First*, this movement is a reaction against dissatisfaction with distribution of development. *Second*, basis for the concept of multiculturalism in Indonesia is weak because the management of pluralism which is lack of conceptual basis. And *third*, the government has not responded the separatist movement through precise preventive movement.

Irwan Abdullah (2010) offers a solution namely adequacy of materials in various forms of information, educational curriculum, books, and magazines that may develop insight of diversity to improve national knowledge, especially insights of diversity and reinforcement of inner feelings. Moreover, an institutionalization of awareness and commitment of diversity through various activities at schools and among the youth at various levels and groups in order to grow awareness and commitment for nation integration and unity is needed.

A concept of integrative-participative is obtained from the *Competition Grant research (the 2008 PHB)* with the title of Empowering Productive Age Women through Development of Local Potential-based Life Skills Model (Vina Salviana DS and Dyah Erni, 2008: 55-57). The integrative-participative model possess 5 (five) important aspects namely:

- a. Involving all elements in the program so that it may make work atmosphere pleasing, growing work spirits and self-confidence, cooperation and developing competitive performances
- b. Importance of clear work divisions that makes the program run well, not overlapping, harmonious, and not jealous
- c. Delegating jobs that may grow the feeling to be trusted due to the capability they possess
- d. Growing motivation to the people to bring any programs into play
- e. Building direct communication between elucidators and the people, making the relation closer between the people and the uniting elucidators.
- f. Transparent approach to leadership that may grow personnel's work spirit and performance, giving impacts on the implementation of activities as planned

- g. Synergy among building institution, programs implementers and the people. This synergy is more intensively made at the post-training to autonomous stages, meaning that elucidation is made integratively and not to leave aspects of participation of each elements in accordance with their portions and roles.

If the concept of integrative-participative is related to education, the integrative-participative education is education that involves many concerned parties with the goal to give supplies and awareness of self-capability and –empowerment that may improve motivation and skills.

## **ANALYSIS**

In the theory of structuration, Giddens (1984) see three big clusters of structure (Herry Priyono, 2002:24). First is the structure of signification or significance that involves symbolic schema, making meaning, designation and discourse. Related to national knowledge, the cadres of political parties make the same meaning of national knowledge, namely they merely understand state symbols. Different from PKS, it gives an emphasis that to do a party is a means, teaching Islam is the main matter (family, society, state). Internalization of values taught are Islamic values (national knowledge that will save world and here-after life). The structure of signification or significance for each political party is different, as specially in the process of making cadres. Designation of terms beginner, media and honorary members shows ranks of membership in PKS which means a little bit different from other political parties such as PDIP or Golkar Party.

Second is the structure of governance or domination that covers a scheme of governance over the people (politics) and items/matters/economy (Herry Priyono, 2002: 24). Concerning with educational politics made in the internal condition of political parties, the structure of domination is very apparent when they approach political events such as general activities such as in elections of local heads (mayor or governor), legislative members, or in the president election. Based on the theory of structuration, it can be understood that general election is a practice in a structure of domination that deals with governance over people. At recent months, meetings were often held in internal boards of political parties to discuss anything dealing the effort to gain victory in the 2014 general election namely to get voters as many as possible.

Third is the structure of justification or legitimacy that deals with the schemata of normative regulations expressed in the legal order (Herry Priyono, 2002:24). Dealing with the process of making cadres and fixed procedures in recruiting members of political parties, there are ranks of memberships and measurement to become cadres to be promoted as candidates of legislative members. In PKS, it is explicitly stated in the oath that is in each rank of membership, the oath is different.

In the social practices, the three clusters are related one another, and the structure of signification will also covers structures of domination and legitimization. Politicians in each political parties possess a schemata of signification namely those who are active in political parties then deal with the schemata of domination namely “authority of politicians over constituents” and also the schemata of legitimization that politicians have rights to influence constituents to support their political parties.

In short, it can be understood that structure is as a medium of social practice. Any action and social practices such as speaking, discussing, or writing are assumed the structure of signification (Herry Priyono, 2002: 26). Duality between structure and action always involves a between-facility, this also applies for any action of politicians who have

discussion with other politicians in the same political parties about politics is assumed as the structure of signification in the form of language and political education, making cadres and giving controls by heads of political parties to cadres is assumed from the structures of domination and also legitimization.

Based on the *Focus Group Discussion* (FGD) the expectations of PDIP, Golkar Party and Democrat Party are that political education is aimed to build characters, political education starts from the education in the family, political education that is doctrinal in nature should be changed, that political education should be done routinely and should be consistent. Moreover, based on the discussion of the research results and on the peer debriefing, it can be concluded that the model of political education should be participative in nature, meaning that participation of various elements in higher education and NGOs is really needed, especially in improving awareness of political participation among constituents, and integrative means creating high-quality and –morality politicians and constituents with adequate political knowledge.

From the results of the FGD and the discussion of the results, a model of civil society-based integrative-participative political education was found. The participative-integrative political education is a political education that involves participations of all elements either heads of political parties, higher education, and the NGOs to integrate all cadres and their constituents to reach their goal. The goal is to realize high-quality and morality politicians and constituents with adequate political and national knowledge. The scheme of a civil society-based Integrative-participative Model is presented below.

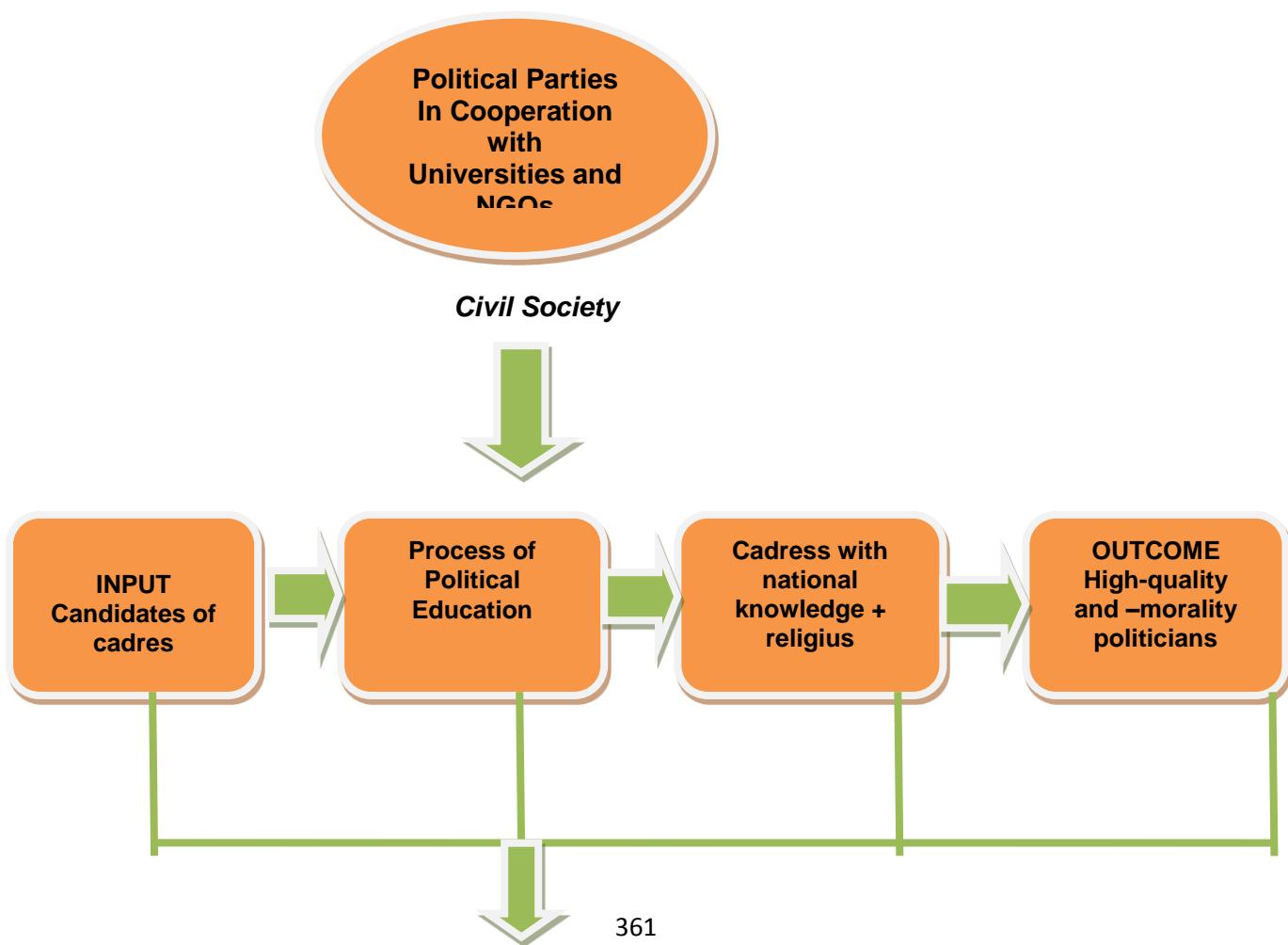




Figure 2. A Scheme of Civil Society-based Integrative-participative Model

## CONCLUSION

From the research results of the five political parties above, there are some similarities in the process of making cadres namely: graded, specific materials, those making the cadres are senior figures from each political parties. The difference is in the basic ideology of each political party. Dealing with the national knowledge of the four political parties, namely PDIP, Golkar Party, PKS, Democrat Party and also PAN, they have different perceptions due to different condition of each political party. Something considered to show similarity is that they do not forget the founding fathers of this country. Dealing with "Who occupies what", an understanding of placing national and state symbols, the PKS gave a more emphasis on religion-based national knowledge. Moreover, such a national knowledge at the cadres level, is still being able to maintained at each political party through the process of making cadres in each political party.

The degradation of national knowledge among the constituents is caused by the lack of the socialization process on nationality/state, since the people merely possesses high tense in handling the state/nationality during political activities such as election for local head's legislative election, and president election.

From the findings of the first and second year research (Vina Salviana DS and Wahyudi, 2013-2014), some problems concerning political education are identified: (1) One of the problems to solve in the political education is the regeneration of elites; (2) Not all political parties posses a manual of political education;(3) To do politics is not for insights of state, but also of wider life, and (4) the ideal model of political education: nothing but each political party believes that the expected model of political education is that the political education:

1. Is aimed at building character
2. Is collective responsibility
3. Starts from education in the family
4. Is doctrinal should be changed
5. Is routinely done
6. Should consistent.

It seems that the five political parties studied namely PDIP Malang city, Golkar Party Malang city, PKS Malang regency and Democrat Party Batu city and PAN Blitar are still trying to improve political education appropriate with the culture of Indonesian people and are still trying to find the best political education.

## **RECOMMENDATION**

Remembering that adequate national knowledge in self of each cadre and constituents has not been well “implanted”, it is necessary to reinforce a participative-integrative political education to create a synergy among board members/heads of political parties and high education and also NGOs as a part of civil society to be responsible for giving national knowledge and right political awareness to constituents.

If this may be realized, high-quality politicians and constituents with adequate national knowledge and political awareness will be resulted in.

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# **GANGGUAN SEKSUAL DI TEMPAT KERJA:HAK PEKERJA MENURUT UNDANG-UNDANG MALAYSIA**

Mumtaj Bt Hassan<sup>1</sup>  
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## **ABSTRAK**

Gangguan seksual merupakan suatu perlakuan negatif yang bertentangan dengan keperibadian terpuji seseorang insan. Gangguan seksual berlaku bukan sahaja di tempat kerja malah di institut pengajian tinggi, sekolah dan di tempat-tempat awam. Gangguan seksual di tempat kerja menimbulkan suasana persekitaran kerja yang serba salah, menakutkan dan lain-lain kesan negatif yang menjelaskan suasana perhubungan yang harmoni. Namun begitu, Malaysia masih belum bersedia untuk menggubal suatu statut yang khusus untuk menangani gangguan seksual. Setakat ini hanya wujud Kod Amalan Untuk Mencegah Dan Membasmi Gangguan Seksual Di Tempat Kerja 1999. Sehubungan itu, kertas kerja ini akan mengupas isu gangguan seksual dan peruntukan daripada pelbagai statut di Malaysia yang boleh digunakan oleh mangsa dalam menuntut hak di mahkamah.

## **PENGENALAN**

Gangguan seksual seperti perbuatan atau pernyataan yang bersifat seksual boleh memberi kesan negatif ke atas semangat pekerja dan prestasi kerja. Gangguan seksual mencetuskan implikasi negatif kepada mangsa sama ada dari aspek psikologi, fisiologi dan tingkah laku. Gangguan seksual turut menimbulkan suasana persekitaran kerja yang serba salah, menakutkan, berasa terancam dan kesan-kesan negatif lain yang menjelaskan suasana perhubungan yang harmoni di tempat kerja. Ia juga dianggap perbuatan yang tidak bermoral dan melanggar batas-batas perhubungan serta nilai peribadi seseorang. Secara tidak langsung, gangguan seksual juga turut mencemarkan nama baik dan imej sebuah organisasi

Gangguan seksual di tempat kerja bukan sahaja melibatkan mangsa wanita bahkan juga lelaki. Walaubagaimanapun, pekerja wanita mendominasi perangkaan kes gangguan seksual sebagai mangsa. Kajian yang dijalankan oleh Badriyah (1988) mendapati 80% daripada pekerja wanita mengalami gangguan seksual di tempat kerja. Manakala Nazri & Lee (2005) pula menyatakan gangguan seksual atau gangguan gender berlaku terhadap wanita dalam bentuk lisan tanpa mengira taraf pendidikan, status perkahwinan atau bangsa.

Menurut kes *Meritor Savings Bank v Vision*, 477 US 57 (1986) gangguan seksual dianggap sebagai suatu bentuk diskriminasi seks terhadap kaum wanita dan melanggar Bab VII, *Civil Right Act 1964*. Malah, Perkara 8(2) Perlembagaan Persekutuan

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Malaysia turut melarang sebarang amalan diskriminasi ke atas pekerja berdasarkan agama, kaum, keturunan atau tempat lahir atau jantina.

Kod Amalan Pencegahan dan Pembasmian Gangguan Seksual Di Tempat Kerja (Kod Amalan) 1999 telah diperkenalkan oleh Kementerian Sumber Manusia pada bulan Ogos, 1999 bagi menangani gejala gangguan seksual di tempat kerja sektor swasta. Kod Amalan 1999 ini secara amnya mendefinisikan gangguan seksual dan memperkenalkan mekanisme dalaman untuk mencegah dan membasmikan gangguan seksual di tempat kerja.

Manakala bagi kakitangan kerajaan, mereka tertakluk kepada Pekeliling Perkhidmatan Bilangan 22 Tahun 2005 iaitu Garis Panduan Mengendalikan Gangguan Seksual Di Tempat Kerja Dalam Perkhidmatan Awam (Garis Panduan 2005) yang diwujudkan bagi mengendalikan gangguan seksual di tempat kerja dalam perkhidmatan awam. Matlamat utama garis panduan ini adalah bersifat untuk mendidik, memberi kefahaman dan sebagai tindakan pencegahan bagi mengelakkan perbuatan serta salah laku yang boleh dikategorikan sebagai gangguan seksual. Garispanduan ini bertujuan untuk memelihara perhubungan di tempat kerja agar lebih harmoni, saling hormat menghormati dan meningkatkan nilai budi bahasa serta integriti kakitangan awam. Dalam perkhidmatan awam, gangguan seksual merupakan salah satu perlakuan yang dilarang mengikut Peraturan 4A Peraturan-Peraturan Pegawai Awam (Kelakuan dan Tatatertib) 1993. Sekiranya seseorang Pegawai Awam didapati telah melakukan gangguan seksual, mereka boleh dikenakan tindakan tatatertib kerana telah melanggar Peraturan 4A atau Peraturan 4(2)(d), Peraturan Pegawai Awam.

### **DEFINISI GANGGUAN SEKSUAL**

Perkara 4 Kod Amalan 1999 mendefinisikan gangguan seksual sebagai sebarang tingkah laku berunsur seksual yang tidak diingini dan memberi kesan sebagai satu gangguan sama ada secara lisan, bukan lisan, visual, psikologi atau fizikal:

- a. yang, atas sebab yang munasabah, boleh dianggap oleh penerima (mangsa) sebagai mengenakan syarat berbentuk seksual ke atas pekerjaannya; atau
- b. yang, atas sebab yang munasabah, boleh dianggap oleh penerima (mangsa) sebagai satu pencabulan maruah, atau penghinaan atau ancaman terhadap dirinya tetapi tiada hubungan terus dengan pekerjaannya.

Kod Amalan 1999 dan Garis Panduan 2005 menyenaraikan lima perlakuan atau perbuatan yang terjumlah kepada gangguan seksual iaitu gangguan secara lisan, gangguan secara isyarat/bukan lisan, gangguan secara visual, gangguan secara fizikal dan gangguan secara psikologi.

Gangguan secara lisan merangkumi kata-kata, komen, gurauan, usikan bunyi dan soalan-soalan yang berbentuk ancaman atau cadangan seksual. Manakala contoh gangguan secara isyarat/bukan lisan adalah pandangan atau kerlingan yang membayangkan sesuatu niat atau keinginan, menjilat bibir atau memegang atau memakan makanan dengan cara menggoda, isyarat tangan atau bahasa isyarat yang membayangkan perlakuan seks, tingkah laku mengurat yang berterusan.

Gangguan seksual secara visual adalah seperti menunjukkan bahan-bahan lucah, melukis gambar lucah, menghantar nota, surat, mel elektronik, foto melalui penggunaan peralatan media, peralatan elektronik atau komunikasi kepada pengadu. Sementara gangguan secara fizikal melibatkan sentuhan yang tidak diingini, menepuk, mencubit,

mengusap, menggesel badan, memeluk, mencium, dan melakukan serangan seksual. Manakala gangguan secara psikologi termasuk perbuatan mengulangi jemputan sosial yang telah tidak diterima, memujuk rayu berterusan atau mendesak untuk keluar bersama atau bagi memenuhi keinginan seksual.

Berdasarkan Kod Amalan 1999, gangguan seksual di tempat kerja bukan sahaja terhad kepada gangguan seksual di dalam tempat kerja tetapi turut merangkumi gangguan seksual yang berlaku di luar tempat kerja yang timbul daripada hubungan dan tanggungjawab yang berkaitan dengan pekerjaan dimana ia adalah termasuk, tetapi tidak terhad kepada:

- (i) majlis sosial berhubung dengan pekerjaan;
- (ii) semasa menjalankan tugas di luar tempat kerja;
- (iii) sesi persidangan atau latihan berkaitan dengan pekerjaan;
- (iv) semasa perjalanan berkaitan dengan tugasan;
- (v) melalui telefon; dan
- (vi) melalui media elektronik.

Secara umum, gangguan seksual di tempat kerja boleh dibahagikan kepada dua keadaan iaitu:

- (i) *Quid Quo Pro* (*this in return for that*) dan (ii) suasana yang menimbulkan ancaman.

Kategori yang pertama adalah lebih khusus berlaku kepada seseorang yang mempunyai kuasa atau dianggap mempunyai kuasa untuk memberi sesuatu ganjaran kepada pengadu seperti peluang peningkatan kerjaya, penilaian prestasi yang baik atau ganjaran-ganjaran yang lain, sekiranya pengadu memberi layanan seksual.

Kategori yang kedua pula merupakan gangguan, diskriminasi atau penganiayaan terhadap pekerja di mana pekerja diganggu melalui perbuatan atau perkataan atau isyarat bersifat lucah, komen terhadap sifat fizikal mangsa. Tindakan seperti ini akan mencetuskan kesan atau emosi negatif seperti takut, tidak selamat, tersinggung atau terhina kepada mangsa.

Selain itu, sesuatu perbuatan seperti gurauan yang hanya sebentar pada keadaan tertentu dan pada kebiasaannya tidak diniatkan untuk mengganggu sebaliknya sekadar untuk menimbulkan kemesraan sesama rakan sekerja. Sebaliknya, jika gangguan tersebut berlaku dengan kerap, disengajakan kerana mempunyai motif tertentu seperti hendak memalukan pekerja tersebut di hadapan pekerja-pekerja lain dan pelaku mengetahui bahawa orang yang diusik tidak menyenangi perbuatan tersebut, maka perbuatan itu boleh dianggap sebagai gangguan seksual. Keadaan ini boleh dirujuk di dalam kes *Tengku Mohd Faizal bin Tengku Mustapha v Hexamatics Sdn. Bhd.* [2013] 4 ILJ 389.

## **UNDANG-UNDANG BERHUBUNG DENGAN GANGGUAN SEKSUAL**

Di Malaysia, tiada statut yang khusus berhubung dengan undang-undang dan kawalan terhadap gangguan seksual di tempat kerja. Bagaimanapun pada 2012, pindaan kepada Akta Kerja 1955 telah dibuat untuk memasukkan beberapa peruntukan berhubung dengan undang-undang gangguan seksual di tempat kerja. Manakala Kod Amalan 1999 yang sedia ada bukanlah undang-undang. Malah, Kod Amalan 1999 tidak memperuntukkan bentuk hukuman yang hendak dikuatkuasakan keatas pelaku. Penerimaan Kod Amalan 1999 oleh sesuatu organisasi adalah secara sukarela. Dalam kes *Fuchs Petrolube (Malaysia) Sdn. Bhd. v Chan Puck Lin* Award 692/2003, Perkara

4(ii), 5(ii) dan 6(ii) Kod Amalan 1999 telah dibawa kepada perhatian mahkamah oleh pihak majikan. Dalam kes tersebut, mahkamah memutuskan bahawa majikan telah membuktikan atas kebarangkalian yang munasabah bahawa gangguan seksual telah berlaku ke atas pelaku yang berkaitan. Dengan itu, pemecatan yang dilakukan oleh majikan terhadap pelaku yang juga pekerja jaya adalah sah dan dengan alasan yang munasabah.

Manakala dalam kes *Cheng Beng Kwee v ST Microelectronics Sdn. Bhd. (dahulunya dikenali sebagai SGS-Thomson Microelectronics Sdn. Bhd.)* [2012] 1 ILR 473, Mahkamah Perusahaan menyatakan bahawa syarikat dan pekerja sewajarnya mematuhi Kod Amalan 1999 yang dikeluarkan oleh Kementerian Sumber Manusia bagi memastikan para pekerja tidak terdedah kepada gangguan seksual. Suasana kerja yang bebas dari gangguan seksual akan mewujudkan tenaga kerja yang cemerlang dan ia dapat menyumbang kepada peningkatan keuntungan syarikat. Mahkamah mengambil perhatian bahawa disebalik keseriusan kesalahan gangguan seksual itu, keterangan yang jelas perlu dikemukakan. Oleh kerana itu, undang-undang menghendaki bahawa tuduhan gangguan seksual hendaklah disokong dengan keterangan sokongan. Sesungguhnya pengamalan Kod Amalan 1999 akan membolehkan tempat kerja bebas daripada aktiviti gangguan seksual.

### **Akta Perhubungan Perusahaan 1967**

Pekerja di sektor swasta boleh membuat aduan berhubung dengan kes-kes gangguan seksual di bawah seksyen 20 Akta Perhubungan Perusahaan 1967. Ini adalah kerana majikan mempunyai obligasi tersirat untuk menyediakan tempat kerja yang selamat kepada pekerja-pekerjanya. Sekiranya seseorang pekerja diancam dengan gangguan seksual sama ada daripada rakan kerja, majikan atau pihak ketiga yang berurusan dengan majikan, pekerja boleh mengambil tindakan untuk berhenti daripada berkhidmat dengan majikan tersebut dengan memberi notis pemberhentian. Tindakan pekerja untuk berhenti kerja dianggap sebagai pemecatan konskruitif atau pemecatan daripada pihak majikan. Jika terbukti berlaku gangguan seksual terhadap pekerja, Mahkamah Perusahaan hendaklah memberikan remedai yang sesuai kerana pengembalian ke jawatan asal adalah tidak sesuai bagi pekerja yang menjadi mangsa gangguan seksual di tempat kerja.

Manakala dalam kes *Melewar Corporation Bhd. v Abu Osman* [1994] 2 ILR 807, Mahkamah Perusahaan memutuskan bahawa majikan mempunyai kewajipan untuk menyiasat apabila menerima aduan bahawa pekerja jaya terlibat dalam gangguan seksual dengan pekerja lain.

Walau bagaimanapun, perbuatan gangguan seksual perlulah disokong dengan keterangan kukuh daripada pengadu dan kredibilitinya tidak dipersoalkan. Kes *Jennico Associates Sdn. Bhd. v Lilian Theresa De Costa & Anor.* [1998] 3 CLJ 583 menyatakan ketiadaan keterangan sokongan tidak secara automatik menyebabkan pihak responden gagal membuktikan pertuduhan salah laku gangguan seksual. Sebaliknya, mahkamah perlu menimbangkan berdasarkan kepada keterangan pengadu yang menjadi mangsa gangguan seksual melalui keterangan sokongan. Sekiranya mahkamah berpendapat bahawa keterangan sokongan tidak diperlukan kerana keterangan pengadu adalah kukuh dan kredibilitinya tidak dipersoalkan, mahkamah boleh memutuskan sama ada terdapat salah laku gangguan seksual hanya berdasarkan kepada keterangan mangsa gangguan seksual tersebut.

### **Akta Kerja 1955**

Akta Kerja (AK) 1955 memberi hak kepada pekerja di sektor swasta untuk menamatkan kontrak perkhidmatannya dengan majikan tanpa notis sekiranya diancam oleh bahaya di tempat kerja. Menurut seksyen 14(3) AK 1955, kegagalan majikan untuk memenuhi obligasi tersirat untuk menyediakan tempat kerja yang selamat kepada pekerja merupakan suatu pelanggaran kontrak perkhidmatan di antara majikan dan pekerja.

Pindaan kepada AK 1955 pada tahun 2012 telah membawa kepada pengenalan kepada undang-undang gangguan seksual di tempat kerja. Bahagian XV A iaitu seksyen 81A-81G merupakan peruntukan baru dalam AK 1955 yang berkaitan dengan prosedur siasatan terhadap aduan gangguan seksual dan perkara-perkara yang berkaitan dengannya.

Peruntukan seksyen 81B menghendaki majikan untuk menyiasat aduan gangguan seksual dalam cara yang ditetapkan oleh Menteri. Menurut seksyen 81C sekiranya majikan berpuashati bahawa gangguan seksual telah dibuktikan, majikan hendaklah mengambil tindakan disiplin yang termasuk memecat pekerja tanpa notis, menurunkan pangkat atau mengenakan hukuman ringan lain yang disifatkan adil dan patut. Hukuman untuk kesalahan gangguan seksual dalam seksyen 81C adalah sama dengan hukuman untuk salah laku yang lain di bawah AK 1955, seperti mana yang diperuntukan dalam seksyen 14 AK 1955.

Selain daripada itu, seksyen 81D(3) menghendaki Ketua Pengarah menyiasat aduan gangguan seksual itu sendiri sekiranya pelaku gangguan seksual adalah tuan punya tunggal, dan memaklumkan kepada pengadu keputusan dengan seberapa segera yang praktik. Peruntukan ini bertujuan untuk melindungi pengadu kerana majikannya adalah pelaku gangguan seksual.

### **Akta Keselamatan dan Kesihatan Pekerjaan 1994**

Antara objektif Akta Keselamatan dan Kesihatan Pekerjaan (AKKP) 1994 ialah memastikan keselamatan, kesihatan dan kebaikan pekerja dan menggalakkan suatu persekitaran pekerjaan yang disesuaikan dengan keperluan psikologi pekerja. Manakala seksyen 15 AKKP 1994 mewajibkan setiap majikan untuk memastikan, setakat yang praktik, keselamatan, kesihatan dan kebaikan semasa bekerja semua pekerjanya. Selain itu, seksyen 16 AKKP 1994 juga mewajibkan majikan menyediakan pernyataan bertulis mengenai dasar keselamatan dan kesihatan pekerjaan, organisasi dan rancangan untuk melaksanakan dasar itu. Dengan itu, majikan hendaklah memastikan pernyataan bertulis berkenaan termasuk langkah-langkah berhubung dengan menghindar dan membasmikan gangguan seksual supaya pekerja dapat bekerja dalam zon yang selesa dan selamat. Kegagalan majikan untuk mematuhi seksyen 15 dan 16 AKKP 1994 adalah satu kesalahan dan apabila disabitkan boleh didenda tidak melebihi lima puluh ribu ringgit atau dipenjarakan selama tempoh tidak melebihi dua tahun atau kedua-duanya.

Walau bagaimanapun, AKKP 1994 hanya terpakai bagi industri-industri yang dinyatakan dalam Jadual Pertama, yang merangkumi sepuluh industri sahaja, iaitu pengilangan, perlombongan dan penguarian, pembinaan, pertanian, perhutanan dan perikanan, kemudahan elektrik, gas, air dan perkhidmatan kebersihan, pengangkutan, penyimpanan dan komunikasi, perdagangan borong dan runcit, hotel dan restoran, kewangan, insurans, harta tanah dan perkhidmatan perniagaan, perkhidmatan awam dan pihak berkuasa kanun.

Penguatkuasaan AKKP 1994 perlu diperluaskan kepada semua industri dalam sektor awam dan swasta supaya ia dapat membantu majikan untuk memastikan keselamatan, kesihatan dan kebajikan pekerja dan menggalakkan suatu persekitaran pekerjaan yang selamat dan bebas daripada gangguan seksual.

### **Peraturan Perkhidmatan Awam**

Garis panduan 2005 terpakai kepada semua perkhidmatan negeri, pihak berkuasa berkanun dan pihak berkuasa tempatan. Peraturan 4A Peraturan Pegawai Awam melarang seseorang Pegawai Awam daripada melakukan sebarang perlakuan yang terjumliah kepada gangguan seksual seperti yang dinyatakan dalam Garis Panduan tersebut. Pengadu boleh membuat aduan rasmi kepada pihak berkuasa tatatertib mengenai kejadian gangguan seksual supaya tindakan tatatertib dapat diambil terhadap pelakunya.

Pegawai awam yang didapati bersalah melakukan gangguan seksual boleh dikenakan tindakan tatatertib kerana melanggar Peraturan 4A atau Peraturan 4(2)(d), Peraturan Pegawai Awam di mana hukumannya adalah amaran, denda, pelucutan hak emolumen, penangguhan pergerakan gaji, penurunan gaji, penurunan pangkat atau penamatan perkhidmatan.

### **Kanun Keseksaan**

Menurut Kanun Keseksaan, gangguan seksual tidak menjadi jenayah dengan sendirinya. Bagaimanapun, terdapat beberapa peruntukan yang relevan dengan perbuatan gangguan seksual iaitu seksyen 351 untuk serangan, seksyen 354 untuk menyerang atau menggunakan kekerasan untuk mencabul kehormatan, seksyen 355 untuk menyerang atau menggunakan kekerasan jenayah untuk menjatuhkan kehormatan, seksyen 357 untuk rogol, seksyen 377D untuk mencabul kehormatan, seksyen 503 untuk intimidasi jenayah, dan seksyen 509 untuk kesalahan menggunakan perkataan atau isyarat bagi mengaibkan kehormatan seorang wanita.

Namun begitu peruntukan-peruntukan tersebut lebih cenderung kepada gangguan seksual berbentuk serangan dan menggunakan kekerasan dengan niat untuk mencabul kehormatan atau merogol kecuali seksyen 509. Peruntukan-peruntukan tersebut jelas dikhkususkan kepada wanita sahaja; tidak meliputi kes di mana mangsa gangguan seksual adalah lelaki. Selain itu, bentuk hukuman yang diperuntukkan lebih menjurus kepada menghukum pesalah dan tidak memberikan pembelaan atau remedii kepada pekerja.

### **Akta Pencegahan Rasuah 1997**

Perbuatan gangguan seksual boleh terjumliah kepada kesalahan jenayah, seperti mencabul kehormatan di bawah seksyen 354 Kanun Keseksaan, di mana pelaku bertujuan meminta layanan seksual sebagai suapan di bawah Akta Pencegahan Rasuah 1997. Bila keadaan seumpama ini berlaku mangsa hendaklah terus membuat laporan kepada polis atau agensi yang bertanggungjawab. Manakala, menurut Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009, penerimaan dan pemberian suapan sebagai upah atau dorongan untuk seseorang individu kerana melakukan atau tidak melakukan sesuatu perbuatan yang berkaitan dengan tugas rasmi adalah suatu kesalahan.

Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 menggariskan kesalahan rasuah, antaranya:

- i. meminta/menerima rasuah [seksyen 16 & 17(a)]
- ii. menawar/memberi suapan [seksyen 17(b)]
- iii. menggunakan jawatan/kedudukan untuk suapan pegawai badan awam [seksyen 23]

Berdasarkan seksyen 24 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009, hukuman yang dikenakan terhadap kesalahan-kesalahan rasuah tersebut adalah penjara tidak melebihi 20 tahun dan denda tidak kurang lima (5) kali ganda suapan atau RM10, 000, mana yang lebih tinggi.

### **Tindakan Tort**

Mangsa gangguan seksual juga boleh mengambil tindakan sivil berdasarkan undang-undang tort terhadap majikannya kerana gagal menyediakan tempat kerja yang selamat. Dalam kes *Beth Ann Fargher v City of Boca Raton*, [1998] 524 US 775, Mahkamah Agung Amerika Syarikat telah memutuskan bahawa majikan hendaklah menanggung liabiliti apabila seseorang pekerja menjadi mangsa gangguan seksual oleh rakan kerja yang lebih kanan. Mahkamah juga menyarankan supaya majikan mengambil langkah-langkah berikut:

- a. Mengambil langkah-langkah pemberian dengan serta-merta untuk menghentikan gangguan seksual di tempat kerja;
- b. Mewujudkan dasar bebas daripada gangguan seksual di tempat kerja dan memastikan pekerja mematuhi dasar tersebut;
- c. Mengadakan prosedur aduan dan penyiasatan;
- d. Menghebahkan hak pekerja untuk membuat aduan dan memastikan prosedur aduan tidak membebankan pekerja sama ada kos atau risiko pada diri dan kerjayanya.

### **CADANGAN DAN KESIMPULAN**

Gangguan seksual di tempat kerja hendaklah ditangani oleh semua pihak merangkumi majikan, pekerja, kesatuan pekerja dan kerajaan bagi memartabatkan nilai sosial masyarakat Malaysia. Masyarakat yang maju bukan sahaja dinilai dari aspek ekonomi dan material tetapi yang paling penting ialah nilai-nilai moral yang baik. Sementara itu, para pekerja perlulah berani untuk tampil ke hadapan untuk menuntut hak mereka sekiranya ada cubaan atau gangguan seksual ke atas mereka. Perbuatan berdiam diri atau melengah-lengahkan aduan ke atas pelaku akan menjelaskan kredibiliti mangsa dan keterangan di mahkamah. Pada masa yang sama suatu undang-undang yang khusus berhubung dengan gangguan seksual perlu diadakan. Undang-undang yang ada perlu diperbaiki lagi dan disatukan dalam suatu statut yang khusus. Hak-hak mangsa gangguan seksual hendaklah jelas dan remedi-remedi kepada mangsa juga perlu diperuntukan. Melalui usaha ini, diharapkan dapat memelihara perhubungan di tempat kerja agar lebih harmoni, saling hormat menghormati dan meningkatkan nilai budi bahasa serta integriti pekerja dan majikan agar nilai moral dan etika kehidupan terpuji manusia utuh terpelihara.

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# CORPORATE GOVERNANCE IN THE MEXICAN SMEs COMPETITIVE STRATEGY

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## ABSTRACT

The current governance model is a fundamental change in the corporate culture, given the constant change and globalization of markets, it serves to strengthen the organizational structure of the company, particularly Mexican small and medium enterprises (SMEs) are more vulnerable to change, what comes the interest of "Analyze corporate governance as a competitive strategy in SMEs of Mexico" under the assumption that SMEs are more competitive by adopting management as corporate governance, and if not adopted this strategy, the company may be displaced from the national or international market. As a result the long term, this strategy aims to create social and economic welfare of SMEs, being labor strength in Mexico.

**Key words:**competitiveness, corporate culture, corporate governance, SMEs.

**JEL:**D29, D70, D82, F61, F63, G30, H10, L20, M14, M51

## RESUMEN

*El modelo de gobierno corporativo actualmente es fundamental como cambio en la cultura empresarial, dada la globalización y el cambio constante de los mercados, pues sirve para afianzar la estructura organizacional de la empresa, en particular las pymes mexicanas que son más vulnerables al cambio, por lo que surge el interés de "Analizar el gobierno corporativo como estrategia competitiva en las pymes de México", bajo los supuestos de que las pymes son más competitivas al adoptar su gestión como gobierno corporativo; y si no se adopta esta estrategia, la empresa podrá ser desplazada del mercado nacional o internacional. Como resultado a largo plazo, esta estrategia pretende generar bienestar social y económico de las pymes, al ser fortaleza laboral en México.*

**Palabras clave:** Competitividad, cultura empresarial, gobierno corporativo, Pymes.

## INTRODUCTION

Today, society is undergoing a continuous transformation process, reflected in the economic, political and social. Thiscoupled withglobalization, characterized by cultural integration, and governmentmarkets, where there are involvedfactorsas important astechnologicalinnovationthroughresearchand development, leading to increased competitionamong employers, some bysurviveand othersto maintaina strong position, changes in which must beconstantly changingstrategiesfor the benefitof the organization. One of the biggest impactscaused byglobalization has beenthe freemarket entry, since previouslya firmcouldremain stable andpositionedat national level,but once it started the

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globalization phase, initially was a competitive advantage for those firms that had vision to grow and had the opportunity to do so, but at the same time has been a threat for those who did not have the technology and capital to do the same.

Therefore it emerges the importance of addressing the use of corporate governance as a strategy in Mexican small and medium enterprises (SMEs) and as a way not only to survive, but to compete and even expand their horizons internationally. So SMEs should have an organizational structure that allows an orderly adaptation to global change. There are companies that already implement corporate governance as a means to create competitive advantages, and have marked major differences from those that have not.

This document was developed through a qualitative study of the characteristics that should be adopted by small and medium enterprises in Mexico, to generate greater competition, greater wealth and greater economic, political and socio-cultural. To this end, for the theoretical framework is considered the agency theory, such as motivating the creation and operation of corporate governance. Considering the objective of this paper is to analyze corporate governance as a competitive strategy in SMEs in Mexico.

Understanding that for change and adoption of corporate governance requires changes of directors, managers, among other major radical changes, so that they are aware of taking the right decisions and safeguard the interests of the company. These changes allow the consolidation of positioning in the market. Considering that many of the familiar Mexican SMEs, the impact would be very favorable and the changes are urgent because studies claim the convenience of going to consultancies, universities, incubators and government institutions that provide enabling developing business.

## **BACKGROUND**

### **Evolution of SMEs in Mexico**

Mexican companies have been affected since the 40's due to protectionist trade policies, which led to create incentive systems, biased and prejudiced greatly competitiveness, causing a lag in the country itself that begins to root before the opening of markets to foreign trade. This motivated to switch to an exchange-free policy. However, it had also failures because it exposed mainly small and medium enterprises, which did not have the resources needed to adapt and survive to the change in order to what was given.

It was not until the second world war, when it was decided to open international markets and it is when Mexico looks like a great opportunity to export its products primarily to the neighboring country United States for the years 50's and 60's, which brought a boom not only for Mexico but to Latin America. At this time, after the Second World War (WW2), Mexico had built a strong industry. However, it did not last long due to the protection and subsidies, which created huge distortions in the economy. Here the government intervened to "support" businesses, causing the protection and government subsidies. Because of this, the employer had a captive market and had no interest in improving the quality of their products and services as well as to export them or seek new markets and resulting that the economy stagnated and would cause a deficit in the balance commercial.

From this background, SMEs (small and medium enterprises) have faced constant obstacles to survive and make inroads in international business. However, this situation has been very difficult for them. Globalization has created great opportunities especially in the field of global competitiveness. Following the opening of borders for entry of all types of products and services, there was a decline in production and the breakdown of many companies, largely by consumer preference for foreign goods and products.

The trend of Mexican business doing business family heritage is reflected in most SMEs. It was unveiled at the International Seminar on the Role of MSMEs in the Process of Globalization of the World Economy, held in Mexico City in 1993. Mexico currently consists mainly of micro, small and medium enterprises (MSMEs) and they are of vital importance, since they form the 98.79% of the Mexican economy. Gutiérrez Peñaloza (2003, p. 12-13) points out that the country has an alternative which is in the creation of a new corporate culture based primarily on employee motivation in its creativity, trust, loyalty, work, initiative and enthusiasm, achieved through a healthy working environment. This alternative is urgently needed to be adopted in SMEs, due to the importance to the country.

### **Features of SMEs in Mexico**

As mentioned above, SMEs are the economic center of the country. This is because social overcrowding and the need to raise capital and technical resources for operating production and services. However, despite the complex rules of management, it has been improving the level of perfection. SMEs have the peculiarity that not all research, planning or use a comprehensive methodology. Therefore, policies are complex functions depending on the type of company, besides cultural, educational, political, economic and social aspects.

Rodríguez Valencia (1994, page 26) states that from the point of view of the individual, a small business may seem insignificant, but in its overall size is really great, not only in numbers but by its contribution to the economy. The size of the SME is not measured solely by the number of firms. It is also the capital investment, production, value added, number of jobs created, to name a few factors that give rise to determine the complexity and at the same time the importance of SMEs in generating employment and wealth to the country. The following Table 1 shows the size distribution companies:

Table 1: Distribution of firms by size

TYPE OF COMPANY	NUMBER	%
Micro	2 605 849	95.5
Small	87 285	3.2
Median	25 517	.09
Large	7 715	.03
Totals	2 726 366	99.9

Source: INEGI (2010)

Some characteristics of SMEs are: little or no expertise in the administration, lack of access to capital, close personal contact between manager and employees, some dominant position in the consumer market and the close relationship with the local community.

## **APPROACH AND DELIMITATION OF THE PROBLEM**

The research aims to highlight the importance of Mexican SMEs from strategically to adopt corporate governance, to be competitive and have a positive impact on the economic development of the country. The question that arises from the difficulty for SMEs to survive is: Corporate governance can be implemented as a competitive strategy in Mexican SMEs?

### **Research objective**

The research objective of this paper is to analyze corporate governance as a competitive strategy in SMEs in Mexico under the support of the agency theory.

### **Research assumptions**

The problems detected, leads to two cases. These are:

- 1) SMEs are more competitive by adopting management as corporate governance.
- 2) If it is adopted a corporate governance strategy type is easy to move the company in the domestic or international market.

## **JUSTIFICATION**

SMEs in Mexico mostly have either advice or enough technology to be competitive. SMEs lack of resources and skilled human capital for business development and decision making to strengthen the business and the lack of information and vision of entrepreneurs. It is then that SMEs are currently involved in a global market, which encourages companies to streamline their processes, train their staff, advise to improve the performance of firms, as well as make use of the technologies. These aspects serve to make the company competitive. Lack of information can affect the degree of being affected in their yields, prices and costs, consequently, become uncompetitive. A factor that also influences the lack of monitoring processes and decisions made by the governance tripod which is comprised of the board, owners and managers (Peng, 2010).

Mexico has gone from being a closed economy, with inward growth, into a country with a new model of outward growth through industrialization and export. The former model was effective from 1940 to 1980, to which was followed by the 1982 crisis because of overprotection in exports and over regulation generated monopolies and oligopolies, there was little international competitiveness (Villarreal & Ramos, 2001). For the years 90's, the industrial model was booming. Mexico currently exports almost 80% of its production, however, has not diversified model to other parts of the world, because it has focused on the United States and Canada, and the percentage decreases for other countries also have opportunity to exploit and compete as well as we will generate a stability in these times of financial and economic volatility (Ministry of Economy, 2013).

Corporate governance can improve the understanding of the structures and governance mechanisms that benefit the operation of the organization. Peng (2010) defines governance as the determination of the general uses to which organizational resources are deployed and the resolution of conflicts between multiple participating organizations. Corporate governance focuses on the control of the executive personnel interest and the protection of the interests of shareholders in environments where organizational separate ownership and control.

One of the biggest impacts that globalization has generated has been creating more risk, in the sense of a more volatile and competitive, but also more opportunities in terms of the emergence of more markets. Several causes lead the companies to redefine their culture and adopt an international business that allows easy adaptation to change and compete more successfully and welfare.

This new culture of corporate governance stands out in-depth assessment of managers and honesty to sustain the business, i.e. really care about the customers, shareholders and employees, and assess organizational levels, the delegation of responsibility and avoid bureaucracy forming multi-functional working teams, seeking an atmosphere of trust and communication within the organization. This is a result of the presence of a senior leadership in enabling to promote good management decision-making for better and faster results.

Mexican SMEs are at a disadvantage in relation to large companies hogging demand, so they (SMEs) are displaced on automatic. This is the motive that explains why they are in urgent need to adapt and adjust to the current environment handled globally, which will enable to be more competitive. This implies a change in attitude to maintain market leadership, then. When buying a good in the global market, no matter the place of origin, Argentina, Mexico or China, the important thing is to meet demand preferences and top with quality standards and marketing process.

Currently, SMEs compete differently. Companies can succeed if they master first at the ways to compete and overcome normal organizational barriers, doing things in a different way, being flexible to change and adapt to it. This leads to a new organizational culture of the 90's to the present as a anchor for change and improvement (Gutiérrez Peñaloza, 2003). Corporate governance is based on tools used for efficient administrative management such as coaching, benchmarking, management by values, empowerment, six sigma, quality function deployment, the balanced scorecard, to name a few.

### **Why implement corporate governance in SMEs?**

To implement corporate governance helps institutionalize the operation of the company, giving it greater professionalism for decision-making and daily management. Some of the benefits generated by the company are:

- 1) Have access to public / private finance on better terms and conditions.
- 2) It can make better business decisions by the existence of timely, accurate and relevant financial reports from generating.
- 3) There is a clear identification of the levels of authority and responsibility.
- 4) It becomes clear to third parties and internal staff.
- 5) Helps improve succession processes generational change.
- 6) Measures the operation and better business performance.
- 7) Promotes risk management of the company.

Success depends on the belief that the owner or employer has on its advantages (De Gárate Lara Perez & Tenorio, 2010).

## THEORETICAL AND CONCEPTUAL FRAMEWORK

It is currently undergoing continuous changes in relation to the business and social world, which is why companies have changed their role and significance, becoming a factor of change and social influence. For further study, read Limón Suárez, 2006 and Koontz & Weihrich, 1998). Dr. Pilar Baptista, cited by Limón Suárez (2004) conducted a recent study to define the profile of SMEs and the outstanding results are that they are generally directed by the owner and that in turn are who serve as administrator and centralized decision maker.

For the Organization for Economic Cooperation and Development (Organización para la Cooperación y el Desarrollo Económico, OECD, 1999), corporate governance refers to the internal means by which corporations are operated and controlled. To be properly implemented, corporate governance helps to ensure that corporations use their resources efficiently. So it can be said that corporate governance is a means to achieve the lead and control the company, in such a way that allows knowing the rights and responsibilities of people who make up the organization, making it possible to establish objectives, procedures, policies and standards with improved administrative management and can become competitive in the market. Deloitte & Touche (2013) show a model of corporate governance including the parties thereto, and the responsibilities and rights of each of them.

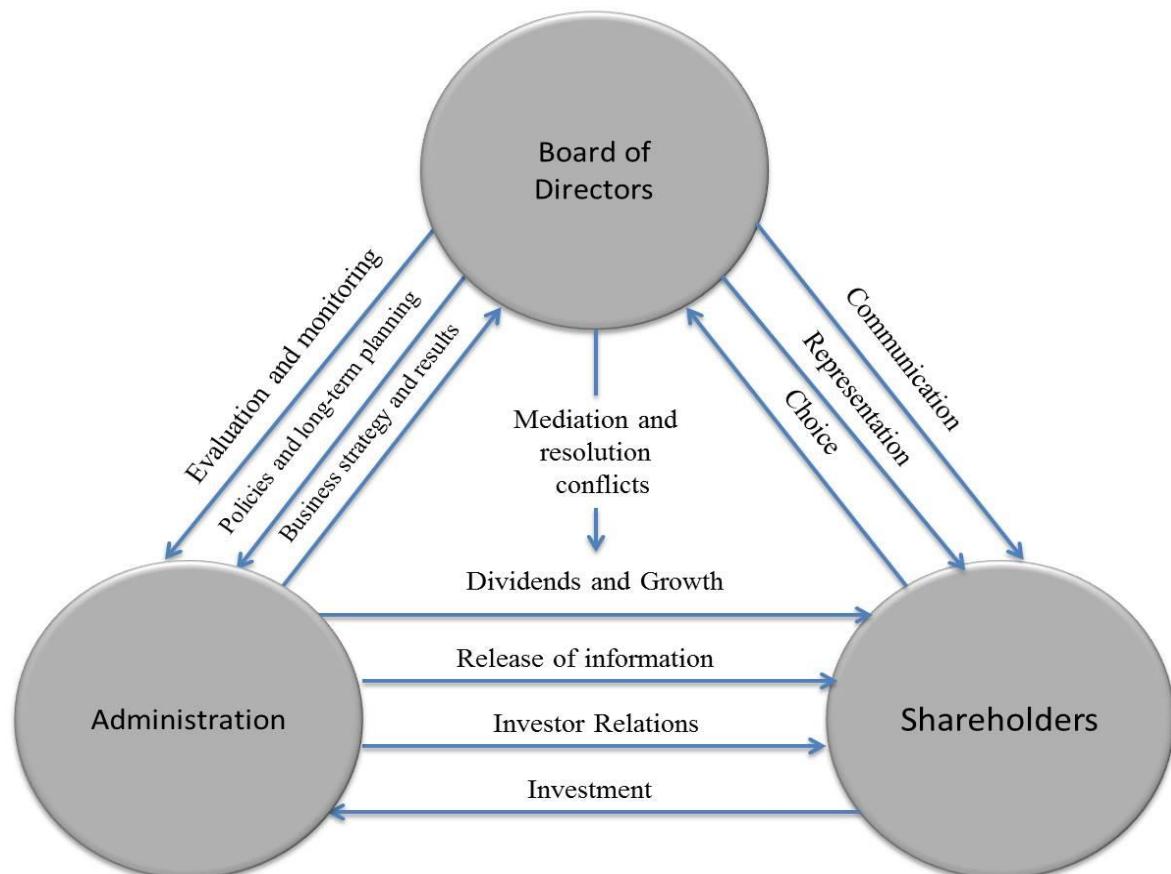


Figure 1. Corporate governance model

Source: Deloitte & Touche (2013).

With the interaction of the parts of the corporate governance, it leads to internal conflicts caused by differences of interest and information asymmetries. The interest is focused on SMEs, because of its importance in the economy as they are generating wealth in the country, covering 98.7% of the total national companies, and generate 45% of GDP (INEGI, 2010). This implies that greater attention must be given to the promotion of technological development and competitiveness in the global market. The absence of structural reforms that are needed to sustain and support is causing a steady loss of competitiveness.

That is why researchers in the field of corporate governance have the opportunity to directly influence corporate governance practices through the careful integration of theory and empirical research. Madhok (2002), argues that a theory of the business strategy should address not only the decision on hierarchical governance or market governance, but also should take into account how a company's resources and capabilities can be better developed and deployed in the pursuit of competitive advantage.

The agency theory is the one who gives rise to the study of corporate governance. Some of the expert authors who have made great contributions to the subject are Dalton, Daily, Ellstrand, & Johnson, 1998 and Shleifer & Vishny, 1997. Jensen & Meckling (1976) proposed in the theory of the agency how the corporation can be, given the assumption that managers are self-interested, and the context in which managers do not bear the wealth effects to take their own decisions. However Berle & Means (1932) point out that the theory is simple. Large corporations are reduced to two participant's directors and shareholders and the interests of each one are supposed to be both expensive and consistent, in addition to considering the idea of that the human beings must be willing to sacrifice their personal interests for the interests of others.

According to Pratt & Zeckhauser (1985), the separation of ownership and control is a subset of a series of economic problems that can be classified as the "principal-agent problem", i.e. recognize the possibility that creativity in the area of governance, can do better. If the agent is given an income that does not depend on effort, has no economic incentive to work harder, in order to provide security for affected interests (Peng, 2010). Mahoney (2005) discusses the agency theory, which makes some predictions for the control, such as:

- 1) Monitoring of lower quality is expensive.
- 2) Agency loss is more serious when the economic interests of principals and agents diverge considerably.
- 3) Agency theory is simply limited control or completely successful on the company.
- 4) The economic benefits of reductions in the loss of the agency are shared by the principal and agent in most market situations.
- 5) The principal and the agent have a common economic interest in defining a structure for monitoring and economic stimulus to produce results as close as possible to the economic result that would occur if the monitoring information were no cost.

The principal-agent theory gives a good reason for the existence of sharecropping contracts. This brings the question: Why is there a big difference between theory and practice? Some limitations of the model are:

- 1) The cost of specifying complex relationships.
- 2) Executive directors are judged based on criteria that could not be set in advance

- 3) Reward restricted or system penalty, usually expressed in terms of monetary payments.

The capital intensity, the degree of specialization of assets, information costs, capital markets and labor markets internal and external are examples of factors in the contracting environment that interact with monitoring costs and bonding different practices to determine contractual forms (Jensen & Meckling, 1976, p. 350).

The agency relationship is given to be a contract under which one or more persons (the principals) hire another person (the agent) to perform some service on their behalf which involves delegating some decision making authority to the agent. In this case the relations of most agency directors and agents incur a positive control of the economic costs of union and there will be a divergence between the agent's decision and the decisions that maximize the economic welfare of the principal.

## METHODOLOGY

The methodology used for the preparation of this research is based on an empirical approach to qualitative analysis, using electronic sources, literary and scientific, besides statistical databases of governmental information. It was collected information and considered done that furnish and give rise to answer the problem to be solved. This research report is considered as a descriptive study because it examines how it is and manifests a phenomenon and its components (Hernández Sampieri, 1991).

The research is considering as the independent variable the corporate governance as a strategy and dependent variable the Mexican SMEs, the competitiveness and the impact factor of agency theory.

## ANALYSIS OF RESULT

Research has developed a wider and clearer appreciation of the role of corporate governance and its importance, leading to consider as a tool to generate competitive advantages in the market. For 2007, the newspaper El Universal (2013) published an article referring to SMEs that remain outside corporate practices in Mexico. However, during the period 2007-2012 the Ministry of Economy announced that advances and supports have been provided to SMEs through the National Program of Promotion and access to Finance for SMEs (Secretaría de Economía, Administración Pública Federal 2006-2012, 2013), shown in Table 2:

Table 2. Supports from the Secretary of Economics (Secretaría de Economía) to SMEs 2007-2012

Concept	Annual data				
	2007	2008	2009	2010	2011
Number of SMEs	102,686	84,548	141,843	82,593	77,913
Financial support from the Secretary of Economics (Millions)	1,219.7	1,798.4	3,979.3	3,676.5	3,729.5

of pesos)					
Seed capital	1,590.0	433	849	1,379	000
Productive projects	2,757.0	1,516	213	1,761	500

Source: Own elaboration based on Secretaría de Economía(2013).

Accordingto INEGI(2013), inMexicothere are3, 724, 019family businessesacross the country, of which 98.35% are concentrated intrade49.9% (1.85855 million), services36.7% (1,367,287) and industriesmanufacturing11.7% (436 851).

Mexicodoesnot yetimplementcorporate governanceculturein SMEsdespitethat the government makesgreat efforts toreach theseeconomic entitiesthat arestrength andpillarof the Mexican economy. This is reflectedthrough theProgramfor BusinessDebt Marketthat is intended to fundthe institutionalizationand installation ofCorporate GovernanceinSMEs throughpayment ofprofessional services, equipment and systemsthat help strengthenthemsothat they becomeissuing debtcandidateson the Mexican StockExchange (BMV) (Observatorio PYME, 2013. SME Observatory, 2013).

Note that forthe year2004was createdtheCenter for Excellence inCorporate Governance(CEGC), which aims to:Providingboard membersand executiveswith information,methodologies and bestcorporate governance practicesthat will increasesthe efficiency andtransparencylevels, facilitate compliance withexisting standards andcreate more confidencefrom investorsto increasestheir economic valueand social(Centro de Excelencia de GobiernoCorporativo, Center for Excellence in Corporate Governance, 2010, p. 2).

The electronic journalof Public Accountingissuedby the Mexican Instituteof Public Accountantsin September 2010posted an articlethat talk about thecompetitive governmentby SMEs, highlighting their basic functionsin order toenable the organization tobemanaged and controlledefficiently,listed below:

- 1) Auditfunction.
- 2) Functionevaluation and compensation.
- 3) Functionoffinance and planning.
- 4) These functionsare carried outthrough twocontrol bodiesthat are:
- 5) The Assemblyof Shareholders.
- 6) The Board of Directors

As part of theanalysisresults, it isnoted thatin 2010the companyapplied thefirst surveyPwCon Corporate GovernanceinMexico(EGC). It wasdone underspecific objectiveslisted below:

- 1) Obtain relevant informationthat wouldconfirmthe current status of corporate governance (CG)practicesand identifyto what extent theculture and practicesofGC, have managed to permeatedifferent layersandMexican businesspositions.
- 2) To know the form onhoware structured theGCbodiesheaded by theBoard of Directors andintermediate bodiesof support(Committees).
- 3) To investigatewhich of theCG practicesare most that register a lowercoverage orless effectiveimplementationbycompanies.

- 4) To seek the viewpoints of the participants in the survey about areas of opportunity to incorporate a greater number of companies and entrepreneurs to their disciplines (Pymempresario, 2013).

Figure 2 indicates the relationship between the functions and the supervisory bodies:

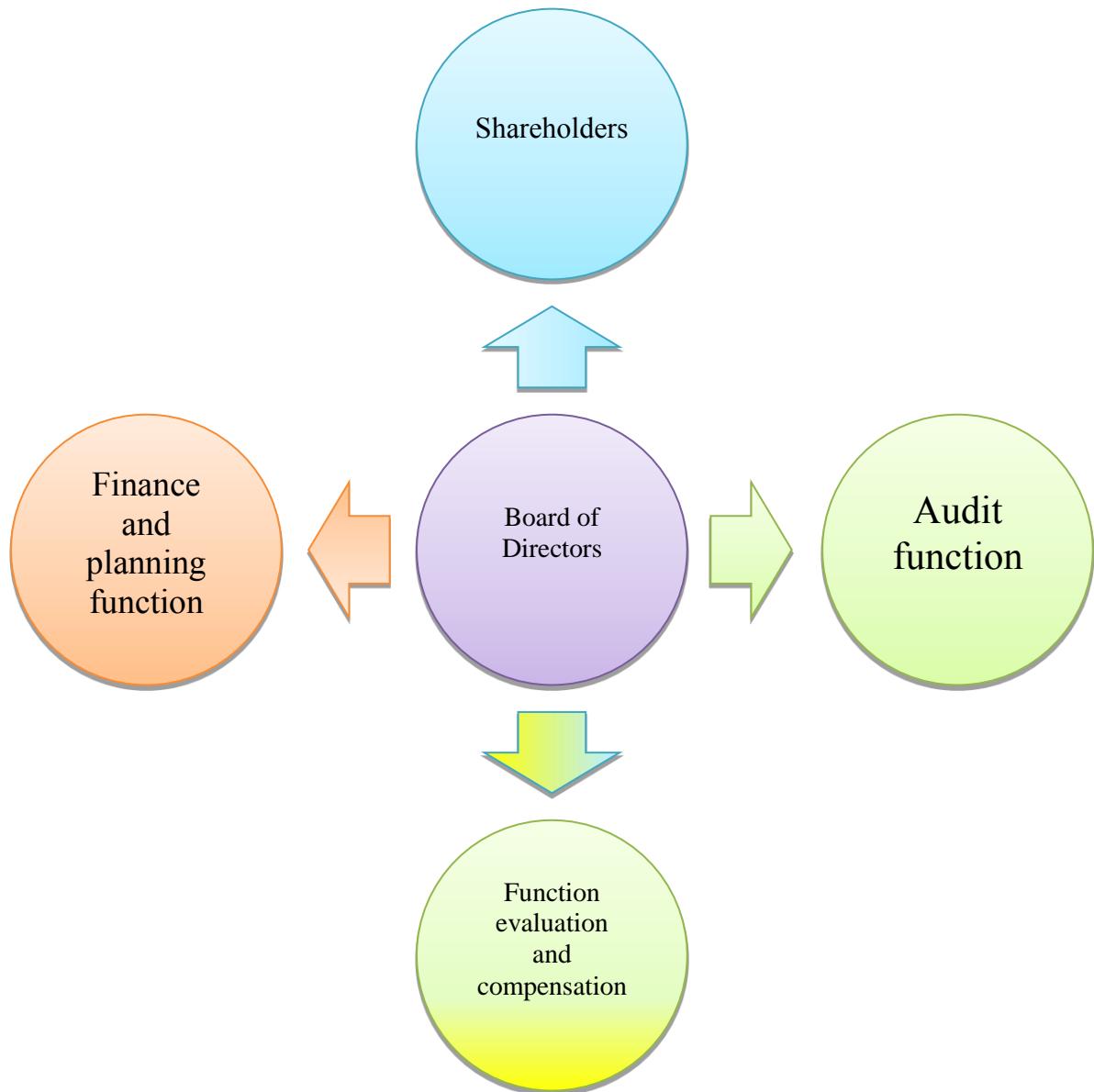


Figure 2. Relationship between control functions and organs

Source: DeGarateLaraPerez&Tenorio(2010).

The relationship between horizontal and vertical size could be negative if coordination costs increase with the number of units produced. In terms of size and concentration

of equity ownership, the effect should predominate is diversified risk of shareholders. If the asset size is greater, maintains a certain proportion of ownership of the company to a shareholder requires increasing the risk that the shareholder has, then it is higher the percentage of its equity position in the company. Therefore, it is also expected a negative relationship between heritage and ownership concentration.

- 1) The third-specific investments lead to more negotiation and the need for the manager to have room to negotiate more freely.
- 2) Costs of monitoring managers increase the likelihood of agency behavior, thereby increasing the concentration of ownership.
- 3) Scale economies increase the horizontal size of the business, making it more risky for shareholders owning a certain proportion of their heritage, thereby increasing the concentration of ownership.
- 4) The agency problem can be mitigated by concentrating the property.
- 5) There should be no relationship, with the understanding that such needs are part of compensation.
- 6) External regulations replace controlling shareholders, thereby reducing the agency problem and thus the concentration of ownership (De Garate Lara Perez & Tenorio, 2010).

A clear vision, mission and strategy is communicated to shareholders and repeated frequently. These elements are shared with employees from the point of interview and induction creating a uniform mentality and performance together. Dynamic leadership is visionary and able to stimulate good behavior in the organization. This feature occurs frequently in one person (the highest executive), although teamwork is recommended, especially to ensure continuity in case of rotation at the summit.

## **CONCLUSIONS AND RECOMMENDATIONS**

Based on the target set at the beginning, the agency theory can foster entrepreneurial opportunism. However, it is necessary to look forward to avoid the opportunism proposing policies, regulations and penalties that are established by agreement between managers, shareholders and the board. Managers or agents are directly responsible for effective functioning in the organization (Blair & Stout, 2001). However, it is found that there is an area of opportunity for future research in relation to the influence that exists between the tripod of government and performance of the company in question financial and production processes.

Corporate governance is a source of strategies, but it is suggested to consider rely on researchers and professional experts to propose ways of supervision and counseling aimed to improving the company. Corporate governance provides the organization attributes, such as improvement in performance, strengthens the commitment of work. There is greater commitment and confidence of participants from across the organization, which results in contributing to organizational effectiveness and efficiency, although they do not fall into extremes.

A deficiency in the issue has been that the agency theory does not provide meaningful information for resources that it can use the board either behaviors or strategies that can be implemented externally to the organization. This is the reason why it is suggested to use experts in the area.

Recent legislative and regulatory changes in Mexico have facilitated the ability of shareholders to participate in the efforts of activists. These changes are fundamental to the effectiveness of the management system, from the point of view of shareholders, as the effectiveness of ownership concentration depends largely on the efficiency of the legal system that protects the rights of shareholders (Shleifer & Vishny, 1997).

In Mexico, SMEs have been affected by the industrial policies of protectionism and indiscriminately open borders. SMEs require refocusing their culture in order to successfully meet the challenges and opportunities that the environment presents, not to be displaced from international markets and maintain a good position on the national level, to create a pleasant work environment and reliable commitment to employees, customers, suppliers, etc., with the organization. The stakeholders should feel to be part of the organization to achieve their goals and attain competitiveness in the current environment of globalization (Gutiérrez Peñaloza, 2003).

SMEs need to develop the ability to act in an environment of constant change, competitive, participatory and internationally. In this environment, the manager or owner must be able to understand the political, social, economic, cultural, psychological and environmental. Therefore, it cannot be limited the performance evaluation only to economic and financial variables. This is based on a model of corporate governance as a competitive strategy.

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# **CONTROVERSY OVER CUSTOMARY LAND OWNERSHIP: AN OVERVIEW FROM POLITICAL PHILOSOPHY PERSPECTIVE**

Khandakar Qudrat-I Elahi

## **ABSTRACT**

In many countries of Africa, Asia and South America, an overwhelming proportion of earth surface has remained undemarcated, unrecorded and unregistered. This territory is popularly known as customary land, whose ownership is claimed by the tribe/clan living in the area for generations. This vast track of land contains many valuable economic resources, including precious minerals, natural gases and oils etc., which are vital for accelerating the process of economic growth and poverty alleviation. Accordingly, since 1960's, supranational organisations, including the World Bank, FAO and UNDP, began investing substantial sums of monetary and technical resources on developing these lands. The general policy principle they pursued is called individualisation. Under this scheme, the communally owned lands are first demarcated and recorded, and then registered under the names of individuals using them. Unfortunately, these policies, the customary land literature suggests, have failed to produce satisfactory outcome. This paper puts up two points, which might be helpful to identify problems associated with the current policy regimes. First, the prevailing perception of customary land needs refinement, because it is conceptually confusing. Second, ownership of any property, including land, is basically a legal and political issue, meaning the customary land controversy belongs to the jurisdiction of legal and political philosophy. The paper suggests that John Locke's theory of property right has necessary policy insights that might offer a kind of sustainable solution to this complex customary land controversy issue.

**Keywords:** Customary Land, Ownership Controversy, Landforms and Land Use, John Locke, Political Theory of Property Right

## **INTRODUCTION**

In many developing countries, the term customary land is used to describe the vast areas of earth surface that have remained undemarcated, unrecorded and unregistered. Although this type of earth surface exists in many developed countries, like Australia, Canada, United States and New Zealand, the controversy about their ownership primarily pertains to the developing world. The main reason seems simple: these lands are critically important for economic growth as well as poverty reduction. First, an overwhelming proportion of population lives in rural areas, which depends directly or indirectly upon occupations related to land use. Second, the earth surface - which contains many valuable economic resources including the potential of producing important food crops, forestry products, mineral and energy resources etc. - is the most abundant unexplored and unexploited resources available in these countries. All these mean that the use and exploration of these resources is vital for accelerating economic growth and reducing poverty in the concerned countries.

All this is well understood. Massive international efforts have been planned and executed for developing and using these huge land resources. For example, the World Bank envisages investing about USD 4.5 billion over the next decade for developing Sub-Saharan's vast land resources (World Bank, 2013). What however alarms the interested individuals is that many previous efforts have been frustrated (Lastarria-Cornhiel, 1997; Lund, 2000; Elahi and Stilwell, 2013; Henley, 2013). One reason of this policy failure may be attributed to ambiguous definition of customary land ownership.

An area of earth surface is called customary land if it has remained unrecorded and undemarcated. Since the land is unrecorded and undemarcated, it could not be registered under any organisation or agent- public or private. And since there is no legitimate authority to claim its ownership, the land is considered communally owned by the people living in the area for generations.

Given this notion, different authors and organisations are inventing different figures about the extent of customary land owned by a country. Wily (2012) is a good example in this regard. Since there is no known statistics, the paper says, the extent of customary sector can be estimated by excluding formally titled properties regulated by statutory law. In Sub-Saharan Africa, most titled properties, located mainly in cities and towns, account for less than one percent of the region's total land area. One quarter to a third of Kenya and 12-15 percent of Uganda's areas are subject to formal title. Elsewhere titled rural lands usually account for only 1–2 percent of the country area. Normally, wildlife, forest reserves and parks are excluded from the customary sector. If wildlife and forest reserves, urban lands and privately titled lands are excluded, the domain of so-called customary land potentially extends to 1.4 billion hectares. Given that only 12-14 million hectares of Sub-Saharan Africa are under permanent cultivation, it may safely be assumed that most of the customary sector comprises unfarmed forests, rangelands, and marshlands.

Conceptualisation and calculation of customary land in this way raises various questions from both academic and political points of view. First, this conventional wisdom of customary land is one serious source of land conflict in the concerned countries. Then placing vast areas of land resources under customary ownership presents a serious problem in developing effective economic planning and policies. Unambiguous land ownership right is vital this purpose.

Nowadays a substantial size of literature exists on customary land topic (Anderson, 2011; Gosarevski, Hughes and Windybank, 2004; TNI, 2013). Yet, the issue of ownership of this vast resource has remained basically unaddressed. This paper, organised in six sections, intends to shed some light on this matter. Section II discusses the difficulties in defining customary land from the perspective of physical features while its ownership issue is identified and interpreted in political philosophy terms in Section III. Section IV discusses political theory of property rights, which is then applied to examine the nature of ownership controversy involved in the CLT literature in Section V. The paper is concluded in Section VI by summarising the main points and listing its major recommendations.

## **CONCEPTION OF CUSTOMARY LAND: PHYSICAL ISSUE**

As noted above, lands are ordinarily understood as customary if they are undemarcated and unrecorded. Since the earth surface varies significantly in terms of physical features, this definition presents a serious conceptual problem in assigning ownership right. More

specifically, this definition raises questions about both the legitimacy of ownership claims made by the concerned tribe/clan and the individualisation policy pursued by national policymakers and international donor agencies. The following paragraphs illustrate this issue by taking Papua New Guinea (PNG) as an example.

The exact area of customary land in PNG is still unknown, because the vast areas of the country are yet to be recorded properly. The political boundary of the country is well established and within this boundary the administrative areas like province, district etc. have been well defined. But, to determine the nature of ownership, this land mass has to be classified and recorded. Due to the absence of this statistical information, different sources have prepared made different estimates. However, the most popular estimate is that 97% of PNG's land resources are under customary ownership. The estimated total land mass of the country is 462,243 km<sup>2</sup>, which means 448375 km<sup>2</sup> is customary land. With an estimated population of 6.4 million, the per capita customary land in PNG turns out to be about 0.07 km<sup>2</sup> or 7.00 hectares. Nevertheless, agricultural lands constitute only 2.54% or 11,740 km<sup>2</sup> of this of the total land mass; meaning the estimated agricultural lands available per person is only 0.002 km<sup>2</sup> or 0.20 hectares. Then consider the country's topography and landforms. PNG is largely a mountainous country, much of which is covered with tropical rainforest. Available statistics for the Southern Highlands Province indicate the following types of land formation: Mountains & hills 65.4%, Volcanic 29.2%, Plains & plateaux 3.5% and Floodplains 1.9% (Allen, undated; Bourke 2013).

The inference, which follows from these statistics, is that the vast areas of landmass in PNG are inaccessible to general use. This information may be extended to other countries where the customary land tenure dominates the land ownership pattern. Yet, according to the popular perception, these inaccessible lands belong to people living in the concerned areas. The lands being used or cultivated rightfully belong to the individuals who are occupying them. It really does not matter whether these lands are recorded or not, demarcated or not; they belong to their users. Therefore, if these lands are brought under public administration and management, their titles ought to be awarded to actual occupiers. However, can this same principle be applied to award ownership right of lands to people which they have never used, which include, among others, hills, forests, marshy lands and low-lying areas? There is, and must be, a positive principle of property ownership. As will be discussed later, this principle makes the concerned tribe/clan ineligible to claim the ownership of these lands.

On the other hand, both theoretical and policy literature is concerned with individualising customary lands (AusAID, 2008; Cotula, Vermeulen, Leonard and Keeley, 2009; Braun and Meinzen-Dick, 2009). Individualisation of ownership is physically possible and legally permissible only on the lands being actually occupied and used. This ordinarily happens on lands suitable for agricultural enterprises. As noted above, the area under this category constitutes a very tiny proportion of total land mass of a country. Yet the policy documents assign customary ownership to lands, which may have never been used before or simply is not suitable for individual use. This seems to be a serious lacuna in formulating policy for reforming customary land tenure system.

## **OWNERSHIP OF CUSTOMARY LAND: POLITICAL PROBLEM<sup>1</sup>**

Besides the physical difficulties inherent in the definition of communal ownership of customary land, the idea is problematic politically. To understand the nature of this problem, the issue of ownership controversy may be approached hypothetically in the way Rousseau (1754) analysed the origin of inequality among men. In his essay, 'What is the Origin of Inequality among Men and is it Authorised by Natural Law?' Rousseau

develops his discourse on the basic premise that the true source of inequality among men can be unearthed only by studying them in their natural state. Such an analysis, he says, requires, first of all, laying aside all facts and ignoring all historical truths, because these facts and historical truths are basically mutilations of the humankind's original state of nature. The correct investigation should only consider conditional and hypothetical reasonings so that it can explain the nature of things instead of ascertaining their actual origin.

Man in his original state, Rousseau says, is no different from other animals living around him. But he is indeed 'most advantageously organised' than other animals, because he can out-manoeuvre them. Like all other animals, men satisfy their hunger with the fruits abundantly available, slake their thirst with water from brooks and find their beds at the foot of trees or mountain caves. Being dispersed up and down among other animals, men observe and imitate their industry in order to attain their skills and instincts, which they use more competently and expediently than their neighbours.

Men, born in the state of nature, become accustomed to the inclemency of weather and rigour of the seasons from their very infancy. This endurance helps them develop internal immunities against illness and stronger bodies needed for survival. They also develop means and manoeuvres to protect them against their enemies- both fellow humans and animals. In doing all this, his primary motive is to satisfy two needs- hunger and thirst. Once these basic needs are satisfied, he tries to gratify the third most important natural need, sex. For this purpose, man might have to subdue a female and/fight for her, if that is what required. Once this erotic appetite is fulfilled, both the male and the female separate unless the female need his company for protection, while the male wants to keep her as his personal possession. At this stage, development of emotional tie between a man and a woman remains at a very rudimentary stage.

The above may be considered as an account of human's physical conditions in the state of nature, i.e., before the origin of civil societies which have evolved in the current states. This historical account of the evolution of human society might be used to reason the development of customary land system. Earth surface everywhere is a free gift of nature. Human species, since their evolution, have been utilising the fruits of this free gift for satisfying physical needs. Initially there was no need to demarcate and divide the earth surface among users and occupants, simply because supply was plenty compared to demand. This demand-supply equation began to change as population expanded. Alongside this development, human races invented technologies that made their livelihood activities easier and efficient. Villages and cities were also created to form human civilisations. All these social developments and technological innovations led to the creation of the need for assigning the idea 'ownership' on lands being occupied and used by individuals and families. This in turn raised the need for demarcating and recording those lands. Ownership, or more specifically 'private' ownership, appears to be an inevitable outcome of human civilisation. This idea in fact resonates the words Rousseau used in his discourse on inequality: "The first man who, having enclosed a piece of ground, bethought himself of saying *This is mine*, and found people simple enough to believe him, was the real founder of civil society."

While this intuitive line of reasoning seems quite believable, it is not known, with certainty, where this process began. But this process, it might be reasoned, was promoted by four major factors- human demography, land topography, soil fertility and climate. The land surface ordinarily remains undemarcated, unrecorded and unregistered in areas or regions where the development of human civilisation was slow; topography is rugged and mountainous; lands are less fertile and the climate is not harsh enough to force people to improve their living style and standard. Ironically, these are the regions or territories

which succumbed to European colonisation, most of which gained independence after WWII.

This political past brings up another important perspective of ownership controversy over customary land. In most countries, both developed and developing, the ownership of land resources is divided into two fundamental categories- private and public. The private ownership classifies itself into two kinds- individual and groups- which respectively imply ownership of identified person or family and a private social group or business corporation. The public ownership normally signifies lands owned by government- local, provincial or national. These publicly owned lands can also be divided into two kinds. The first kind includes the lands which government owns or acquires from private people for public use, while the second kind refers to all other lands which have not been claimed by anyone. The last kind of land is often called 'crown land'.

This system of land ownership has not developed in the countries where customary land exists in abundance. Political history and physical factors described above well explain the reasons why such land tenure systems developed in the concerned countries. A colonial power, by definition, cannot claim legitimate ownership of a country's land resources. For, the ownership of lands, which are not being occupied and used by any individual or group, are supposed to be vested in national government of the country. The colonial administration means that this type of government did not exist in those countries.

Accordingly, the huge areas of earth surface remaining unclaimed in these countries may be accounted by these factors. If these countries were independent, then the national governments could have exerted ownership of these resources as 'crown lands'. The problem is further complicated by the fact that these countries are composed of numerous tribes or clans, which have developed their independent identities as a kind of 'sovereign' group. Therefore, in the absence of national government, each group claimed their known area as their sovereign territory. That's how the idea of 'communal/customary ownership' originated in the first place. All tribes consider them independent and sovereign in relation to one another and have developed their own set of laws which govern and guide their social, economic and political life. Viewed in terms public administration, the tribal system is not much different from the one pursued in modern nation-states.

This system changed dramatically after independence, because a national government has been established for the entire territory constituting the country, which is supposed to be governed by the representatives of all tribes or groups. This political change in turn suggests an automatic transference of customary land ownership to the national government. The idea of 'communal ownership' is no longer valid, because all tribes have agreed, voluntarily or involuntarily, to surrender their independent status and have united them under one central political administration.

The current controversy over customary land ownership indicates that this politically correct legislative rule has not been formulated and implemented in the concerned countries. When these countries became independent, national governments, led mainly by the chieftains of the country's powerful tribes, seem to have legalised their previous claims, thereby creating a dual system of land administration. Since the ownership of customary lands has been constitutionally entrusted to the concerned tribes, the national government is authorised only to enact laws regarding a very limited areas of the country's earth surface, although it represents all tribes.

## POLITICAL PHILOSOPHY OF PROPERTY RIGHT

The word ownership expresses a kind of possessive relationship between human agents and economic objects (tangible or intangible). Human agents could be either private or public and economic objects could be both tangible and intangible. An object is defined 'economic' if it carries exchange/market value. Economists ordinarily categorise those economic objects/goods as 'properties', which can be used for generating current and future incomes. In our case, we are interested in 'property' in earth surface, because it has these characteristics. Although there is little discussion about how topography, landforms, soil quality etc. affect the nature of economic use of lands, a huge literature has developed that deals with the ownership right of these resources. This issue, discussed broadly under topic, the theory of property right, is examined here keeping in view the points mentioned above.

This literature, like any other, is fraught with confusions and controversies, perhaps because the analysts ignore the difference between two aspects of this issue- political and economic (Atman, 2008; Locke, 2013). The political theory of property right is concerned with the right of ownership: Who should possess what type of property and under what conditions of constitutional law. The economic theory, on the other hand, ought to investigate the impact of property rights on production and employment generation. If this basic distinction between ownership and use of property is kept clear, then much of the confusions and controversies might be avoided. The following discussion sticks to the above logic and concentrates on the political theory of property right.

Classification and distribution of property right in modern states have evolved over a long period of time, meaning the nature of property right established in any particular society is directly related to the developments in its socioeconomic and political milieus. Naturally, the nature of property right practised in Europe and North America is expected to be different from that practised in the developing world, such as Africa and Asia. This suggests that the history of development of nation-state is critical to understand the property rights being practised in any country. In this respect, the customary land phenomenon presents a unique opportunity.

Customary ownership, as mentioned above, is normally assigned to the vast areas of earth surface that have remained unrecorded and undemarcated. This ownership belongs to the group/tribe living in the concerned area for generations. The main reason for the development of this tenurial arrangement is that there was no nation-state, and hence no national government to claim the ownership of most of these lands. Each clan/tribe used to claim the land it knew as its sovereign boundary. Therefore, the creation of nation-state causes dramatic changes in the political landscape of the country, which in turn is supposed to bring about dramatic changes in the ownership practice of unrecorded and undemarcated lands: Who should own these lands- individuals, tribes or regional/national government?

An appropriate way to address this question is to review the political theory related to the development of the modern state/nation-state. The basic objective of the theory of nation-state is to conceptualise the nature of 'civil government', which can be indicated by the definition of democracy that the US President Abraham Lincoln enunciated: 'Democracy is by the people, of the people and for the people'. The best reference for a hypothetical description of the development of the nation-state is John Locke's *Second Treatise on Civil Government* (1690). The following is the sum and substance of Locke's monumental theory, which forms the foundation of modern politics.

## **Locke's Theory of Property Right<sup>2</sup>**

Locke's political philosophy is basically intended to describe the nature of civil government appropriate for ruling the nation-state. Currently, this philosophy forms the foundation of governance in the countries belonging to the Western hemisphere. His theory of property right is only a component, but indeed the most important one, of his whole project of civil government (Widerquist, 2010). Therefore, to understand his theory of property right properly, we need to review it in the context of his political structure of civil government.

The political debate that captured the philosophical minds in Locke's time concerned the nature of government- should it be monarchical or republican? This might be one of reasons why Locke used a religious approach to discuss both the nature of government and the theory of property right.

God created earth and gave it to Adam and Eve for their preservation and propagation of human race. The subsequent generations received the right to use this gift by being the descendants of these original couples. This is all accepted, Locke says, but does not explain how anyone could have a 'property' in anything. Here property means one's right to exclude others from his/her possession. His sole purpose in the 5<sup>th</sup> Chapter of his Book was to address this issue, which later become the fundamental political principle of determining property right in the states ruled by civil government.

Although earth is a free gift from God and all fruits it produces and beasts it feeds belong to mankind in common, men must use some means to make these products of nature useful or at least beneficial to them: "The fruit, or venison, which nourishes the wild Indian, who knows no enclosure, and is still a tenant in common, must be his, and so his, i.e. a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life."

Every man has a property in his own person, to which nobody has any right but himself. The labour of his body and the work of his hands are properly his. Therefore, whenever he removes something out of the state of nature, that thing becomes his property because he has mixed his labour to make it useable for human use. This means that anything removed from the common state nature by someone automatically excludes it from the common right of other men. For, labour is the unquestionable property of the labourer; no man but he can have a right to this human quality once joined to.

Thus it is human labour that puts a distinction between what can be claimed as 'property' of a person and what is to be enjoyed in common. Accordingly, this law of reason makes the deer killed by an Indian his property. In the civilized part of humankind, where people have made and multiplied positive laws to determine property right, this original law of nature still takes place. By virtue this natural law, fished caught in the ocean are treated as property of those who caught them.

However, the chief object of property issue in our context does not concern gathering fruits of the earth, but the earth itself. Yet this issue, on closer inspection, does not appear at all different from the one which created the conception of property in the first place. Land that a man cultivates and plants seeds for growing foods is certainly his property and has the moral as well as positive right to appropriate its fruits. Therefore, this man has the right to encircle the land with fences in order to separate it from the common use and prevent others to usurp his right.

God indeed gave earth to men in common. But since this earth was given for the survival and preservation of all human beings, His most favourite creations, He did not mean it to remain always common and uncultivated. Land was meant for the industrious and rational people to mix up their labour in order to make it more productive. By doing this, He gave occasion to formulate positive law for the creation of private property in material things. This law is solely founded on the unquestionable attribute of humankind- his labour.

### **CUSTOMARY OWNERSHIP AND THE THEORY OF PROPERTY RIGHT: POLITICAL PHILOSOPHY PERSPECTIVE**

From political perspective, the term 'right' signifies a perception that defines and regulates our relations and freedoms of action in society. Perhaps, one the most critical perceptions is 'property ownership' in land. In political philosophy, individuals' rights are often divided into two kinds (Rousseau, 1754). First, 'natural rights' imply individuals' proclivities to have whatever their psyches inspire them to get; but their abilities to satisfy these psyches are limited by their physical and mental power. Moral or political rights, on the other hand, are entitlements granted to individuals by the state and are protected by its sovereign power. These entitlements are called 'private properties' not only because they are granted and protected by the state, but also the fact that other citizens recognise them as something on which they do not have any moral or legal claims.

Clearly, this conception of 'right' does not apply to customary lands, because individual rights have not been assigned. However, individual ownership is only the tip of the iceberg here, because most of the declared customary lands are not under individual use and/or cultivation. These lands, as mentioned before, include natural resources like hills and mountains, jungles and forests, and marshy lands and low lands under water. Obviously, most of these resources were not used by private people, individually or collectively, for their livelihood needs. Yet, these lands are being claimed by the people living in the relevant areas as owners.

This is an interesting intellectual issue that falls under the jurisdiction of 'the right of first occupants' theory. According to this theory, since the earth surface is the free gift of nature, the ownership right must be determined through the principle of 'first occupancy'. In other words, the human race, which settled first in an area or region, acquires the political right to claim that area as its own sovereign territory. This principle excludes everyone, not belonging to this race, from the right to settle there. The political structure of the modern nation-state is essentially founded on this theory. Tribal claim of ownership of customary land might be seen from the same political perspective. Strong sentiment and emotion ordinarily expressed by tribal peoples about their communal right of ownership and their post-independence recognition through constitutional provisions might be considered as the reflection of that theory.

However the point discussed above raises a curious question: Can this established political theory of 'first occupancy' be applied to justify communal ownership of the vast areas of undemarcated and unrecorded land existing in many developing countries? Apparently an affirmative answer is difficult to come up with. For, the political superstructure in which these lands used to be treated as sovereign territory of a particular tribe has totally and absolutely changed after independence.

### **Definition of Customary Land: The Source of Confusion and Controversy**

Besides the political points discussed above, much of the confusions and controversies surrounding the issue have been created by the way customary land is defined and the international development community formulates reforms policies and execute them. This issue, discussed in Section II, points out that although vast areas of landmass are inaccessible to general use, they are being treated as communally owned. It was also mentioned that lands rightfully belong to the people who use them, whether recorded or not, demarcated or not. When these lands are brought under government land registration and administration programme, titles of the demarcated pieces must be awarded to those who are using them. If any public or private agency intends to use these lands for any reason, these people must be well compensated. But how can government assign ownership right of hills, forests, marshy lands and low-lying areas - which may have never been accessed, let alone used - to any group?

### **Ending the Customary Land Controversy: Political Philosophy Perspective**

Definitional confusions discussed above are certainly adding elements to already controversial issue of customary ownership. These confusions need to be cleared out in order to set the stage for resolving the ownership controversy once for all. For doing this, the most important point to be remembered is that customary land ownership, or the property right in land, is out-and-out a political issue. We no longer live in the state of nature; we live in civil society. The foundational feature of human life in civil society is that law defines individuals' rights and the nation-state uses its sovereign force to protect these rights. Of all the rights individuals enjoy in civil society, the right to own and accumulate property is most momentous and critical. As Locke says, and Rousseau quotes, where there is no issue of property; there is no injury. Property right is a political issue and hence ought to be dealt with politically.

Political theory of property right as enunciated by John Locke may be considered as a clue to resolving the customary land controversy. The use of human labour is, and ought to be, the only judging criterion to be employed for assigning ownership rights to the vast tracts of land called customary. One simple way to carry out this difficult job is first to separate the lands being currently used by individuals and communities from those that are inaccessible to ordinary human use. Private as well as group ownership titles can be awarded for the first kind of land, while government (national or regional) can claim ownership of the second kind. Arbitration procedures may need to be developed to resolve conflicts over the remaining areas of undemarcated and unrecorded lands.

The above is just a suggestion. There are of course other ways which might be used to determine and distribute ownership right of customary lands. What however needs to be underlined is that a well-articulated theory of property right exists in political philosophy which can satisfactorily settle the controversy over customary land ownership once for all.

### **SUMMARY AND CONCLUSIONS**

The term customary land is used to describe the vast areas of earth surface remaining undemarcated, unrecorded and unregistered in many developing countries belonging to Africa, Asia North America. This land is vital for these countries' rapid economic development and poverty alleviation. For, an overwhelming proportion of population lives in rural areas and these lands contain valuable economic resources, like natural gas, minerals, oils, forests etc.

All this underlines the importance of designing appropriate and effective land planning and policies for the development of these land resources. Governments of these

countries have responded appropriately by pursuing land reform policies with monetary and technical helps from supernational organisations, like the World Bank, FAO and UNDP. Yet, the customary land literature suggests a sort of agreed evaluation that these policies have failed to produce satisfactory outcomes. Although customary land researchers seem to see eye to eye on the failure of reform policy, they cannot concur on some common causes of this failure. Under this circumstance, this paper argues that the very conception of customary land is confusing as well as ambiguous. It was further suggested that the solution to the customary land issue lies in clarifying this conceptual confusion.

The critical point to understand for clarifying the customary land conception is that assigning ownership right to any kind of property is directly related to the employment of human labour. Someone could claim ownership of a piece of land only if he/she has employed own labour on this natural gift, assuming that the piece of land is not inherited. By this criterion, lands which are not accessible to general use cannot be claimed by individuals or private groups. This in turn suggests that an overwhelming proportion of undemarcated and unrecorded lands cannot be granted private titles of ownership.

An interesting question crops up from the above reasoning: Whom should the title of this land belong to? Currently, many countries have placed this land under the legal ownership of the tribe/clan of the concerned area. More specifically, national governments are granting constitutional recognition to traditional tribal land claim. This paper argues that these conventional territory claims are no longer valid under changed political circumstances. For, these countries, which suffered long eras of colonial rules, did not have the sovereign political superstructure like the one they have after independence. Before, the country was divided into as many territories as the number of tribes or clans. Now with independence, all tribes/clans have joined together to form one sovereign nation, identifying themselves as a member of the United Nations, like all other nation-states. By doing this, individual clans/tribes have rescinded their status of having independent territory, meaning the rightful ownership of the country's land resources, not suitable for private titles, belongs to national government.

Based on these logics, the paper argues that national governments with the help of supranational organisations should conduct geographical surveys to determine the use patterns of different landforms. The lands, which are suitable for individual use, must be placed under private ownership. However, lands, which are not accessible to general use, may be brought under public management and administration.

#### Footnote:

<sup>1</sup>This section has been adapted from Rousseau's 2<sup>nd</sup> Discourse, *What is the Origin of Inequality among Men, and is it Authorised by Natural Law?* The source is digital, for which conventional referencing procedure could not be followed.

<sup>2</sup>This section has been adapted from John Locke's 2<sup>nd</sup> *Treatise on Government*. Because the source is digital, conventional referencing procedure could not be followed in this case either.

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# GOVERNANCE AND BOKO HARAM INSURGENTS IN NIGERIA

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## ABSTRACT

This paper will examine Governance and its effects that led to the emergence of Boko Haram insurgents in Nigeria. Governance which is about providing services to the populace but in Nigeria the reverse is the case, leaders are not answerable to the yearning of the generality of the people due to corruption, illiteracy and poverty leading to the emergence of the group in 2002, as a result the attention of government functionaries have been diverted to how the activities of the insurgents should be curtailed instead of service delivery. The government has been involved in buying guns and other war equipments. An exploratory method of data collection was carried out using secondary data such as news papers, journals and texts. The findings revealed that effective governance no longer take place in the affected areas such as the northeast part of Nigeria because government offices are closed; children no longer go to school for fear of been abducted; markets were closed; banking services not rendered or hours of services reduced. The paper then recommends that the source of income; and supply of weapons to Boko Haram be blocked by the Nigerian government, there should be improvement on educational provision; poverty and corruption must be reduced so as to combat the Boko Haram activities and thereby creating enabling environment for good governance to take place.

**Keywords:** Governance, Boko Haram, Insurgents and Terrorism

## INTRODUCTION

Insurgencies has been as old as civilization but became most prominent after the September 11 2001 bombings of the United States by Al-Qaeda. The bombings were carried out on world trade centre which has adverse effects on America and globally (Rogan 2007).

Boko Haram started as a small radical Sunni Islamic organization with preaching and a limited support from among the Sufi Islamic communities in the Northeast of Nigeria, the anti-western ideology of the Boko Haram terrorist group, earn it the concern about its potential relationship with other groups such as Sunni extremist and other terrorist groups elsewhere, including al-Qaeda as well as al-Qaeda affiliates such as al-Qaeda in the Islamic Maghreb (AQIM) in Algeria and Mali and al-Shabaab in Somalia. (Reuters,2013).

Fundamentally, it is the responsibilities of the state to protect the security of lives and property of its citizens and the entire nation which includes the protection of territorial sovereignty and the guarantee of the country's socio-economic and political stability. However, these functions of the Nigeria state has been taken for granted by the ruling

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elites in the country hence the emergency of Boko Haram insurgents. (Duru and Ogbonnaya, 2010:2).

The first and main reason for the emergence of the Boko Haram insurgents in Nigeria could be regarded as religious, yet there are other reasons apart from the religious factor. Boko Haram's aim is to turn Nigeria into an Islamic country to be ruled with Islamic Sharia law which was already adopted in most of the Northern states. Some researchers referred to this reason as a camouflage. But for the conservative Yusuf, the leader of the Boko Haram, the sharia law was not enforced strictly enough hence the need to get it enforced through Jihad (Nossiter, 2010:1).

Some factors such as political and socioeconomic frustrations which are all over Nigeria and more prevalent in the Northeast Nigeria where Boko Haram thrives along with poverty, unemployment, and lack of education which are much higher here than other parts of the country also serves as reasons for the emergence of Boko Haram.

As reported by the National Population Commission, literacy rates are much lower among states in the Northeast part of Nigeria with about 72 percent of children around the ages of 6-16 who never attended schools in Borno state, where Boko Haram was founded hence availability of readymade recruits into Boko Haram (Unite Education for Orphans, 2011, Sighted in Wikipedia, 2013:2).

This paper therefore seeks to answer questions such as: How do government activities led to the emergence of Boko Haram in Nigeria? What are the effects of Boko Haram activities in Nigeria, and what then can be done by the government to curtail the incidents of this group thereby creating a secured environment in the country?

## **LITERATURE ON THE EMERGENCE OF BOKO HARAM INSURGENTS IN NIGERIA**

The early members of Boko Haram were people such as Aminu Tashen Ilimi, who was involved in the founding of the early evolution of Boko Haram (Gusau, 2009). However, there are differences in opinion over the precise date and conditions under which the group that became known as Boko Haram was first established.

Despite the existence of various conflicting accounts, it is agreed by most observers that in 2002, a Muslim cleric by name Ustaz Mohammed Yusuf, established a religious complex with a mosque and an Islamic boarding school in Maiduguri in Borno state, along with a prayer group which he called "Jama'atul Alhul Sunnah Lidda'wati wal Jihad" loosely translated from Arabic as "people committed to the propagation of the Prophet's teachings and jihad (Chothia, 2011). The same group is better known by its Hausa and Arabic language name as Boko Haram, meaning "Western education is sinful" (Adesoji, 2009, p: 100).

Teachers at this school have been known to abuse these children, in some cases taking a portion of whatever people gives them, and in other cases using them as foot soldiers in religious clashes (Saidu, 2011). This was the kind of school that was established by Yusuf.

The present ongoing terrorist attacks in Nigeria by Boko Haram is both of religion and political in nature. Mantzikos, (2010) in his work titled "The Absence of a state in Northern Nigeria: The case of Boko Haram" Argues that:

At the moment, there is an external dimension to the rise of terrorism in Nigeria. An Islamic terrorist group called Jama'atu Ahlus-Sunnah Lidda'Awati wal Jihad- meaning 'People committed

to the propagation of the Prophet's Teachings and Jihad'. The sect is popularly called 'Boko Haram'- a combination of the Hausa word, 'boko' meaning 'western education' and the Arabic word 'Haram' meaning forbidding or sin which figuratively means 'Western education is a sin' (Mantzikos, 2010, p.1).

Mantzikos further maintained that " Boko Haram which started operation in the year 2002 as a domestic Islamic group metamorphosed in 2011 into international terrorism in its tactics, due its collaboration with outside terrorist groups" The outside terrorist organizations includes al Qaeda in the Islamic Maghreb (AQIM) and Harakat al-Shabaab al-Mujahideen (Al-Shabaab), which are all affiliates of al-Qaeda terrorist network. The first leader of the group was one Mohammed Ali in Maiduguri of Borno state in the Northeast of Nigeria, it was during his time that the group declared Maiduguri city and Islamic establishment as intolerably corrupt and irredeemably, hence it embarks on hijra (a withdrawal along the lines of the Prophet Mohammed's withdrawal from Mecca to Medina). It moved to a village called Kanama, in Yobe state. The group called on Muslims to join the group and return to a life under 'true Islamic law, with the aim of making a more perfect society away from the corrupt establishment (Walker, 2012, p.2).

Walker further states that in December 2003, the group clashed over a fishing pond rights with the community where they flew to, the group had clashed with the police, at the first instance, the group overpowered the police and took their weapons. The Nigerian armies later intervened, seize the group's mosque and subsequently overpowered the group and killed almost 70 members of the group including their leader, Mohammed Ali. (Walker (2012, p.4) reports a bloodier event that took place between the police and the Boko Haram sect in July 2009. He stated that the group was travelling en masse to the funeral of a fellow member where they were stopped by the police traffic officers, who were enforcing the tightened restriction on motorcycle helmets and an argument ensued. A member of the group was then reported to have fired on the police, injuring several of them. The group further attacked police stations in Bauchi and Yobe state, killing scores of police officers. After the episode, Yusuf released several video sermons in which he explicitly threatened the state and the police with violence.

The above event led the Bauchi government to crack down on the group, arresting more than seven hundred members. In Maiduguri, the police surrounded the group's mosque, but members of the sect managed to break out and for three days they had the run of the town. They roam the city acting independently, fighting police when they come across them and killing Muslims and Christians indiscriminately.

Walker further narrated that the police eventually regained control of Maiduguri, and embarked on bloody purge of the group's member and any one they suspected as Boko Haram supporter or sympathizers. Dozens of people were rounded up and executed without trial, Muhammed Yusuf was arrested by the army and handed over to the police, who killed him within hours and claimed that he was shot while trying to escape (Walker, 2012, p.4).

After the conflict with law enforcement agents, the remaining youth among the group went back to Maiduguri to join the other group lead by Muhammed Yusuf who was said to have embarked on an intensive and largely successful, in the recruitment of members such that he had over 500,000 members before his demise (Madike, 2011, p.2). Madike also alleged that Yusuf taxed each members one naira daily, meaning that he received about #500,000 per day for the welfare provided which includes school and mosque where many poor families from Nigeria and neighboring countries enrolled their children.

## **THEORETICAL FRAMEWORK**

There is no doubting the fact that theories of conflict and violence have dominated the literature as it relates to Boko Haram in Nigeria such as class theory of terrorism; Jihadism; theocratic Islamic states theories; conspiracy theory etc. But all these did not individually explain reasons for the evolution of Boko Haram and its impact on the challenges to security in Nigeria; they seem to have looked at the phenomenon from a single cause perspective. On the contrary, the theory of structural violence shall be used to help in the analysis of this paper.

## **STRUCTURAL VIOLENCE THEORY**

The theory of structural violence states that some violence are avoidable but becomes inevitable due to deprivation of some basic human needs in the areas of political, socioeconomic and cultural structures, because those suffering from this deprivations are linked with the variables mentioned above by structural violence theorists. Structural violence may occur as a result of lack of human agencies such as the government which may make an action of a person to result to unequal distribution of resources.

Structural violence exists when some groups, classes, genders, nationalities, etc are assumed to have, and in fact do have, more access to goods, resources, and opportunities than other groups, classes, genders, nationalities, etc, and this unequal advantage is built into the very social, political and economic systems that govern societies, states and the world (Galtung, 1969). For a long time however, there tends to believe that failure of existing state systems to satisfy the need for identity as the primary source of modern ethno-nationalist struggles also leads to violence in societies (Burton, 1997). The structural violence theory has its largest proponents from the intelligentsia, prominent amongst them are Johan Galtung (1969); and (Burton, 1997).

One of the schools of thought which blame socioeconomic conditions for the violence act such as those of Boko Haram activities in Nigeria is premised on the human needs/ structural violence theory. It argues that human beings have some basic needs to achieve and when the failure to do this is caused by somebody, it then leads to conflict (Rosati et al, 1990 cited in Faletti, p. 51). This theory is likened to that of frustration-aggression theory of violence, which states that frustration is a product of aggression (Dougherty and Pfaltzgrate Jr, 1990: 266).

The theory sees relative deprivation as the main difference between what one expects but unable to get which is seen as a gap between aspirations and achievement which brings about psychological state of frustration and aggressive attitudes coming out of such situation (Midlarsky, 1975:29).

It is further argued that Nigeria's socio-economic index seems to confirm the views of human needs/ structural violence theory. Nigeria ranked 16 out of 176 in 2013 on the index table where the socio-economic factors being the root causes of violence in Nigeria and particularly in the Northern part where unemployment among the youths; corruption; poverty; injustice; and a worsening standard of living is the order of the day.

In the interpretation of the Boko Haram's evolution and violence activities, the proponents of Human needs/structural violence theory admits that there is endemic poverty and hopelessness in Nigeria generally but more severe in the northern part of Nigeria. It was debated that "the root cause of violence and anger in both the north and southern part of Nigeria is endemic poverty and hopelessness; hence the Nigerian government was advised to address the socio-economic deprivation in the country which is most severe in the north (Herskovits, 2012).

Some scholars also reaffirm that the very high incidence of poverty in Nigeria is generally seen as a northern problem. The three northern regions have an average poverty incidence of 70.1% compared to 34.9% of the south's three. While the Southern part of Nigeria record the lowest poverty incidence, the Northern part has the highest with 70% of the people living below \$1 per day, which is equivalent to N129 per day," (Lukman n.d.). Frustration as a result of economic deprivation may lead to violence in some developing countries (Dougherty and Pfaltzgrate, Jr. 1990: 266). This is the present situation as currently taken place in Nigeria of today.

It is pertinent to argue that the north's socio-economic crisis lies in its system of patrimonial economic system, which disallow women from participation in economic activities, and the bad governance in Nigeria that places distribution above production (Aregbesola, 2012). Aregbesola further argued that the non participation of women in economic activities does not lead to violence and terrorism, yet, it is only the adult males that sustain that society; because, for the male to Sustain their family has become difficult, especially with the north no longer with political power at the center makes the Northern elites unable to meet up their demands which in turn makes it difficult for crumbs to go to the less privileged and hence, violence in the Northern part of Nigeria (Aregbesola, 2012).

Economically, there is competition for scarce resources which also play some role in the political violence in some developing countries (Oberschal 1969; Nelson 1969). There is complaint from the Northern part of Nigeria claiming to be at disadvantage in the federal allocation structure, despite the prevailing illiteracy; poverty; and ignorance in that part of the country, this situation makes it difficult for the North to develop industrially and hence their engagement in violence activities (Daily trust, online, February 24, 2012).

Some argued that poverty and unemployment are not excuses for terrorist activities by Boko Haram because, other parts of Nigeria do experience adverse socio-economic conditions. The North West and North central also have beggars on their streets yet they did not use the poverty excuse to go into violence activities. (People Daily, online, June 26, 2012).

From the above perspective therefore, the researcher will then wish to state that, other factors such as religion contributed to the evolution of Boko Haram in Nigeria as explained in of the theories, but not addressed in the Daltung structural violence theory, because not every socio-economically deprived individual will be motivated to lend support to acts of violence perpetrated by the Boko Haram insurgent group in Nigeria which has some devastating impact on the security and development situation in Nigeria as a result of its own activities.

## **GOVERNMENT ACTIVITIES THAT BROUGHT ABOUT THE EMERGENCE OF BOKO HARAM IN NIGERIA.**

The factors on the part of government that brought about the emergence of Boko Haram insurgents in Nigeria are numerous and interwoven but for analytical briefings, we shall look at them as follows:

### **Lack of good Governance**

Good governance is a system where by society's resources is been managed transparently with accountability as well as given room for popular participation in governance among others by responsible leaders (Aro, 2011,p: 160 ). While good

leadership has been referred to as leadership that is driven by the concept of ‘patriotism’, ‘honesty’ and ‘mean-well for the Nigerians’ which will reflect through good governance (Aro, 2011, p:64).

Leaders are entrusted with resources for the benefit of Nigerians as a whole, but Nigerian leaders use these resources largely for the benefit of few people directly and indirectly in government. It is therefore argued that bad governance on the parts of government leaders, both at the three tiers of government in Nigeria don’t utilize judiciously their monthly allocations, to better the lots of the ordinary people. Mallam Lamido Sanusi Lamido; The Governor of Central Bank of Nigeria, collaborated with the view when he stated that 25% of Nigeria Annual Budget is been allocated to National Assembly alone (Brock, 2012). During her visit to Nigeria in 2009, the then-US Secretary of State Hillary Clinton reiterated that ‘the most immediate source of the disconnect between Nigeria’s wealth and its poverty is the failure of governance at the federal, state, and local government levels...Lack of transparency and accountability has eroded the legitimacy of the government and contributed to the rise of groups that embrace violence and reject the authority of the state’ (Clinton, 2009,p:1).

It is the view of this that the researcher wishes to observe that the inability of the Nigerian government to consciously manage public resources entrusted on them for people’s interest that have contributed greatly to the emergence of Boko Haram insurgents in Nigeria. If these entrusted resources have been used for the benefit of the whole Nigerians, youth would not be available for easy inducement for insurgency or terrorism.

### **Corruption**

In Nigeria, the high level of corruption greatly weakens the strands of trust between the state and its citizens. Nigeria is ranked 139th out of 176 countries in Transparency International’s 2012 corruption perceptions Index, by this implication the 35th most corrupt country in the world (TI, 2012). For instance, some argued that “there are so many symptoms of corruption and that corruption are killing Nigeria, a slow, painful death” (James, 2012, p: 22). Throughout the country, there are myriad examples of what John Alexander described as the “concentration of wealth and power in the hands of a very few, with nepotism and tribalism as key factors (John, 2009, p: 49).

There is a link between corruption and violence. Corruption delegitimizes the state and fractures the relationship between government (state) and the people (society). Corruption of state officials undermines the rule of law and the authority of the state, thereby leading to hostility by citizens who came to view the state as an “enemy” (UNODC 2005, p: 89). In such circumstances, citizens tend to resort to the use of force and self-help, making outbreaks of violence a real possibility (Yusuf, 2012, p: 451).

Corruption has become an instrument used to underdeveloped Nigeria, it pave ways for terrorism because resources that could have been used to empower the people have been converted to private use and drastically reduce the resources available for development as well as provision of social services such as education, medical care, energy, and provision of portal drinking water, thereby making room for people to be frustrated and angry as well as create enabling environment for easy inducement of youths to be recruited into terrorism and other social vices (Olaide,2013).

In his recent personal account of the Nigerian Civil War (1967–1970), the late Nigerian writer Chinua Achebe described Boko Haram as a product of economic deprivation and corruption in northern Nigeria. In his words, ‘economic deprivation and corruption produce and exacerbate financial and social inequities in a population, which in turn fuel political instability’ (Achebe, 2012, p: 250).

## **Poverty**

Despite oil mineral resources as well as availability of other natural resources and coupled with the fact that Nigeria is Africa's second largest economy, majority of Nigerians live below the UN-designated poverty threshold. With no access to jobs or a decent education, and a minimum wage, in some parts of the country is at \$50/month or less (Abdel-fatau, 2009, p: 7). The level of absolute poverty in Nigeria was 60.9 percent of the population in 2010, an increase from 54.7 percent in 2004, according to the National Bureau of Statistics (in Brock, 2011, p: 27). As at January 16<sup>th</sup>, 2013, it was stated by the Vice President of World Bank that there was improvement on poverty rating of Nigeria from 48% to 46% in 2012 (Adebayo, 2013).

President of the United States of America, Barack Obama, has tactically lent his support to the school of thought alluding the growing terrorism in Nigeria to poverty, blaming the upsurge of terrorist groups on the fact that "countries are not delivering for their people and there are sources of conflict and underlining frustrations that have not been adequately dealt with"(Obama,2013).

This extreme poverty in the Northeastern region of Nigeria leads to vulnerability and insecurity and even though, poverty does not always lead to terrorism, terrorism does take advantage of misery, knowing that despair creates favorable conditions for terrorist projects and action (Okemi,2013,p:4). This is the exact case with the situation of Boko Haram terrorist group in Nigeria.

## **Unemployment**

There are not less than 40 million Nigerians without jobs today. On the average, 14.60% are unemployed from 2006 -2011 and by December, 2011, it increased to 23.90%. This is based on the number of people actively seeking for job as a percentage of the labor force (NBS, 2013). By the current United Nation Human Index as at this year(2013) Nigeria is rated 153 out of 186 countries, that is, 33 position in the ranking (World Bank Report,2013)

In Nigeria today there are lots of unemployed youths, who do not belong to any fundamentalist or radical group but are easy tools in the hands of the rich or terrorist organizations. With some little financial inducement, they can carry out any terrorist act. These youths are easily available for criminal acts because they have nothing doing and nobody cares about their well being. Those in government in Nigeria today only make political and economic promises in order to secure the people's vote, but after they have won; promises are abandoned to their fates. This is the critical meeting point that has enhanced the emergence and growth of militancy and terror groups in Nigeria (Chinwokwu, 2013, p: 270).

Unemployment has adverse effect on the youths, it makes them available in all parts of the federation for easy inducement for militancy, terrorism and other social vices. No wonder Iwuanyanwu is of the view that high level of unemployment in the Country is alarming and the government needs to address the issue if it hopes to win the war against insecurity in the country. (The Punch Newspaper, 2012).

In view of this development, the Nigerian Minister of Finance therefore advised that the government should do something fast towards the direction because of the concomitant effect of the youth unemployment which normally manifests itself in various negative forms such as kidnappings, armed robbery, militancy and Boko Haram terrorism which are all negative outcome of unemployment (This day November21, 2013).

## **Education**

Education in Nigeria is widely considered as sub-standard in its present form. In Nigeria at any given point in time, you find students roaming the streets without going to school, it is either university lecturers are on strikes for several months at a time (For instance, Lecturers in Nigerian Universities were on strike in July, 2013 till November, 2013) demanding for reforms or simply requesting for payment of some pending arrears. Low level of a country is argued to be caused by low level of educational advancement because, those without education in the society forms the ready and willing recruits, the jobless and miscreants who perpetrate considerable vandalism and terrorism on innocent citizens as in the case of Boko Haram. (Mbachu, 2011, p: 234).

## **Social Injustice**

The social injustice in Nigeria can be said to be among the factors emanating from the government responsible for the present Boko Haram insurgents in Nigeria at the moment. As argued by some scholars, it is stated that the ultra-violent turn of Boko Haram must be traced back to the extrajudicial killing of its charismatic leader, Muhammed Yusuf, and the bloodletting of its members. This episode from the Nigeria security agents prompted the Boko Haram to seek vengeance. For many Boko Haram members, the killing (without trial) of their founder was the catalyst event that served to foment pre-existing animosities that stemmed from arbitrary arrests as well as the torture and killing of group members by state security forces. Prior to 2009 Boko Haram was seen as radical in its preaching, but without ultra-violent (Onuoha 2012)

In November 2011, during the trial of six Boko Haram suspects, one group member told the court that their mission was to avenge the death of their founder extra-judicially killed by the government. (ibid). Not surprising, since 2010 Boko Haram fighters have raided over 60 police facilities in at least 10 northern and central states, as well as in Abuja, and killed at least 211 police officers (Agbiboa 2013).

## **EFFECTS OF BOKO HARAM ACTIVITIES IN NIGERIA**

To say that the deadly activities of the Islamic sect, Boko Haram, are killing the economy of the North is an understatement. In most states in the North, the devastating socio-economic effects of the sect's serial killings and bombings, especially in Borno, Yobe, Niger, Kaduna, Kano, Plateau (which is more of ethno-religious conflict), Kogi, Bauchi and recently Sokoto, has destroyed economic and commercial activities with many people relocating to other places.(Adebayo,2014).

In Maiduguri, Borno State, where the sect originated, the frequent bombings and clashes between Boko Haram and security agents have weighed down seriously on commercial and businesses activities in the city as many business have reportedly crumbled while many people have fled the state.(Adejumola, and Tayo, 2012).

The Maiduguri Monday Market said to be the biggest market in the city is reported to have been seriously affected as hundreds of shop owners, especially Southerners are said to have closed their businesses and left the troubled city. About half of the 10, 000 shops and stalls in the market were said to have been abandoned by traders who have fled the city. (Oshio, 2009).

Banks and their customers are also said to be operating under difficult situation and have reduced their business hours to guard against being attacked by members of the sect. According to the Borno State Commissioner of Information, Mr. Inuwa Bwala, it will take the state 20 years to recover from the current predicament it has found itself. (Ome, and Ibietan, 2012).

The attack on Kano has been very devastating because the city has always been the commercial centre of western Sudan for the past 500 years. The city had been the economic base of the North before neighboring countries like Niger Republic, Chad and northern Cameroun emerged as nations. But today the story is different as business and commercial activities has taken a turn for the worse in the city as a result of the security problems occasioned by frequent killings and bombings. Investors who have been doing business in the city for ages are said to be relocating their businesses due to the unending security challenges in the city. (Okereocha, 2012).

Boko Haram insurgency and terrorism are bad signal to foreign investors. Economic experts have described President Goodluck Jonathan's economic reform as an effort that may yield no results due to the insecurity in Nigeria. It is also argued that the only problems with the nation's business environment were insecurity and mismanagement, because the issue of investment is also about the issue of security for the fact that no investor will come to invest in Nigeria with the current security challenges perpetuated by Boko Haram (Baiyewu, 2012).

Boko Haram insurgents has increased the cost of doing business by the private sector as well as providing public services for the citizenry because resources that would have been invested in increasing output, fund education, health and other welfare programmes are diverted to crime control and prevention as well as buying of arms and other war equipment. As stated by the Nigeria's Finance Minister, Dr. Ngozi Okonjo-Iweala, ke allocation of funds in the 2013 budget, over N950 billion was allocated for national security purposes, comprised of N320 billion for the Police, N364 billion for the Armed Forces, N115 billion for the Office of the NSA, and N154 billion for the Ministry of the Interior (This Day, 2013). This amount doubles that of education and health etc. which is detrimental to national development. The development of a society largely depends on the rate of crime. If the crime rate is high, it always scares away or discourages investors from coming to Nigeria to do business. (Adebayo, 2013).

It was also reported that due to the activities of Boko Haram and other factors in Nigeria, the ability of the manufacturing companies to employ youths into its workforce has been disrupted by the continuous decline in the sector, thereby further increasing the number of youths on the street for recruitment by Boko Haram. In 2009 alone, about 837 factories have collapsed and shops closed. Many of these firms that collapsed or closed operation blamed it on insecurity, vandalism of equipment and sabotage, epileptic power supply, among other reasons. This number is likely to increase if the crime rate and Boko Haram insurgents goes further unabated. (Okafor; 2011).

The Boko Haram insurgents became too sophisticated and frequent in its attacks to the extent that the U.S. Embassy in Nigeria issued an emergency warning to its citizens living in or visiting the country about the potential of Boko Haram attacks on major hotels in Abuja, including the Transcorp Hilton Hotel, Sheraton Hotels and Towers, and Nicon Luxury Hotels (U.S. Embassy, Nigeria, 2011). With this type of signal, interested investors won't like to visit Nigeria for business any longer.

## **RECOMMENDATIONS AND CONCLUSION**

There is no gain saying that virtually all the countries that have become economically strong and stable did not achieve the fit under an insecure environment as been experienced in Nigeria today, and so people and government of Nigeria need to be concerned about the low level of performance by government of the country and make concerted efforts towards arresting the downward trend. Consequently, government at all

levels would need to ensure security of lives and property in order to create the necessary enabling development, provision of qualitative welfare services as required of the government.

Boko Haram along with other crime activities such as armed robbery, assassination, and kidnapping which has created fear in the people and hence reduction in the country's growth and development as a result of bad governance should be tackled with all seriousness by the government mainly through blocking sources of funds, and weapon supply by Boko Haram group and most importantly human security must be adequately handled by the Nigerian government so that poverty, unemployment, provision of qualitative education been the purpose for the existence governance be put in proper perspective.

Security agencies must be empowered, motivated and adequately mobilized to combat criminality and insecurity to the barest minimum. Also, effective legislation that will adequately punish offenders and deter potential criminals must be put in place. A situation where criminals are offered amnesty and put on bumper payroll will not only undermine state security, but also encourage more people to take into criminality with the expectation of amnesty and consequent monthly salary from the government, just for being repentant criminals. An example of this is the Niger Delta Amnesty Program in 2009 and the offer of amnesty to Boko Haram insurgents of recent by the government.

Intelligence gathering by the security agencies should be intensified, as this will nip many of the security problems confronting the nation in the bud. Also, border patrol should be enhanced and there should be a proper and efficient regulation of the influx of immigrants or aliens, in order to forestall their recruitment into the Boko Haram insurgents.

The government of Nigeria should evolve poverty alleviation programs that should positively change the lives of the people, particularly the youths. Government should be able to provide the citizens with social, economic and political conditions which are necessary for happy people with relative prosperity which are necessary agents for national security.

Employment of youths must be taking seriously by government because if more youths are employed, it automatically reduces the army of youths available for recruitment into various criminal activities such as insurgents like Boko Haram. From all indications, creation of jobs for the youths will bring about reduction in crime, and hence a boast in sustainable good governance will return to Nigeria.

All government functionaries at all levels must abstain from corrupt practices while fighting crime and insurgents. The Billions of Naira voted for security both at State and Federal levels for some obvious reasons are not used for the purposes of curtailing these problems.(Oshio, 2009).

Education must be all encompassing in Nigeria. Government should as a matter of must carry the Almajiri system in the North along educationally so as to make the children in the system useful to themselves as well as the society. To this end, education must be aggressively pursued and made compulsory for Nigeria children including the Almajiris.

It is obvious in this study, that the Boko Haram insurgents has given Nigeria bad publicity, and adversely affects its business size, with investors discouraged from investing in the country. It further reduces the national funds that would have been used for development of the country, discourages investments and reduces funds that should have been used for development. Consequently, if Boko Haram insurgents is adequately curtailed, and security of lives and property is guaranteed in Northeast Nigeria and other part of the country, rapid development in the area of good

governance which is the sole responsibility of the government and highly needed at this stage of the nation's existence, will have an enabling environment to take place.

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# THE ROLE OF GOOD GOVERNANCE ON INSTITUTIONAL QUALITY AS A FDI MOTIVATOR IN THE MALAYSIAN CASE

Sridevi R.K.Narayanan<sup>1</sup>

## ABSTRACT

Malaysia, as well as other developing countries has been the recipients of FDI and (foreign direct investments) over the past few decades. These investments have proven to be a source of economic growth for the host countries. However, in recent years, there seem to be a strong competition among developing countries to attract FDI as the importance of FDI in developing the host country through increased employment and resource usage hence GDP growth cannot be overlooked. This article examines the role of institutional fitness in FDI considerations. The World Governance Indicator (WGI) which includes voice and accountability, political stability, absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption as the main issues of governance. We will examine these indicators for Malaysia over a period of 1996-2012 and predict the path for Malaysia as a FDI destination for the coming years. If indeed these indicators are of importance, for FDI consideration as proclaimed in FDI literature, then is Malaysia having the advantage compare to its neighbors like Singapore, Indonesia and Thailand? In order to ensure these indicators are encouraging signals, good governance is a necessary condition

**Keywords:** Governance, FDI, Institutional Quality, Foreign Direct Investment,World Governance Indicators (WGI).

## INTRODUCTION

FDI has become a Big Word in economic development literature and global economics as it has proven to have enhanced growth and development in many countries as well as transformed many economies for the better. This is undeniable as many studies have been undertaken to look at the benefits of FDI to both host country and donor country, which to a large extent has proven support for the benefits of FDI as a catalyst to growth and development in capital scarce, resource-rich host country and capital-rich, resource-poor donor country. Hence, FDI can be regarded as a mechanism that redistributes factors of production in a way that leads to appositive sum game, bringing benefits to all stake-holders involved.

Henceforth, it is worthy to note that FDI brings along with it many benefits to the host country such as increased employment, technology and education transfer, higher GDP and many other development prospects which would otherwise be difficult to achieve if the economy is solely dependent on domestic funds, both the government and private. So, FDI is therefore a vital injection for a growing economy.

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As such, as the beneficial effects of FDI become more and more recognized and accepted, many countries especially in the developing clusters try to capture as much of FDI in a competitive environment to stay attractive and relevant to donor countries.

Although, proper empirical studies on FDI as an agent of technology transfer is still lacking, there has been enough recognition of FDI as an agent of both technology transfer and economic transformation in many studies, for example Lloyd (1996). On FDI being a catalyst of economic transformation, there is enough evidence witnessed by the transformation of countries like Singapore, Hong Kong, South Korea, Taiwan which are the offspring of FDI from the western countries, thereby creating the first tier of newly industrialized countries (NIE).

Due to the transformative and positive impact of FDI on host countries, it is only logical that Less Developed Countries (LDCs) brace to improve their macroeconomic and institutional outlook to attract FDI in the midst of a very competitive environment of survival of the fittest.

## **REVIEW OF FDI IMPORTANCE**

Dunning (1993) provides four reasons for FDI motives rather than exporting or licensing arrangements that being, access to resources and markets, efficiency gains and acquisition of assets.

The importance of FDI in developing regions cannot be overlooked as these economies often lack the funds and technology to undertake investment projects which are crucial in the creating job opportunities, technology transfers and on a bigger scope an improvement in economic growth and development.

Lloyd (1996) categorizes FDI roles into two main areas – an agent for technology and an agent for economic transformation.

The FDI outflows from Japan starting from the 1960's to countries like Singapore, Hong Kong, South Korea and Taiwan has seen the making of these countries to be categories as NIE (Newly Industrialized Economies) as it is currently known. It is further than the FDI inflows into these four parts NIES can be transformed into high performing industries through technological advancements Aminian, Fung and Lin (2007).

Kojima (1973) explains the role of FDI in economic transformation of the host country using a model of 'flying geese'.

As these countries advanced, then they eventually will lose the comparative advantage, hence FDI outflows from the more developed countries will seek to invest in lesser developed countries like Malaysia, Thailand and credit the Second tier NIEs.

Sumner (2005) asserts that the impact of FDI on host country will differ depending on the attributes and functions of the FDI inflows. Raw-material seeking FDI may create export expansions but little effect on domestic employment compared market-seeking FDI which is expected to bring better employment, technology for the host country.

It has been evidenced by empirical findings that FDI supports growth of the host country; however, certain country conditions lead to a better inflow of investment.

## **REVIEW OF INSTITUTIONAL FACTORS IMPACTING FDI MOVEMENTS**

Dunning (2002) argued that institutional factors such as good governance and economic freedom are becoming increasingly important determinants of foreign direct investment (FDI) as the motives of multinational companies (MNCs) have shifted from market- and resource-seeking to efficiency-seeking implying that traditional determinantsof FDI such as natural resources, low labor costs and good infrastructure are now becoming relatively less important while less traditional determinants such as governance and economic freedomare becoming more important However, investigation between FDI and institutional factors are limited in literature except for corruption. We will examine some of the main macroeconomic and institutional determinants of FDI which is discussed from the review of past studies. Among the role of institutions which are considered important determinant for FDI inflows include effectiveness of property rights, economic freedom, and regulatory system (i.e. tax system, corruption, transparency etc.) bureaucracy framework.

Rodrik(1999) explained that the declining trend in FDI after 1975 can be explained by weak institutions of conflict management. Daniele and Murani (2006) identified three potential channels through which institutions affect FDI inflows.

Firstly, the presence of good institutions tends to improve factor productivity and thus stimulates investments whether domestic or foreign. Quality institutions lead to lower transactions costs related to investments. This refers to corruption –related costs. Thirdly, with good institution (i.e. proper property rights enforcement effective legal systems) give more security to MNC, eliminating the presence of sunk cost which is often associated with FDI's.

Many recent studies on FDI-institutions relationships have surfaced, discussing the importance of quality institutions on FDI inflows. Knack and Keefer (1995) discusses the components of institutional quality namely, the property and contract rights which focuses on right of expropriation and rule of law.

Clarke (2001) however focuses on role of institutions in technological deepening. The findings of Clarke (2001) suggest that institutional quality has a positive correlation with FDI.

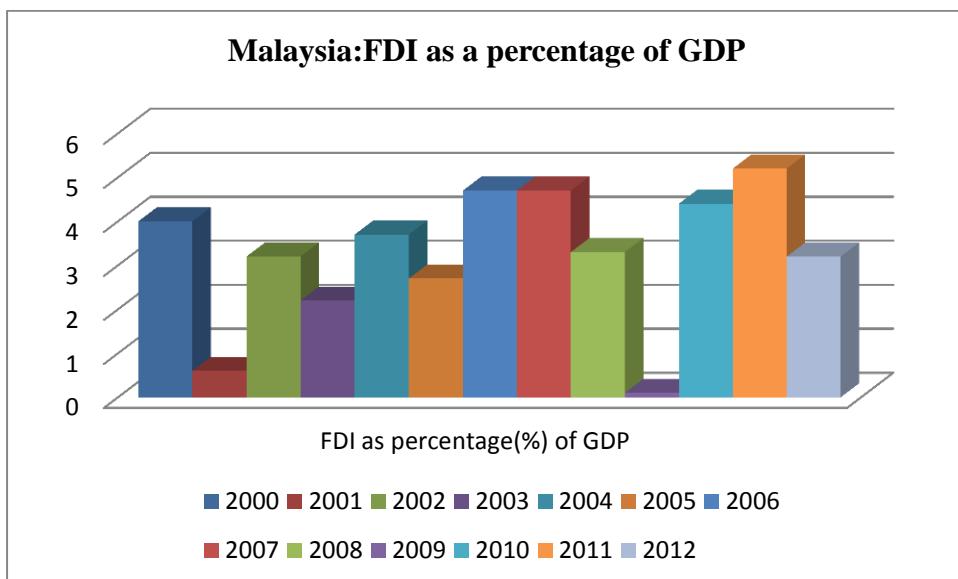
Kose et.al (2006), asserts that growth and stability benefits of financial globalization can be realized through abroad set of positive factors in the host country such as well-developed financial market, efficient institutions, better governance and macroeconomic discipline.

## **FDI IN MALAYSIA**

UNCTAD reports that Malaysia's FDI grew by an impressive 22.2% (RM13.6 b) in 2013 compares to RM 10 b in 2012. Despite this impressive growth, Malaysia is lagging behind its neighbors in terms of total FDI receipts, putting Malaysia only in the fourth spot among ASEAN countries like Singapore, Indonesia and Thailand.Malaysian Investment Development Authority (MIDA) claims that the outlook for FDI in Malaysia is on the positive trend shown by leading indicators.

The data and the graph below shows that Malaysia has been receiving substantial FDI inflows for the past 13 years constituting between 2% TO 5% OF ITS GDP with the exception for 2001 and 2009, where the FDI as a percentage of GDP did not make even 1%.However, will Malaysia continue to an attractive FDI destination with the increasing FDI competition. We will examine the prospects of Malaysia in maintaining its FDI from the governance of its Institutional indicators.

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
FDI as percentage(%) of GDP	4.0	0.6	3.2	2.2	3.7	2.7	4.7	4.7	3.3	0.1	4.4	5.2	3.2



## THE ROLE OF GOVERNANCE IN FDI DETERMINATION

The World Bank has defined governance as a mode of power exercise in the management of social and economic resources of country. UNTAD defines governance as the manner in which the main actors of society, governments, businesses and civil society work together to make society better.

The World Bank group has introduced the world governance indicators (WGI)<sup>2</sup> which comprises of 6 main pillars of governance which will be discussed as follows:

### 1. Voice and Accountability (VA)

This upholds the principles of democratic principles, which emphasizes the right of the citizens involved in decision making and the government's responsibility and accountability to the government. It includes issues such as freedom of media, freedom to assemble, freedom to fair and clean election for selecting the government and the freedom of expression without fear or favor.

<sup>2</sup>The Worldwide Governance Indicators (WGI) are a research dataset summarizing the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, international organizations, and private sector firms. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

## *2. Political Stability and Absence of Violence (PSAV)*

This refers to the number of years a government remain in office as well as the ease of power change without any undue struggle and violence; it also reflects that unlikelihood that the government will be overthrown by unconstitutional means or politically motivated or terrorism.

## *3. Government Effectiveness (GE)*

Refers to the quality of public service provision, the quality of bureaucracy, the competence of civil servants, the independence of civil service from political pressures and the credibility of the government's commitment to policy implementation

## *4 .Rule of law (ROL)*

This comprises several indicators measuring the extent to which, agents have confidence in and abide by the rules of society which includes perceptions of incidence of crime , effectiveness and predictability of the judiciary and enforceability of contracts.

It can also be described as the degree to which citizens and administration of a country is willing and able to accept established institutions to make and abide by the laws.

## *5. Regulatory Quality (RQ)*

This refers to the perception that the elected government is capable to formulate and implement sound policies and regulation that permit and promote private sector development.

## *6. Control of corruption (COC)*

Corruption can be referred to the extent to which public power is exploited for personal gains as well as "captive" of state by elites and private interest

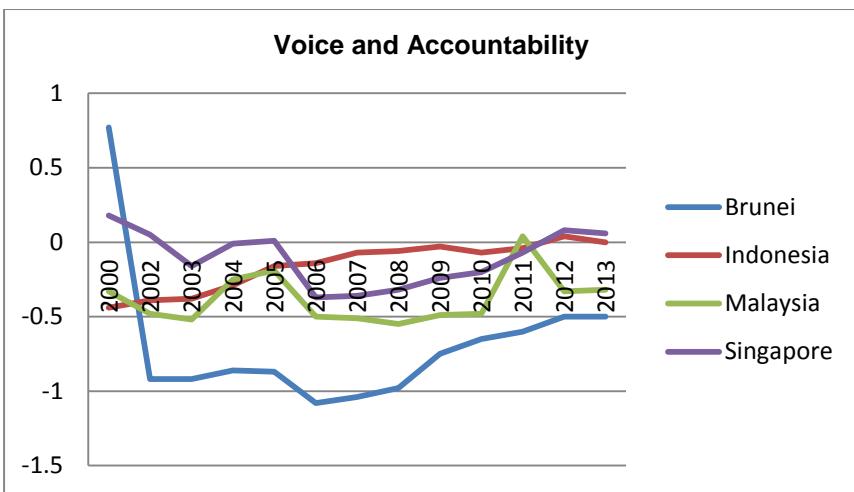
Corruption affects the financial and economic efficiency and deters FDI inflows. According to (Davidson,1980), firms prefer to operate in a lesser corrupt environment. Likewise, other studies also show negative relationships between FDI and corruption Tanzi and Dovoordi(1997).

This article examines the six pillars as advocated in the WGI for Singapore, Malaysia, Indonesia and Brunei for the period of 2000 to 2013 using the data from the World Bank Database for World Governance Index.

**Table 1: Voice and Accountability**

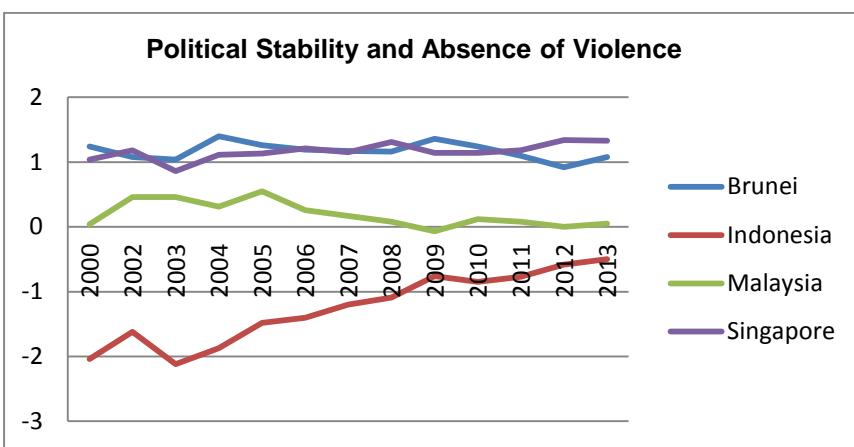
Country/Year	2000	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Brunei	0.77	-0.92	-0.92	-0.86	-0.87	-1.08	-1.04	-0.98	-0.75	-0.65	-0.60	-0.50	-0.50
Indonesia	-0.44	-0.39	-0.38	-0.29	-0.16	-0.14	-0.07	-0.06	-0.03	-0.07	-0.04	0.04	0.00
Malaysia	-0.33	-0.48	-0.52	-0.25	-0.19	-0.50	-0.51	-0.55	-0.49	-0.48	0.04	-0.33	-0.32
Singapore	0.18	0.05	-0.16	-0.01	0.01	-0.37	-0.36	-0.32	-0.24	-0.20	-0.07	0.08	0.06

As seen from the chart for VA, all the four countries seem to reflect badly on this index, showing that there is much suppression in freedom to voice and question on issues that affect general public. In this case, it can be seen that Brunei has the lowest score even falling below Indonesia.



**Table 2: Political Stability and Absence of Violence**

Country/Year	2000	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Brunei	1.24	1.08	1.04	1.40	1.26	1.19	1.17	1.16	1.36	1.24	1.10	0.92	1.08
Indonesia	-2.04	-1.62	-2.12	-1.87	-1.48	-1.40	-1.20	-1.09	-0.76	-0.85	-0.77	-0.58	-0.50
Malaysia	0.04	0.46	0.46	0.31	0.55	0.26	0.17	0.08	-0.07	0.12	0.08	0.00	0.05
Singapore	1.04	1.18	0.86	1.11	1.13	1.21	1.15	1.31	1.14	1.14	1.18	1.34	1.33

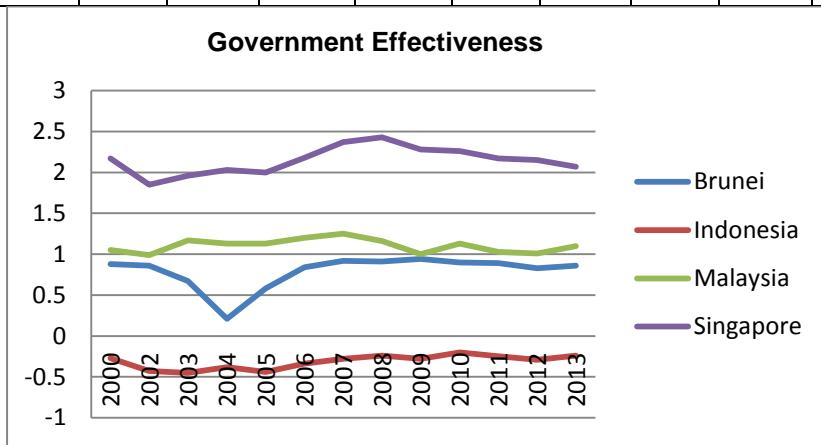


From the graph above it can be noted that Malaysia falls behind Singapore and Brunei .Political re-silence in these two countries may be attributed to their political systems where one is a republic and the other a Kingdom respectively.

**Table 3: Government Effectiveness**

Country/Year	2000	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Brunei	0.88	0.86	0.67	0.21	0.58	0.84	0.92	0.91	0.94	0.90	0.89	0.83	0.86
Indonesia	-0.27	-0.43	-0.45	-0.38	-0.44	-0.34	-0.28	-0.24	-0.28	-0.20	-0.25	-0.29	-0.24

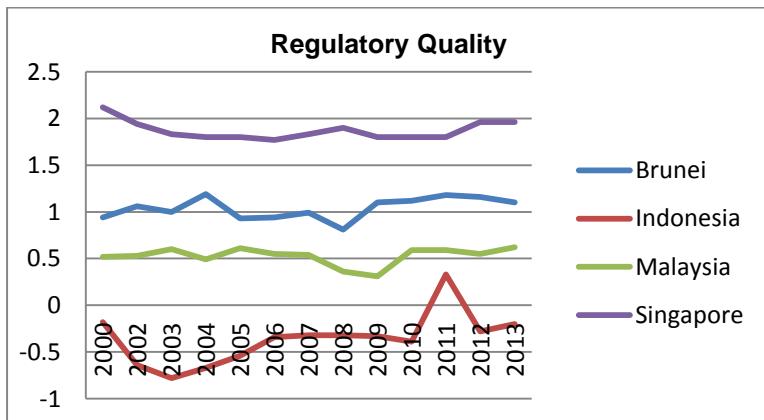
Malaysia	1.05	0.99	1.17	1.13	1.13	1.20	1.25	1.16	1.00	1.13	1.03	1.01	1.10
Singapore	2.17	1.85	1.96	2.03	2.00	2.18	2.37	2.43	2.28	2.26	2.17	2.15	2.07



In this aspect, Malaysia comes in second after Singapore, which reflects very strong public administration for which the Singapore government should be emulated. A strong government and public administration is definitely a good environment for business investment.

**Table 4: Regulatory Quality**

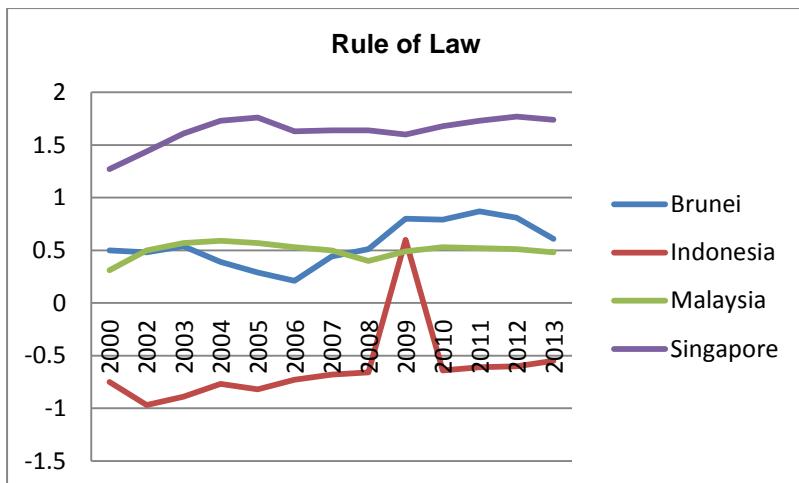
Country/Year	2000	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Brunei	0.94	1.06	1.00	1.19	0.93	0.94	0.99	0.81	1.10	1.12	1.18	1.16	1.10
Indonesia	-0.18	-0.64	-0.78	-0.67	-0.54	-0.34	-0.32	-0.32	-0.33	-0.39	0.33	-0.28	-0.20
Malaysia	0.52	0.53	0.60	0.49	0.61	0.55	0.54	0.36	0.31	0.59	0.59	0.55	0.62
Singapore	2.12	1.94	1.83	1.80	1.80	1.77	1.83	1.90	1.80	1.80	1.80	1.96	1.96



In this aspect, Malaysia comes in third after Brunei and Singapore .Regulatory functions are as important as policy formulating. If the regulatory systems are strong and consistent, then there will smooth functioning of government machinery and less wastage of funds.

**Table 5: Rule of Law**

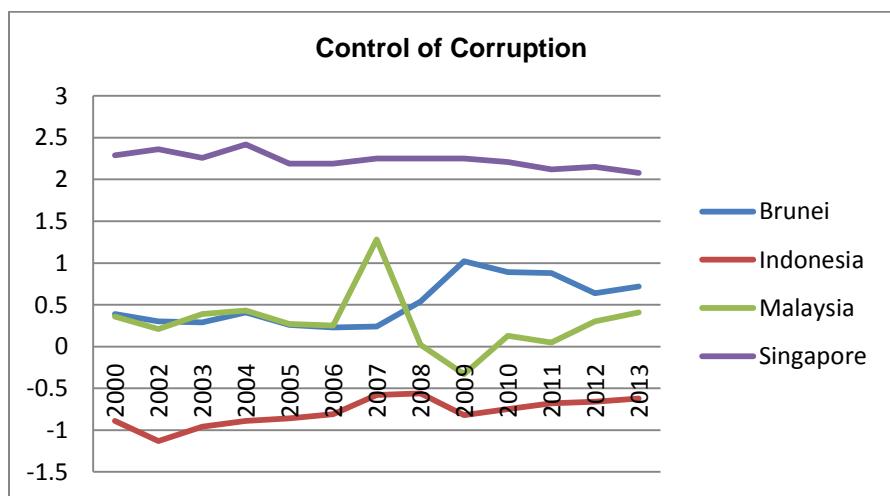
Country/Year	2000	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Brunei	0.50	0.48	0.54	0.39	0.29	0.21	0.44	0.51	0.80	0.79	0.87	0.81	0.61
Indonesia	-0.75	-0.97	-0.89	-0.77	-0.82	-0.73	-0.68	-0.66	0.60	-0.64	-0.61	-0.60	-0.55
Malaysia	0.31	0.50	0.57	0.59	0.57	0.53	0.50	0.40	0.49	0.53	0.52	0.51	0.48
Singapore	1.27	1.44	1.61	1.73	1.76	1.63	1.64	1.64	1.60	1.68	1.73	1.77	1.74



There is much improvement needed in this aspect with respect to Malaysia. There is need for an independent judiciary from the state control. Singapore on the other hand, heads the others in this aspect.

**Table 6: Control of Corruption**

Country/Year	2000	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Brunei	0.39	0.30	0.29	0.41	0.26	0.23	0.24	0.54	1.02	0.89	0.88	0.64	0.72
Indonesia	-0.89	-1.13	-0.96	-0.89	-0.86	-0.81	-0.58	-0.56	-0.82	-0.75	-0.68	-0.66	-0.62
Malaysia	0.36	0.21	0.39	0.43	0.27	0.25	1.28	0.02	-0.33	0.13	0.05	0.30	0.41
Singapore	2.29	2.36	2.26	2.42	2.19	2.19	2.25	2.25	2.25	2.21	2.12	2.15	2.08



While Singapore again takes the lead in corruption control, Malaysia on the other hand comes in third after Singapore and Brunei, reflecting a very lax regulatory quality and the lack of determination to combat this evil.

All data used in this article sourced from the World Bank

## CONCLUDING REMARKS

Based on the ‘flying geese’ model of Kojima, as countries transform from FDI inflows they will lose their competitive advantage and their macroeconomic variables will no longer seem attractive to pull in FDI. Hence, these countries have to look for alternative methods to remain attractive as FDI destinations. Institutional quality has been much regarded as an important factor in FDI decisions. The findings in this paper see Malaysia as an attractive destination for FDI. Malaysia is in the transition to the second-tier NIE, hence it has to benchmark with Singapore to remain fit for FDIs. However, there is a need for improvement in many of the indicators especially corruption control. If corruption is well under control, then to achieve strength in all the other indicators will be much easier. Governance of corruption control is more of self-governance among elected representatives who will put the interest of the public above their own self-interest. With the will to serve the people better, the country will reach greater heights and allow more freedom of expression and will be more accountable and transparent to gain the confidence of the citizens and the world at large.

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# MH17: HOW SAFE ARE THE SKIES?

Mohd Hazmi Mohd Rusli  
Rahmat Mohamad

## ABSTRACT

From the earliest kites to hypersonic flights, the history of aviation extends to more than a thousand years. The flying machine created by the Wright Brothers gradually changed the world's transportation industry. Commercial flights or airlines were subsequently introduced to replace sea transportation as the fastest way to convey people to various destinations around the world. The Malayan Airways came into the picture in 1947. Upon Malaysia's independence and separation of Singapore, the Malaysia Airlines System (MAS) was founded in 1972, serving not only Malaysia, but the world. The recent MH17 tragedy is a tragic episode in global aviation history when the world is still mourning over the disappearance of MH370. These tragedies may lead to one simple question – how safe are the skies? This paper discusses how international law through the Chicago Convention regulates safe overflight and assisted in developing the aviation industry. This paper further explains that the gunning down of MH 17 was a blatant violation of international law and MAS should not be blamed and lambasted for this tragedy. This article concludes that the skies are not entirely safe for the normal practice of civil aviation and that the world community should work together in ensuring that MH 17 tragedy would not happen again.

**Keywords:** Aviation, Malaysia Airlines System (MAS), MH 17 Tragedy, International Law

## INTRODUCTION

From the earliest kites to hypersonic flights, the history of aviation extends to more than a thousand years (Crouch, 2004). Leonardo Da Vinci's 15th-century dream of flight was clearly seen in his several rational but unscientific designs, though he did not attempt to erect any of them (Niccoli, 2006). His dreams were later realised by the Wright Brothers, who flew the skies in 1903 with the world's first motored aircraft (Kelly, 1989).

The flying machine created by the Wright Brothers gradually changed the world's transportation industry (Heppenheimer, 2004). Commercial flights or airlines were subsequently introduced to replace sea transportation as the fastest way to convey people to various destinations around the world (Grant, 2007). The world's first airline was Deutsche Luftschiffahrts-Aktiengesellschaft (DELAG), established in 1909 (Rusli, 2014). Airline business grew rapidly in mid-20<sup>th</sup> and the Malayan Airways came into picture in 1947 (Ibrahim, 2007). Upon Malaysia's independence and separation of Singapore, the Malaysia Airlines System (MAS) was founded in 1972, serving not only Malaysia, but the world.

The recent MH17 tragedy is a tragic episode in global aviation history when the world is still mourning over the disappearance of MH370. These tragedies may lead to one simple question – how safe are the skies?

## **GOVERNING THE SKIES**

Realising the growing importance of the aviation industry, the world community met in Chicago in 1944 and came up with the Chicago Convention on International Civil Aviation that established the International Civil Aviation Organisation (ICAO) (MacKenzie, 2010). Malaysia became a State party to this Convention on 7 April 1958 ("Convention on International Civil Aviation Signed at Chicago on 7 December 1944," 1944). Article 1 of the Chicago Convention acknowledges that every State has full and complete sovereignty over its airspace.

Article 3 (a) of the Protocol Relating to an Amendment to the Convention on International Civil Aviation of the Chicago Convention (Protocol) refrain any States from using weapon against civil aircrafts in flight. The Chicago Convention however, failed to achieve consensus over the extent of aviation liberalisation, or in other words, freedoms of the air (Rusli, 2014).

In maritime navigation, a vessel may navigate through the territorial sea of another State without prior notification, as clearly stated in the United Nations Convention on the Law of the Sea 1982 (LOSC) (Ridenour, 2006). This ensures the sea is open to all for the purpose of transportation. Like shipping, transit rights are important to the aviation industry too. However, unlike passage through the sea, aviation transit rights are generally obtained through bilateral agreements between States involved (Vallero, 2004).

There are nine types of transit rights with two being deemed most important in the aviation industry (Erotokritou, 2012). These rights are the right to fly over a foreign country without landing and the right to refuel or carry out maintenance in a foreign country without embarking or disembarking passengers or cargo (Stadlmeier, 1998). The Chicago Convention drew up a multilateral agreement in which the first two freedoms are being legally conferred to State signatories ("International Air Services Transit Agreement, Signed at Chicago, on 7 December 1944 (Transit Agreement)," 1944), achieved through the creation of the International Air Services Transit Agreement (IASTA) (Haanappel, 2003). As of mid-2007, the treaty was accepted by 129 countries including Malaysia, the Netherlands and Ukraine. The IASTA has facilitated in building a wider network of airlines throughout the world by opening up the skies to safe overflight (Rusli, 2014).

## **DOWNING OF MH17**

The downing of MH17 on Thursday, 17 July 2014 has caused a tremendous shock to the world's aviation industry. The incident took place in the Ukrainian airspace and the aircraft crashed within the territory of Ukraine ("As it Happened: Malaysian Plane Crash in Ukraine," 2014). MAS suffered two horrific accidents in less than a time span on five months. The MH17 crash took place when the whole world is still in search of MH370 that disappeared into thin air last March.

Early reports have shown that MH17 was believed to be gunned down by either Ukrainian separatists or Russia at the Russia-Ukraine border, killing all aboard, mostly of Dutch nationality ("MH17: Malaysia to Announce a Day of Mourning," 2014). MH 17 was flying from Amsterdam to Kuala Lumpur, using the route that has been declared safe by the ICAO. Other airlines that frequent that route are, among others, Aeroflot of Russia, Lufthansa of Germany and Singapore Airlines ("MH17 crash: Facebook users pledge

support for Malaysia Airlines," 2014). MAS has the right to fly over that particular route safely as provided in Article 3(a) of the Protocol.

In addition, as both Malaysia and Ukraine are State parties to the Chicago Convention and the IASTA, Ukraine has the obligation to ensure that aircrafts could exercise safe transit rights over its airspace by refraining from using weapons against civilian flights. As such, the gunning down of MH17 was a blatant violation of the said Protocol and should not be condoned in any way under international law.

MAS is not jinxed and should not be lambasted for this calamity as MH17 was just unlucky for being at the wrong place at wrong time. If not MH17, the missile might have hit other aircrafts using the same route. Following this tragedy, Russia and Ukraine are now pin-pointing at each other on who should be held responsible.

## **CONCLUSION**

The world now is still mourning over the loss of both MH17 and MH370. In these difficult times, Malaysians should stay united to stand up for MAS in facing challenges ahead. For more than 40 years, MAS has served the nation well in uplifting Malaysia's name in the international arena particularly in the airlines industry. From its humble beginnings, MAS is now one of the world's best five-star airliner, a symbol of the nation's pride. One cannot just disregard the importance of the national carrier to Malaysia. Although it is true that this tragedy was not MAS' fault, its image as a world-class airliner may now be somewhat tarnished. 2014 might be a terrible year for MAS, but every cloud has a silver lining.

MH 17 tragedy shows that the skies are not entirely secured for safe overflight even though international law recognises this right through the Chicago Convention. In light of this tragedy, the world community should work together to ensure the skies are hospitable for the well-being of the global aviation industry in ensuring that MH 17 tragedy shall not happen again. May the perpetrators of this crime be brought to justice.

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# **THE RELATIONSHIP BETWEEN FINANCIAL REWARDS AND TURNOVER INTENTION WITH MEDIATING ROLE OF DISTRIBUTIVE JUSTICE**

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Helmi Sumilan

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## **ABSTRACT**

The main objective of this study is to measure the relationship between financial rewards and turnover intention with the mediating role of distributive justice. Financial rewards in this study include basic salary, performance-based rewards and benefits. Cross-sectional survey method of quantitative approach was used in this research study. A pilot study is conducted and the coefficient value is ranging between 0.705 to 0.893, which had demonstrated high reliability for the items used in different section of the questionnaires. A total of 74 set of questionnaires were received from respondent in retail line in Kuching, Sarawak. After the analysis using Pearson's Correlation test, the result show negative correlations between financial rewards (basic salary, performance-based rewards and benefits) and employees' turnover intention. However, there is a positive relationship between financial rewards (basic salary, performance-based rewards and benefits) and distributive justice. Therefore, this study indicated that distributive justice has partially influenced the relationship between financial rewards and turnover intention. There are a lot of other factors that will lead to turnover attention too. In addition, implications and limitations of the research study were discussed to aids for future research development.

**Keywords:** Financial rewards, Turnover intention, Distributive justice, Performance-based rewards, Benefits

## **INTRODUCTION**

Compensation is a payment in form of financial and non-financial rewards in returns to the work performed. Therefore, compensation is one of the major important components that exist in an employment relationship that attributes towards organization's performance. It also has a significant impact towards attracting and retaining employee (Bergmann & Scarpello, 2001 and Misra, Rana & Dixit, 2012).

## **PROBLEM STATEMENT**

With most of the stakeholders have a concern on the impacts of compensation; the equity issue has been neglected sometime. The issue of unfairness in distribution of monetary components is affected relevantly by two components which comprises of procedural and distributive justice. Both have distinct impact on turnover intention. According to the study conducted by Ponnu and Chuah (2010) there is a significant relationship between organizational justice and organizational commitment that are of the important contributors towards employees turnover intention. In the research findings, distributive justice was known to have stronger correlation as compared to procedural justice towards affecting employee turnover intentions.

However, many of the previous research efforts have worked towards discovering the role and impact of distributive justice on pay distribution system in influencing job satisfaction or work attitudes and behavior (Ismail, 2007; Ismail, Abang Ibrahim & Girardi, 2009) but little are made to known in examining the mediating role of distributive justice in financial rewards towards affecting the turnover intention.

With little empirical knowledge corresponding to this relationship, it motivates the researchers to make further research in this area in order to understand how does the financial rewards can contributes towards turnover intention, to determine the relationship between financial rewards and turnover intention with mediating role of distributive justice and to find out which component in direct monetary rewards that best affect the employee turnover intention.

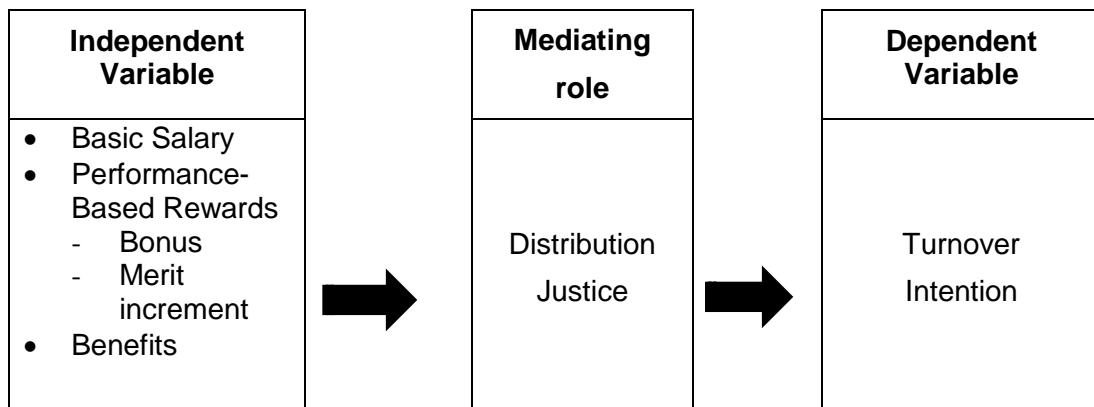
## **RESEARCH OBJECTIVES**

The main objective of this study is to measure the relationship between financial rewards and turnover intention with the mediating role of distributive justice.

## **HYPOTHESIS**

- H<sub>01</sub>:** There is no significant relationship between basic salary and turnover intention.
- H<sub>02</sub>:** There is no significant relationship between performance-based rewards and turnover intention.
- H<sub>03</sub>:** There is no significant relationship between benefits and turnover intention.
- H<sub>04</sub>:** There is no significant relationship between basic salary and distributive justice.
- H<sub>05</sub>:** There is no significant relationship between performance-based rewards and distributive justice.
- H<sub>06</sub>:** There is no significant relationship between benefits and distributive justice.

## 5.0 Conceptual Framework



Source: (H. G. Heneman & D. P. Schwab, 1985; H. N. Wong, 2010)

Figure 1. Conceptual Framework

## 6.0 LITERATURE REVIEW

A past survey study conducted by Scott, McMullen and Mark Royal (2011) among 568 reward professionals indicated that the employees has emphasizes and expresses their major concern upon fairness or equity on the allocation of merit increment (97.4%), total amount of compensation (96.7%), career development opportunities (94.2%) and recognition (92.9%). This is because the employer determined the amount of remuneration receives based upon their judgement which sometime out of the real context. The study also showed that bonuses and incentives as indicated did not obtain much of the concern as to the fact that it was based upon their own performance with least intervention from the employers in deciding on the amount of rewards thus with less regards to the contemplation of the fairness involved.

An Employee Engagement annual survey conducted by Aon Hewitt in 2014 had found about that the top five drivers' elements which influence employee engagement includes career opportunities, performance management, organization performance, pay for the employee and communication (Oehler & Domicelj, 2014). As pay for the employee is regarded as the top five elements for the employee engagement efforts that this has justified about the view upon the importance value of pay for employee or employee compensation as one of the vital measures that enable the organization to utilize upon in facilitating their organizational commitment therefore enhancing the retention rate that are useful in minimizing the turnover intention among the employees.

A common voluntary turnover among the employees were affected by inequity in the compensation, limited development opportunities and other personal agendas, thus, the employee retention measures although not restricted were mostly focused upon the factors which has contributed towards the attrition tendency (Bedi, 2011). Therefore, it shows that compensation satisfaction and justice drives some important value

corresponds with the determination of retention and turnover capacity among the employees.

Another research conducted by Wahab, Goh, Shamsuddin and Abdullah (2014) showed negative correlation between perceived organizational support and employees' turnover intention. The negative correlations between perceived organizational support and employees' turnover intention has illustrated that the rewards and fairness which are among the components in the perceived organizational support has definitely plays an important role initiating over the turnover intention among the employees which can be associated with the independent variables of the current research study that examined upon the relationship between financial rewards and distributive justice in affecting the turnover intention among the employees.

In addition, Mohd Johan, Abdul Talib, Martha Joseph and Mooketsag (2013) has conducted a research study that examining upon the organizational justice in affecting turnover intention among employees which involved 150 sample respondents whom worked at private firms which are located at Kuala Lumpur, Malaysia. From the finding of the research study has revealed that there are moderate yet significant correlation of relationship between distributive justice in affecting the turnover intention but not likely for the case of procedural justice. The study has indicated that the tendency of employees leaving the organization reduces if employees perceived the occurrence of fairness in their pay. The respondents as of the result findings have greater concern of fairness involving the outcomes which inclusive of fair pay, promotion, salary, annual increment, bonus and rewards.

In conjunction of the matter, compensation packages still instill great value towards determining the turnover intention among the employees in the organization. Thus, appropriate studies should be conducted in concern of examining how does compensation or pay may induce over employees' turnover intention which will further be deduce in respond to theories and past research findings.

## RESEARCH METHODOLOGY

Cross-sectional survey method of quantitative approach was used in this research study. A self-develop questionnaire is used for this research study where it is divided into 4 sections using Four-point Likert-scale. The language used for the questionnaires is in both English and Bahasa Malaysia. A pilot study is conducted and the coefficient value is ranging between 0.705 to 0.893, which had demonstrated high reliability for the items used in different section of the questionnaires.

	Alpha Cronbach's Value
Section B	0.893
Financial Rewards	
• <i>Basic Salary</i>	0.773
• <i>Performance-based rewards</i>	0.804

• Benefits	0.705
<u>Section C</u>	0.773
• Distributive Justice	
<u>Section D</u>	0.802
• Turnover Intention	

Table 1. Reliability of the Questionnaire

A total of 74 set of questionnaires were received from respondent in retail line in Kuching, Sarawak. Then the research hypotheses were analysed by using Pearson's Correlation Coefficient, and the signs of the correlation coefficient indicate the strength of the relationship or the degree of association between the two variables. Apart from the above, descriptive statistics also been used to analyse the respondents' demographic data.

## RESEARCH FINDINGS

Components	Respondent Characteristics	Percentage
Gender	Male	60.8
	Female	39.2
Age	21 - 30	55.4
	31 - 40	36.5
	41 - 50	6.8
	51 & Above	1.4
Length of Services	Less than 2 years	32.4
	2 - 5 years	44.6
	6 - 10 years	20.3
	11 - 15 years	2.7
Monthly Salary	RM800 - RM1000	18.9
	RM1001 - RM2000	48.6
	RM2001 - RM3000	18.9
	RM3001 - RM4000	2.7
	RM4001 & above	10.8

Table 2: Respondents' Demographic Characteristics

Table 2 shows the descriptive statistics of the respondents' demographic characteristics stated on Section A of the questionnaire. From the total number of the 74 respondents, 60.8% respondents are male and 39.2% are female. From the analysis, most of the respondents are in the age range of 21 to 30 years old (55.4%), followed by those of age range from 31 to 40 years old, 41 to 50 years old and 51 years old and above with 36.5%, 6.8% and 1.4% respectively. In addition, most of the respondents' length of services is within the range of from 2 to 5 years with 44.6%, followed by those with less than 2 years, 6 to 10 years and 11 to 15 years of employment experience with the organization which is

of 32.4%, 20.3%, and 2.7% of the respondents respectively. As of the monthly salary, most of the respondents (48.6%) are receiving salary of the range from RM1,001 to RM2,000 whereas others are receiving monthly salary of the range RM800 to RM1,000; RM2,001 to RM3,000; RM3,001 to RM4,000 and above RM 4,001 are 18.9%, 18.9%, 2.7% and 10.8% of the respondents respectively.

**H<sub>01</sub>:** There is no significant relationship between basic salary and turnover intention.

		<b>Turnover Intention</b>
<b>Basic Salary</b>	<b>Pearson Correlation</b>	-0.621**
	<b>Sig. (2-tailed)</b>	0.000

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Table 3. Correlation between Basic Salary with Turnover Intention

Table 3 indicated that there is a significant relationship between basic salary and turnover intention with p= 0.000 which is smaller than level of significant of p < 0.01. Therefore, the H<sub>01</sub>is rejected. The relationship between the basic salary and turnover intention is of strong correlation in negative direction as indicated by r = -0.621 which illustrating that the higher the respondents' satisfaction in term of basic salary that the less likely the chance in initiating upon their turnover intention.

The above result is consistent with the research conducted by Chong, Khor, Lee, Ooi & Tan (2013) that indicated that rewards, a combination of monetary and non-monetary value has negatively correlate with turnover intention whereby this has indicated that when the rewards given are high, the turnover intention will be low.

**H<sub>02</sub>:** There is no significant relationship between performance-based rewards and turnover intention.

		<b>Turnover Intention</b>
<b>Performance-based rewards</b>	<b>Pearson Correlation</b>	-0.479**
	<b>Sig. (2-tailed)</b>	0.000

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Table 4. Correlation between Performance-Based Rewards with Turnover Intention

Table 4 indicated that there is a significant relationship between performance-based rewards and turnover intention with p= 0.000 whereby the level of significant is smaller than p > 0.01. Hence, H<sub>02</sub>is rejected. As shown by the r = -0.479 that there is strong negative relationship between performance-based rewards and turnover intention. The

result above has illustrated that higher satisfaction upon the performance-based rewards reduced the turnover intention among the respondents.

The results of this study is consistent with the research findings by Singh & Loncar (2010) indicating that pay raise which is known as of another term to performance-based rewards has shown negative correlations with turnover intention whereby higher satisfaction towards the pay raise has shown to have minimized the turnover intention.

$H_{03}$ : There is no significant relationship between benefits and turnover intention.

	Turnover Intention	
Benefits	Pearson Correlation	-0.400**
	Sig. (2-tailed)	0.000

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Table 5. Correlation between Benefits with Turnover Intention

Table 5 indicated that there is significant relationship between benefits and turnover intention with  $p= 0.000$  whereby as seen that the level of significant is smaller than  $p > 0.01$ . Therefore,  $H_{03}$  is rejected. As shown by  $r= -0.400$  that the relationship between benefits and turnover intention is of strong correlation in negative direction which illustrate upon higher satisfaction in benefits are less likely to initiates the turnover intention among the respondents.

The findings is consistent with other research findings by Singh and Loncar (2010) whereas the result analysis have shown that the benefits has negatively correlates with turnover intention which therefore illustrating that turnover intention among the respondents are less likely to develop in response to higher satisfaction in benefits.

$H_{04}$ : There is no significant relationship between basic salary and distributive justice.

	Distributive Justice	
Basic Salary	Pearson Correlation	0.755**
	Sig. (2-tailed)	0.000

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Table 6. Correlation between Basic Salary with Distributive Justice

Table 6 indicate the significant relationship between basic salary and distributive justice whereby as indicated of the  $p= 0.000$  which is smaller than level of significant  $p > 0.01$ . Therefore,  $H_{04}$  is rejected. The relationship between basic salary and turnover intention as corresponding to the result analysis with  $r = 0.755$  is of very strong correlation in positive

direction whereas this has illustrated that higher satisfaction in basic salary is highly associated with the distributive justice.

The results of this research study is consistent with other research findings by Teklead, Bartol and Liu (2005) whereby as indicated in the analysis that the pay level is strongly correlated with distributive justice whereby this has illustrated that higher satisfaction in pay level is strongly associated with distributive justice.

**H<sub>05</sub>:** There is no significant relationship between performance-based rewards and distributive justice.

<b>Distributive Justice</b>		
<b>Performance-based rewards</b>	<b>Pearson Correlation</b>	<b>0.553**</b>
	<b>Sig. (2-tailed)</b>	<b>0.000</b>

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Table 7. Correlation between Performance-based Rewards with Distributive Justice

Table 7 indicated that there significant relationship between performance-based rewards and distributive justice with p= 0.000 whereby it is smaller than level of significant p= 0.01. Therefore, H<sub>05</sub> is rejected. As indicated by the r= 0.553 has illustrated upon strong positive correlation between the relationship of performance based-rewards and distributive justice whereby this has stipulate that higher satisfaction in performance-based rewards are highly associated with the distributive justice perceived among the employee.

The result is consistent with other research findings such as research study done by Teklead, Bartol and Liu (2005) which has shown positive correlation between the relationship of pay raise satisfaction and distributive justice whereby that illustrate upon higher satisfaction in pay raise is highly influence by distributive justice. The pay raise in the research study is known as another similar term indicating performance based rewards.

**H<sub>06</sub>:** There is no significant relationship between benefits and distributive justice.

<b>Distributive Justice</b>		
<b>Benefits</b>	<b>Pearson Correlation</b>	<b>0.481**</b>
	<b>Sig. (2-tailed)</b>	<b>0.000</b>

\*\*. Correlation is significant at the 0.01 level (2-tailed).

Table 8. Correlation between Benefits with Distributive Justice

Table 8 indicated that there is a significant relationship between benefits and distributive justice with  $p= 0.000$  whereby it is smaller than level of significant  $p > 0.01$ . Therefore,  $H_{06}$  is rejected. As indicated by  $r= 0.481$  has illustrated strong positive correlations in the relationship between benefits and distributive justice whereby this has stipulate that higher satisfaction in benefits is highly affected by distributive justice.

The result is consistent with the research findings by Ismail, Ong, Marzuki and Tan (2008) whereby that has shown positive correlation between the relationship in adequacy of benefits and distributive justice which indicating that adequacy of benefits is highly influence by employee perceived distributive justice. Therefore, this has support upon the result analysis which has shown positive correlation between the relationship of benefits and distributive justice.

## **RECOMMENDATIONS**

Some of the recommendations made available after this study are:-

- (a) Transparent policy or guideline pertaining to how to calculate the weightage of the job responsibilities by incorporating the idea of continuous job evaluation should be introduced;
- (b) Fair and transparent pay system (recommended KPI) to avoid or minimize prejudiced treatment towards the employee should be constructed;
- (c) The HR practitioners are encourage to work closely with all the line managers to ensure fair and appropriate practices of remunerating employees' through appraisal system, succession planning and any other form of system;
- (d) Communicating the criteria to all the respective individuals using different instrument to increase their understanding on how they been remunerated should be communicated;
- (e) Develop and enhance grievance handling mechanism to investigate, to propose further action on the allegation made related to unfair distribution of reward and to monitor the disciplinary action taken for the insubordination case; and
- (f) To increase the practices of performance-reward system in future to inculcate performance culture.

## **CONCLUSION**

This research study has illustrates upon the strong correlations involving various components of financial rewards (basic salary, performance-based rewards and benefits) in affecting turnover intention as well as the strong correlations of various components of financial rewards associating with distributive justice. Therefore, with high regards of the close proximity of financial rewards and turnover intention as well as the distributive justice that perceived equity is important aspect of highlight in the rewards system whereby this further suggest that appropriate measures and guideline should be taken to ensure fairness is administered as a practice in the workplace which encourage upon correspond good working attitudes and behavior for organization advantages.

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# **ASSESSMENT OF ENHANCED MARKETING-MIX STRATEGY ON CUSTOMERS' PATRONAGE OF COMMERCIAL BANKS IN NIGERIA**

Salihu, Abdulwaheed Adelabu, PhD<sup>1</sup>

## **ABSTRACT**

Enhanced Marketing-mix Strategy on Customers' Patronage is becoming an innovative means of wooing customers to patronize goods and services in the business world. The aim of enhanced marketing-mix strategy is to shape and reshape the company products so that they can yield target profit and growth. The study therefore seeks to assess the enhanced marketing-mix strategy on customers' patronage in the commercial banks. The study used First Bank Plc, Nigeria as unit of analysis. The study is premised on qualitative analysis. Three hypotheses were formulated, and the hypotheses were tested using chi-square. The findings revealed that customers are willing to patronize the Nigerian commercial banks, especially if the enhanced marketing-mix of the physical environment, people (staff) and process (operation) elements are well structured in the banks on one hand, and these three elements are having significant impact on customers' patronage in the Nigerian commercial banks. Finally, it becomes imperative for stake players in the banking sector to incorporate enhanced marketing-mix strategy in the business world.

**Keywords:** Customers' Patronage, Physical Environment, Process Element and People Element.

## **INTRODUCTION**

Marketing is a social and managerial process by which needs and desires of individuals are provided through the production, supply and exchange of useful goods (Holm, 2006). Marketing management is defined as the analysis, planning, implementation and monitoring of programs to create, provide and maintain a profitable transactions process with the buyers, in order to achieve organizational goals (Cutler, 2000). That is, marketing management is the analysis, planning, implementation and controlling of programs to achieve organizational goals.

In today's global business environment, there is increasing complexity, rapid change and unexpected developments (Mason, 2007). With the advancement of science in all fields, Companies are applying marketing techniques and strategies for attracting customers. Using the marketing-mix strategies has become a formidable strategy to attract customers in the banking sectors. Therefore, marketing plan may be viewed as a process designed

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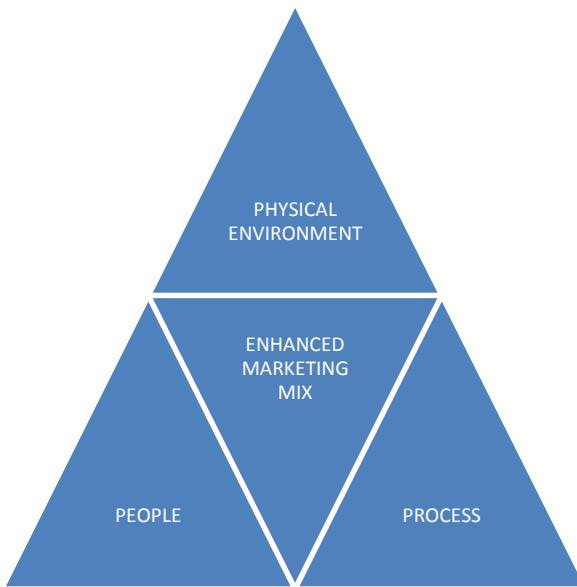
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for predicting future events and determining strategies to achieve the objectives of company (Mnty and Trusteeur, 1985).

Marketing-mix strategies are often classified into two, namely: traditional marketing-mix and enhanced marketing-mix strategies (Dave, 1996). The traditional marketing mix is often associated to the manufacturing companies that deal with manufacturing of goods, while enhanced marketing-mix strategy is designed for companies who are service providers (Booms and Bitner, 1981). The service marketing-mix or enhanced marketing-mix strategy is an extension of the traditional marketing-mix strategy by providing additional three elements of people, process and physical environment. The need for the extension is due to the high degree of direct contact between companies and customers.

Enhance marketing-mix strategy is an extension of the 4P's framework. The four 4Ps are product, price, promotion and place elements, while additional three elements are added to the 4Ps. These 3Ps are physical environment, people and process elements to produce a 7Ps (Brooms and Bitner, 1981). The additional 3P's have been added because, today marketing mix is far more customers oriented than ever. Enhance marketing-mix strategy is often called service marketing-mix or extended marketing-mix strategy. The need for the extension is due to the high degree of direct contact between the firm and their customers (Booms and Bitner, 1981). The additional three elements that is baptized as either enhanced marketing-mix strategy or service marketing-mix strategy is hereby illustrated below in Figure 1 as:

Figure 1: Enhanced Marketing-mix Strategy



**Source:** Salihu, et al., 2014: Impact of Enhanced Marketing-mix Strategy on Customers' Patronage

## **PROBLEM STATEMENT**

Findings of several scholars have revealed that the 4p's of the marketing-mix strategy that the 4Ps represent the seller's mind-set, and not the buyer's mind-set (Lauterborn, 1990). Murphy et al. (1978) argued that the 4Ps is unethical especially in the area of packaging, promotion, price and distribution channels. This argument tends to suggest that the marketing-mix is responsible for the unethical practices that may occur during implementation. It is equally argued that the 4Ps formulation is inadequate for services marketing (Shostack, 1977; 1979). Beaven and Scotti (1990) Opined that the traditional 4Ps of the marketing-mix strategy is considered very narrow and simple within the services marketing context and services marketers should think within the service oriented realm. According to Baron (2002), the 4Ps does not incorporate the characteristics of service providers as it was derived from research on manufacturing companies.

With the development of enhanced marketing-mix strategy, the author of this paper wants to bridge the research gap by conducting an empirical study on the impact of the enhanced marketing-mix strategy on customers' patronage of commercial banks in Nigeria.

## **RESEARCH OBJECTIVES**

This paper seeks to achieve the following objectives: (1) to assess the impact of "physical environment" on customers' patronage in the commercial banks; (2) to assess the impact of "people" on customers' patronage in the commercial banks; and (3) to assess the impact of "process" on customers' patronage in the commercial banks. In order to achieve these objectives, the following research questions are raised. Thus:

1. How does "physical environment" element of enhanced marketing-mix strategy have significant impact on customers' patronage in the commercial banks?
2. How does the "people" element of the enhanced marketing-mix strategy affect customers' patronage in the commercial banks?
3. How does the "process" element of enhanced marketing-mix strategy affect customers' patronage in the commercial banks?

## **HYPOTHESIS FORMULATION**

**H<sub>1</sub>:** The "physical environment" element of enhanced marketing-mix strategy has a significant impact on customers' patronage in the commercial banks?

**H<sub>2</sub>:** The "people" element of the enhanced marketing-mix strategy has a significant impact on customers' patronage in the commercial banks.

**H<sub>3</sub>:** The "process" element of enhanced marketing-mix strategy has a significant impact on customers' patronage in commercial banks.

## **LITERATURE REVIEW**

The marketing-mix is one of the most famous marketing terms. The marketing-mix is the tactical or operational part of a marketing plan. The marketing-mix is also called the 4Ps and the 7Ps. The 4Ps are price, place, product and promotion. The services marketing-mix

is also called the 7Ps and includes the addition of process, people and physical evidence. The marketing-mix is the set of controllable tactical marketing tools, product, price, place, and promotion – that the firm blends to produce the response it wants in the target market (Kotler and Armstrong, 2010).

This is a set of controllable elements of marketing tools and marketing strategies of a company in combining these elements. Cutler (2000) posited that a set of marketing-mix variables can be controlled by the marketing companies and institutions in their target market and its composition are required for the reaction (Cutler, 2000). Elements of the marketing-mix are set of marketing tools for achieving the goals of the institute of marketing (HaKansson and Waluszewski, 2005). Marketers, in order to receive favorable responses from their target markets, use many tools. These tools comprise the marketing-mix. In fact, it is a set of tools that institutions use to achieve their marketing goals, classified these tools into four major groups, and called the 4P's of marketing: product, price, place and promotion (Harrell and Frazier, 1999).

Product strategy is a combination of a firm's resources in single unit offered to a customer so as to make profit. The choices that are made concerning the product can be: brand name, design, functionality, protection, maintenance, packaging, guarantee, accessories and services. According to Richard and Colin (2003), product strategy asks questions such as what does the consumer want from the product? What requirements does it satisfy? What characteristics are the products suppose to have to meet customers' requirements? How is it different from the product of your competitors?

Price strategy refers to the choice of appropriate approaches to forming the actual price of the product. Each customer tries to weight benefits of product against its cost in order to make a purchase. It is also important to mention that price strategy is the only among other elements that creates sales revenue. Questions that are often asked are: what is the value of the product or service to the purchaser? Is the costumer price sensitive? How will your price be different with your competitors Richard and Colin (2003).

Place element of the marketing-mix is concerned with a range of methods of transporting and storing goods on one hand, and making them available to the consumers on the other. Delivering the right product to the proper place at the right time requires designing of a distribution system. These questions are usually asked: where do buyers search for his/her product? In what kind of store do they look for the product? How can you contact the appropriate distribution channels (Richard and Colin, 2003).

Promotion strategy is concerned with presenting customers with information needed to make a decision. The fact is that, even though being sometimes extremely costly, promotion can increase the sales significantly. These are the questions that can be helpful when defining this particular element of marketing mix: Where and when can one get information on your marketing messages? When is the best time to promote? Is there seasonality in the market Richard and Colin (2003).

Assumptions about customer patronage underlie promotion, service, and location decisions of commercial banks. Young customers are sought through special promotional programs on the premise that substantial continued patronage will result. Major advertising campaigns are launched, touting one bank as friendly, another as sincere, assuming such intangible appeals pull customers in, or, at a minimum, substantially reinforce current

customers. Little is known about the bond between customer and bank, however, with the result that the payoffs of such marketing activities are uncertain. The availability of banking facilities can clearly have an influence on customer patronage. In this sense, the multi branch aspect of the commercial banking system is important to appreciate. On the one hand, switching is facilitated since a customer who wants to change banks can easily locate a nearby alternative. On the other hand, loyalty is supported since the customer who moves or changes jobs, for example, can usually find a reasonably convenient branch of his prior bank should he wish to continue patronizing it.

Customer patronage developed a conceptual framework of brand loyalty that revealed the overall range of brand loyalty is based on a hierachal effect model with respect to affective, behavioral intention, cognitive and action dimensions. One of the newest definitions of brand loyalty comes from Armstrong and Kotler (2005) who describes it as "theory and guidance leadership and positive behavior including, repurchase, support and offer to purchase which may control a new potential customer". Furthermore, the American Marketing Association defines brand loyalty as "the situation in which a consumer generally buys the same manufacturer originated product or service repeatedly over time rather than buying from multiple suppliers within the category" or "the degree to which a consumer consistently purchases the same brand within a product class".

The longevity of a customer's relationship influences a company's profitability in a positive way. Because of this, general business wisdom suggests that a company should focus some proportion of its marketing efforts on the development, maintenance or enhancement of customer loyalty.

## **RESEARCH METHODOLOGY**

The study is a mini research that is premised on quantitative approach. Structured questionnaire is used in the study. The questionnaire is made up of five sections. Section A contains items on demographical data; while B contains items on the dependent variable (i.e. customers' patronage). Section C contains items on the physical environment of the company under review, while section D contains items on the process element, and section E contains items on the people element of the marketing-mix strategy. One hundred (100) questionnaires were administered on respondents. The rate of returned questionnaire is 100%. Frequency, descriptive statistics and chi-square were run through the use of the Statistical Package for Social Sciences (SPSS) to analyze the data elicited from the respondents.

## DATA ANALYSIS

The analysis of data is given below as:

**Table: 1: Use of ATMs to Enhance Customers' Patronage**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	STRONGLY AGREE	26	26.0	26.0	26.0
	AGREE	51	51.0	51.0	77.0
	NEUTRAL(NOT SURE)	13	13.0	13.0	90.0
	DISAGREE	8	8.0	8.0	98.0
	STRONGLY DISAGREE	2	2.0	2.0	100.0
	Total	100	100.0	100.0	

**Source:** Author's computation 2014

Table 1 shows that 26 respondents representing 26% strongly agree, 51 respondents representing 51% agree, 13 respondents representing 13% were neutral, 8 respondents representing 8% disagree, 2 respondents representing 2% strongly disagree. The finding shows that the use of ATMs can enhance customers' patronage.

**Table 2: Banks Are Having More Than Enough Customers**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	STRONGLY AGREE	17	17.0	17.0	17.0
	AGREE	42	42.0	42.0	59.0
	NEUTRAL(NOT SURE)	27	27.0	27.0	86.0
	DISAGREE	12	12.0	12.0	98.0
	STRONGLY DISAGREE	2	2.0	2.0	100.0
	Total	100	100.0	100.0	

**Source:** Author's computation 2014

Table 2 shows that 17 respondents representing 17% strongly agree that banks in Nigeria are having more than enough customers, 42 respondents representing 42% agree, 27 respondents representing 27% were neutral, 12 respondents representing 12% disagree, while 2 respondents representing 2% strongly disagree. The respondents with the highest representation of 42% agree that banks in Nigeria are having more than enough customers.

**Table 3: Customers' Service Unit(CSU) Response Promptly to Customers Complains**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	STRONGLY AGREE	15	15.0	15.0	15.0
	AGREE	43	43.0	43.0	58.0
	NEUTRAL(NOT SURE)	18	18.0	18.0	76.0
	DISAGREE	17	17.0	17.0	93.0
	STRONGLY DISAGREE	7	7.0	7.0	100.0
	Total	100	100.0	100.0	

**Source:** Author's computation 2014

Table 3 shows that 100 respondents answered the question on Customers' Service Unit (CSU) Respond Promptly to Customers Complains. 15 respondents representing 15% strongly agree, while 43 respondents representing 43% agree, 18 respondents representing 18% were neutral (not sure), 17 respondents representing 17% disagree, 7 respondents representing 7% strongly disagree. The respondents with the highest representation of 43% agree that Customers' Service Unit (CSU) respond promptly to customers complains.

**Table 4: Customers Are Willing to Patronize Other Banks' Service and Products Apart from Savings, Current and Fixed Deposit Accounts**

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	STRONGLY AGREE	11	11.0	11.0	11.0
	AGREE	36	36.0	36.0	47.0
	NEUTRAL(NOT SURE)	29	29.0	29.0	76.0
	DISAGREE	15	15.0	15.0	91.0
	STRONGLY DISAGREE	9	9.0	9.0	100.0
	Total	100	100.0	100.0	

**Source:** Author's computation 2014

Table 4 shows that 11 respondents representing 11% strongly agree that customers are willing to patronize other banks' service and products apart from savings, current and fixed deposit accounts, 36 respondents representing 36% agree, 29 respondents representing 29% were Neutral, 15 respondents representing 15% disagree, and 9 respondents representing 9% strongly disagree.

**Table 5: Chi- Square Test on Physical Environment**

	Customers, ATMs and other operating machines are modern and effective.	The floor design, lighting, painting inner decoration, etc of the banks are visually appealing to customers.	Office furniture and fittings are adequate and comfortable for customers use.	Location of the banks may be discouraging and demotivating to customers.	Security men in the bank welcome customers professionally .
Chi-Square	75.200 <sup>a</sup>	36.000 <sup>a</sup>	23.900 <sup>a</sup>	39.700 <sup>a</sup>	47.300 <sup>a</sup>
Df	4	4	4	4	4
Asymp. Sig.	.000	.000	.000	.000	.000

**Source:** Author's computation 2014

### Hypothesis One

**H<sub>1</sub>:** The “physical environment” element of enhanced marketing-mix strategy has a significant impact on customers’ patronage of the commercial banks in Nigeria.

### DECISION RULE

Since Psig < Pvalue (0.05), the author accepts the alternative hypothesis that says that the “physical environment” element of enhanced marketing-mix strategy has a significant impact on customers’ patronage of commercial banks in Nigeria.

**Table 6: Chi-Square Test on Process Element**

	Security checking are prompt and effective in the banks.	The removal of physical interaction between customers and cashiers of the banks is accepted by customers.	Removal of physical interaction between customers and cashiers of the banks is accepted by customers.	Bank deductions are generally accepted by the customers.	Items kept by customers in the cabinet in the bank are always secured.
Chi-Square	31.600 <sup>a</sup>	32.200 <sup>a</sup>	27.600 <sup>a</sup>	13.600 <sup>a</sup>	48.400 <sup>a</sup>
Df	4	4	4	4	4
Asymp. Sig.	.000	.000	.000	.009	.000

	Security checking are prompt and effective in the banks.	The removal of physical interaction between customers and cashiers of the banks is accepted by customers.	Removal of physical interaction between customers and cashiers of the banks is accepted by customers.	Bank deductions are generally accepted by the customers.	Items kept by customers in the cabinet in the bank are always secured.
Chi-Square	31.600 <sup>a</sup>	32.200 <sup>a</sup>	27.600 <sup>a</sup>	13.600 <sup>a</sup>	48.400 <sup>a</sup>
Df	4	4	4	4	4
Asymp. Sig.	.000	.000	.000	.009	.000

**Source:** Author's computation 2014

### Hypothesis Two

**H<sub>2</sub>:** The “process” element of enhanced marketing-mix strategy has a significant impact on customers’ patronage of commercial banks in Nigeria.

### DECISION RULE

Since Psig < Pvalue (0.05), the author accepts the alternative hypothesis in this study. That is, the “process” element of enhanced marketing-mix strategy has a significant impact on customers’ patronage of commercial banks in Nigeria.

**Table 7: Chi-Square Test on People Element**

	Customers often enjoyed banks services and products.	Bankers often discharged their duties promptly.	Banks operations are handled by operation managers in the banks professionally.	Customers are treated as ‘king’ in the banks.	Customers are treated as ‘king’ in the banks.
Chi-Square	43.600 <sup>a</sup>	50.600 <sup>a</sup>	48.100 <sup>a</sup>	23.500 <sup>a</sup>	50.444 <sup>b</sup>
Df	4	4	4	4	4
Asymp. Sig.	.000	.000	.000	.000	.000

**Source:** Author's computation 2014

### Hypothesis Three

**H<sub>3</sub>:** The “people” element of enhanced marketing-mix strategy has a significant impact on customers’ patronage of commercial banks in Nigeria.

## **DECISION RULE**

Since  $P_{sig} < P_{value}$  (0.05), the author accepts the alternative hypothesis in this study. That is, the “people” element of enhanced marketing-mix strategy has a significant impact on customers’ patronage of commercial banks in Nigeria.

## **DISCUSSION OF FINDINGS**

Three independent variables are sine qua non to overwhelming customers’ patronage in the banking sector in Nigeria. These variables are tested, and seen to have positive impact to effective patronage of customers in the commercial banks in Nigeria. the physical environment includes the appearance of physical structure, landscaping, vehicles, interior furniture, equipments, uniforms, signs, printed materials and other visible cues that provide evidence of service quality. Physical environment as element of enhance marketing-mix strategy enables the customers to evaluate the bank.

People (staff) element is an asset in any organization. Therefore, people element goes a long way to determine the level of patronage in the commercial banking services. This element considered an important element in the sale of service products because of direct contact between customers and the bank staff. The people element of service marketing of commercial banks suggest that the selection and training of service staff is a sin qua non in overall marketing effort of the commercial banks.

Similarly, the study tries to assess the impact of process element on the rate of customers’ patronage in the commercial banks in Nigeria. In service marketing, how the service is delivered is paramount. For example, service system performance determines the length of customers waiting time (Asiegbu et al., 2011). The process element relates to procedures of interacting with customers at the point of contact.

Lastly, the findings of this study corroborate the findings of the study conducted on marketing-mix strategy by scholars such as Hinterhuber (1992), Steiner (1997), Wing (1997), Hitler (2000), Paley (2004), Kotler Armstrong (2010), etc.

## **CONCLUSION**

This study found that customers are willing to patronize commercial banks in Nigeria if these three elements are well structured. A well structured enhanced marketing-mix will improve profitability of the commercial banks on one hand, and enhance economic growth of the country on the other.

## **RECOMMENDATIONS**

The researcher wishes to suggest the following for future studies. Thus:

1. Use a variety of methods to explore customers’ patronage of the commercial banks in Nigeria.
2. Conduct a comparative study in test variation in several results.
3. Conduct study on enhanced marketing-mix strategy covering a wider range of commercial banks.
4. Private companies should be encouraged to fund researches on economic development issues.

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# **INTERNATIONAL REPORTING STANDARDS ADOPTION IN NIGERIA MATTERS ARISING**

Adamu Garba Zango<sup>1</sup>

## **ABSTRACT**

This paper explores the prospects and problems of IFRS adoption in Nigeria whose implementation roadmap began in 2012. After considering the historical evolution of IFRS, the analysis shows that a lot need to be done by the regulators especially the Financial Reporting Council of Nigeria (FRCN) to stem the tide of negative consequences that the wholesome adoption may bring especially on IFRS adoption by SMEs. The study recommends that SMEs be allowed to revert back to NIG. GAAP over a period of time long enough to address problem areas like infrastructural decay, trained work force etc.

**Keywords:** IFRS Adoption, SMEs, Nigeria

## **INTRODUCTION**

Prior studies in the context of financial reporting literature find divergent reasons for the international differences between reports of jurisdictions and in adopting the new accounting language (Bova and Pereira, 2011; Brown, 2011; Kantudu, 2006). These differences in corporate statements arose from lack of good corporate governance practices, which adversely affect both current and potential investors in making business comparison and having a choice of undertaking in both local and international market. With globalization and the switch to Information and Telecommunication Technology (IT), a country's corporate entity no longer waits to buy or sale a product within its jurisdiction. A common accounting language is required to bridge the lacuna in the drive for standard business reporting. Thus, Lazar et al. (2006) and Daske (2006) opine that a standard financial reporting framework will allow for more value relevant reports in the area of comparability, understandability and transparency to attract intending shareholders.

The push by multinational and transnational corporations to trade internationally made them expand their strategic alliances outside their own nationality through e-commerce, e-banking and e-procurements (Sidik and Abd Rahim, 2013). Universal regulators (World Bank, IMF, IOSCO, etc) support the IFRS because they believe that the use of common standards in the preparation of financials will make it easier to compare the financial results of reporting entities from different geographies (Pacter, 2014).

According to Korea Accounting Standards Board Financial Supervisory Service (KASBFS, 2013) adoption of IFRS is no longer an option. It has evolved into an indispensable means for literally all those engaged in this globalised economy of today. Therefore, the urge for international harmonization as companies seeks finance at the least cost anywhere made the

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international accounting standards committee to restructure itself for the challenges ahead. This body known as the International Financial Reporting Standards (IFRS) was formally the International Accounting Standards Board (IASB).

The International Financial Reporting Standards (IFRS), which came on board in 2005, is the principal regulator for setting the universal accounting framework. Other regulators and standard setting bodies like the World Bank, Financial Accounting Standards Board (FASB) and other professional bodies and institutions with differing expertise from different nationalities also contribute.

The move towards a universal accounting language for business gathered momentum as IFRS are converged with local standards, endorsed or fully adopted by jurisdictions and in the case of Nigeria in 2012 (IFRS Foundation, 2012). According to the survey conducted by Deloitte Touche Tohmatsu (2012) there are over 125 countries worldwide which adopt, converge or require IFRS for their country's domestic financial transactions and international businesses.

In addition to its flexibility, IFRSs new is accounting paradigm emphasis on:

- a) principles rather than specific rule
- b) economic substance rather than legal form
- c) consolidated statements rather than individual financial statement and
- d) on fair value measurements rather than on historical or traditional cost concepts.

Despite the benefits inherent in the IFRS however, a lot of concern is being raised on its practicality especially in its implementation by the small and medium scale enterprises in Nigeria (Oduware, 2012; Obuh, 2012; Obuh, 2012).

Based on the problems highlighted, this paper sets to examine on the probable consequences of IFRS adoption in Nigeria generally and by the SMEs in particular.

The paper proceeds with a discussion review of prior literature on IFRS adoption. The next section deals the research methodology, with the results of the study are reported in the next section. The final section concludes the paper.

## LITERATURE REVIEW

### **Financial reporting architecture in Nigeria**

The Institute of Chartered Accountants of Nigeria (ICAN) established in 1982 became the official accounting and finance regulator responsible for all accounting and financial issues in Nigeria in 1992 (World Bank, 2004). However, the act which gave ICAN the power of regulation stem from the Companies and Allied Matters Act (CAMA) of 1990 which also mandated all companies in Nigeria to prepare and issue annual accounts and reports using the Statement of Accounting Standards (SAS) issued by the Nigerian Accounting Standards Board (NASB) established in 1996 (World Bank, 2004).

With globalisation and the ever pressing need to align with accounting best practices in financial reporting, the federal government of Nigeria in consultation with all stakeholders (public and private) decided in September 2010 to set in motion the process of convergence from local GAAP to IFRS beginning with 'public interest entities', which includes not only quoted and unquoted companies but also governments, government organisations, and not-for-profit entities that are required by law to file returns with regulatory authorities effective January 1, 2012 (World Bank, 2011; Nneka and Rotimi, 2012; IFAC, 2009). Moreover, applying

the phased adoption method, other public interest entities keyed in on January 1, 2013; while the Small and Medium Enterprises followed suite on January 1, 2014 (World Bank, 2011, Anyahara, 2012; Bewaji, 2012).

Based on the explanations proffered above, the adoption of IFRS is a necessary alternative that the regulatory authorities in Nigeria had to take (Anyahara, 2012). Further studies by (World Bank, 2004; Kantudu, 2006) find the financial reporting literature in Nigeria to be deficient and grossly inadequate to meet the increasing challenges in the global business landscape. As the opportunity present itself therefore, government of Nigeria quickly went into the drawing board and finally came up with a roadmap to IFRS adoption in 2005.

The IFRS adoption in Nigeria saw public listed entities and significant public interest entities applying IFRS on 31December 2012; followed by other public interest entities on 31December 2013 and finally the small and medium scale enterprises (SMEs) to effect on 31December 2014(Oduware, 2012).

The adoption of IFRS by Nigeria was an outcome of a professional advice granted by the experts. It is widely believed that full adoption of IFRS though with some initial implications has the most significant impact on accounting and financial reporting quality as it enhances greater transparency and disclosure in financial statement (Ball, 2006; Epstein, 2009).

As part of its benefits, Sunusi (2010) observe that adoption will facilitate the growth of international trade and investment, particularly in attracting the flow of direct foreign investments in order to accelerate the country's pace of industrial growth and development.

Further benefits of IFRS adoption by Nigeria is the emulation of well-established professional standards of behaviour both in conduct and in practice as legitimate and fully fledged members of the international accounting community.

### **Studies on IFRS adoption in Nigeria**

Adekoje (2011) agree that the adoption of uniform standards cut the cost of doing business across borders by reducing the need for supplementary accounting information thereby enhancing evaluation and analysis by investors and other users. Hence, IFRS adoption in Nigeria is noteworthy for the healthy growth of both capital and money market as entities are able to assert full financial statement compliance.

Commenting on the framework, Anyahara (2012) uphold the decision of the Federal government in Nigeria for the mandatory adoption of IFRS and its desirability arguing that by so doing Nigeria contribute to the global accounting harmony, which remains indelible for posterity.

### **IFRS adoption in Nigeria- The Journey so far**

The primary objective in IFRS adoption is the belief that a common accounting language around the world is necessary to improve comparability, transparency and disclosure in financial reports so that investors can have confidence in companies' financials regardless of what country they came from (Pashko, 2010).

Nigeria declared its intentions to adopt IFRS in 2005 which, came into effect on January 1, 2012 is expected to bring with it tremendous benefits to the country as a global player in the

international oil market. However, recent happenings within the economy indicate some disturbing scenarios capable of derailing the benefits of IFRS adoption. For instance, in a study by a member of FRC, (Oduware, 2012) report the level of adoption by some visible sectors of the Nigerian economy fail far short of expectations.

In that report, Oduware tells us that the information and telecommunication sectors ranking is the lowest in terms of compliance! IFRS adoption and compliance is mandatory and the IT sub-sector in this age of the dot.com bubble the expectations are that the performance of this all embracing sub-sector is second to known as is the case with some nationalities in the world.

Secondly and most importantly is the issue of SMEs. These groups of entities dominate the business world. In all geographies from the developed to the developing, over 99% of companies are SMEs as they have less than 50 employees. Pacter (2014) reports not fewer than 21 million SMEs in the European Union and over 20 million on the United States alone.

Studies by scholars on IFRS adoption in Nigeria documents satisfactory levels of compliance with directives given by the Financial Reporting Council (FRC). For instance, Terzungwe (2012) reports scheduled IFRS implementation by public listed entities and significant public entities in accordance with the guidelines. Business day magazine (2014) quotes the President of ICAN as saying that: “all the listed companies and significant public interest entities in Nigeria adopted IFRS on January 1, 2012 while all the public interest entities were expected to have adopted IFRS on January 1, 2013”.

The SMEs are now in their fourth month of IFRS (January 1 to April, 2014). However, the recent outcry by the President of SMEs in Nigeria and public pronouncements by even some professional authorities’ call for a revisit to the adoption roadmap for the SMEs for two cogent reasons. First, the capital outlay for these enterprises is negligible. The business is largely family based with little or no literate person for effective supervision and employs mostly family members, neighbors’ or close associates.

Finally, there is an acute shortage of trainers to go round all the enterprises in Nigeria as aptly stated by ICAN former President Mr. Owolabi (2012) which means lack of trained manpower within the SMEs and shortage of professional skills from the “Big 4” to go round all the entities and help them prepare their financials for a fee. This brings us to the most cogent problem of the moment- the adoption of IFRS by SMEs which keyed in since 1 January 2014 and the likelihood of full compliance with the adoption.

### **Why IFRS adoption**

International Financial Reporting Standards (IFRS) adoption has gained momentum in recent years all over the world. As the capital markets become increasingly global in nature, more and more investors see the need for a common set of accounting standards. IFRS is used in many parts of the world, including the European Union, Hong Kong, Australia, Malaysia, Pakistan, and GCC countries, Russia, South Africa, Singapore, Nigeria and Turkey among others. As in December 2013 more than 125 countries around the world, including all of Europe, currently require or permit IFRS reporting (Mary, Okoye and Adediran, 2013).

With IFRS according to Abiola and Ojo (2012) companies do not have to operate in isolation as all uses the same accounting language thus easing comparability, reduced cost of accessing capital markets and for tax purposes. It will further reduce the burden of complex consolidations between local and multinational companies during mergers and acquisitions as it will eliminate the need for multiple reports and lower the cost of raising funds, reduce accountants’ fees and enable faster access to all major capital markets. Furthermore, it will facilitate target setting and

milestones by companies based on globalised business framework, rather than an inward perspective.

Convergence to IFRS, by various group entities, will enable management to bring all components of the group into a single financial reporting platform. This will eliminate the need for multiple reports and significant adjustment for preparing consolidated financial statements or filing financial statements in different stock exchanges (Ajogwu, Nwabu and Mordi, 2012). This is because global users i.e. stakeholders would require sound understanding of financial statement for them to transact at every market. Hitherto, different countries adopt accounting treatments and disclosure patterns with respect of the same economic event in different ways which often a time create confusion and distrust among the users while interpreting financial statements. However, today's business can only be made possible if there is a universal accounting language that is readily understood and applied by all and sundry. Globalisation has already gained recognition as financial exchange of information and services in a meaningful and trustworthy manner is on the increase on daily basis (Ikpefan and Akande, 2012).

### **IFRS adoption by SMEs in Nigeria**

Small and medium-sized enterprises (SMEs) dominate both the developed, developing and transition economies business world. In virtually every jurisdiction, from the largest economies down to the smallest, there is now a consensus among state policy makers, development economists as well as international development partners that these enterprises [SMEs] are a potent driving force for industrial growth and overall economic development. Over 99% of companies in the world today have fewer than 50 employees. For instance, there are 21 million SMEs in the European Union and 20 million in the United States alone (Safiriyu and Njogo, 2012).

In Nigeria, the smallest in this group of enterprises are the microenterprises. These enterprises being a veritable tool of economic development are pursued for attaining one of the millennium development goals of eradicating extreme poverty in Nigeria. Poverty is caused by inadequate incomes and incomes result from gainful employment which SMEs are widely known to provide (Safiriyu and Njogo, 2012).

The mission in IFRS for SMEs is to provide a benchmark which allows financial statements to be prepared for use by lenders, vendors and other creditors, outside investors, credit rating agencies, and other stakeholders. The goal is to improve the SMEs' access to capital (Bewaji, 2012).

The global acceptance and adoption of IFRS by SMEs which was officially released by IASB in July 2009 after an extensive consultation worldwide have been gaining momentum as over 70<sup>+</sup> countries all over the world use the new accounting framework (Bewaji, 2012; PwC, 2013). However, the adoption by Nigeria is not without some reservations. As accounting to Owolabi (2012) the wholesome adoption no doubt has propound implication especially for the SMEs as IFRS is not just an accounting exercise.

Firstly, there is the issue of cost implications in terms of personnel training and user friendliness which fundamentally places the SMEs at a disadvantage as they encounter only a narrow range of simple transactions without public accountability, with few employees and often owner managed with low/moderate level of revenue and gross assets (IFRS Foundation, 2009; Obuh, 2012; Oduware, 2012).

Second is the anticipated difficulty in the application of the standards by SMEs due to lack of specificity and precedent in the market place as capital is now a global commodity. Therefore, IFRS adoption results in local financial statements that are readily understandable and acceptable in global markets (PwC, 2013).

Finally, there is a need for concerted effort to raise the awareness of SME entrepreneurs in terms of staff education, training, guidance, tools and sharing of experiences (IFAC, 2011).

## **METHODS**

In addressing the issue of IFRS adoption in Nigeria, this article adopted a contextual review approach of existing literature. The paper is secondary based on an examination and analysis of issues documented in major publications both print and electronics as in reputable newspapers, magazines, periodicals, bulletins and the World Wide Web (WWW). It also consults documentary materials from professional accounting bodies (in particular related to reporting regulation, conferences, training and education) and in government statutory documents as gazetted.

## **DISCUSSION OF FINDINGS**

Various studies on the perceived benefits of IFRS adoption on global basis and in Nigeria in particular have been documented in the literature by scholars such as (Leuz and Verrocchio, 2000) on decreased cost of capital, (Bushman and Piotroski, 2006) on the efficiency of capital allocation in companies (Young and Guenther, 2008) on the international capital mobility consequent upon globalisation, (Christensen, Hail and Leuz, 2013; Ahmed, 2011) on capital market development through foreign direct investment (Christensen, Hail and Leuz, 2013; Adekoya, 2011; Cai and Wong, 2010) on the increased market liquidity and value (Brochet, Jagolinzer and Riedl, 2011; Okere, 2009) on enhanced comparability (Bhattacharjee and Hossain, 2010) on cross border movement of capital and (Borker, 2013; Bruggemann, Hitz and Sellhorn, 2012; Mike, 2009) on improved transparency of results (Brochet, Jagolinzer and Riedl, 2011) on financial statement comparability and information asymmetry.

Inspite of the benefits listed above however; there are some obstacles and problems stemming from implementation, to changes in related systems, unexpected additional costs, lack of accounting professionals and unwelcoming public sentiments. Others as highlighted by scholars include:

- a) potential knowledge shortfall, as documented by (Alp and Ustundag, 2009)
- b) legal system effect due to differences between code law and common law countries (Armstrong et al., 2008; Li and Meeks, 2006)
- c) tax system effect (KASBFS, 2013; Ke, Young and Zhuang, 2013; Anyahara, 2012; Oduware, 2011; Shleifer and Vishny, 2003)
- d) education and training (Irvine and Lucas, 2006) and
- e) enforcement and compliance mechanism (Martins, 2011)

## **CONCLUSION**

The adoption of IFRS by Nigeria has several far-reaching implications. First, the credibility of companies' financial statement enhances the Nigerian money market, as banks are in the lead

as IFRS adopters (Oduware, 2012). This paper suggests IFRS adoption for SMEs deferment beyond 2014 or be left optional for small and medium size entities (SMEs). FRC should continue with Nig. GAAP for SMEs over a defined transitional period with a focus on minimizing transition costs, long enough to address problem areas like infrastructural decay, lack of trained work force etc. This provides the Council an ability to modify or supplement IFRS in the public interest and necessary for the protection of investors.

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# **RELIGION BASED INTERNATIONAL CONFLICTS: DENIAL OF HUMAN RIGHTS WITH REFERENCE TO IRAQ & AFGHANISTAN CRISES**

Dr.M.Nallakaman<sup>1</sup>

## **ABSTRACT**

The 21<sup>st</sup> century of the 3<sup>rd</sup> millennium has unleashed a plethora of spectacular developments for the enrichment of the modern civilization. However on par with the positivities, negativities also are impacting the world society which ultimately threatens the entire survival of humankind. Racial discrimination, Recurring apartheid regime, intra-religious conflicts and animosities, Hegemonic entanglements, Ideology crisis, Sectarianisms are all various factors which plays a very precarious role in the globalized era. As observed in the present situation, religious conflicts pose a great threat to the existence of humans. Marx opined that religion is the opium which can gradually denigrate the entire system. That said, due to religion related enmities humans face a lot of rights violations and that is the single most focus which this descriptive writing endeavors to attend by taking into account of the happenings in Iraq and Afghanistan.

## **INTRODUCTION**

Conflict between Nation-states is not a new phenomenon in the globalized era. Nation states fought with each other from the age of antiquity either in organized or unorganized manner, when National interests conflicts with each other. Starting from Peloponnesian war that was between Athens and Spartan civilizations until now, only the mode of fighting differs with conventional or unconventional weapons. The proliferation of weapons of Mass Destruction (WMD) made Nations deter from one another in indulging in major war as such fought during I and II world war subsequently with a gap of 21 years. The Second World War taught a lesson for all state actors, that war is not an ultimate weapon, which threatened the survival of entire humanity. The then Prime minister of India, Indira Gandhi opined that "the concept of peace has no substitute". By following Noble ideal of Immanuel Kant, Woodrow Wilson the former jubilant President of U.S.A gave fillip to the formation of an International Organization i.e., League of Nations, which failed to meet the demand of state actors, ultimately ended up with fiasco. Obviously it is observed, that the aftermath of II world war in 1945 has seen glorious and successful U.N.O., which prevents and protects the Nations from indulging in major war. For the past 67 years, the world is free of any Major War like World War I and II, which itself is an evidence for the successful handling of adverse conditions by U.N.O. However there are numerous conflict prevails which could not be controlled by U.N.O, either because of victim states or otherwise due to the influence and impact of super power's imperialistic concerns. There are number of cases of World conflicts in which U.N.O failed to act due to various reasons. Israel, Palestine, Afghanistan, Srilanka, Iraq, Syria, Tunisia, Egypt are all the Nations which were affected by internal and external causes of war activities in which the role of

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members of Security Council is not refuted. Particularly these victim Nations are still facing lot of problems on the basis of human rights, for which a certain level of focus is needed, the job especially should be by done scholars and exponents who specialized International relations as the research area,. This paper emulates attention by focusing upon the scenario which is prevalent in Iraq and Afghanistan where rights were denied by the state machinery itself.

### **AFGHAN CRISIS AND RIGHTS VIOLATIONS**

Afghanistan is a highly ravaged country in the world either by U.S.A or erstwhile U.S.S.R. "The War against terrorism" a policy detonated by Bush administration still have a tremendous impact in this country, by which there is an absolute failure of state machinery. Even we can go to the extent of calling Afghanistan as a "failed state "in many aspects. The search for Osam bin laden was over by killing him in the wee hours by American commando forces, but still "night raids" and "drones" are continuing to stop terrorist related activities. Afghanistan is now facing a multi-pronged attack from all sides both internal and as well as external. There is a non-stop clash between Shia and Sunni communities in this country, in which 100's and 1000's of civilians were targeted. On the other side, Taliban's are trying to capture the territory with sophisticated arms and ammunitions. The Government itself, sponsors local militia to control the situation and pacify the protesters in a very stringent manner. U.S.A backed International Security Assistance Forces (ISAF) promised to withdraw in 2014. But war between Security forces and Taliban's on the other side happens, which causes enduring violation among civilian groups. In 2011, the armed conflict of Taliban was escalated to the core, thus causing major human rights violations in Afghanistan. Women are the worst affected in the clashes between various sectors. The incident of American pastor burning "Koran", kindled ferocious and animosity among various groups. It is reported that there are around 1462 civilians dead in 2011. Due to "Night raid" by International forces there were 368 people dead in the first six months of 2011. NATO, trained 1, 30,000 strong police forces and 1, 71,600 soldiers by October 2011, in order to tackle internal strife and terrorist activities. This training itself comes to halt, because the trainees attacked their International mentors due to religious fundamentalism which were indoctrinated by religious leaders. There were unprecedented rape, torture and illegal collection of tax in the Northern region causing untold sufferings among civilian groups. Taliban's target mostly school going girl Children, who were misused for suicide bomb attacks. Those imprisoned in jails come across beating, electric shock, stressing position, removal of genitals, hanging detainees by their wrists etc. Around 700 women were arrested for immoral activities and imprisoned. The justice system is either weak or compromised and sided with the ruling Government. Moreover Taliban courts are huge enough in Northern area which still follows traditional Justice Mechanisms and punishment procedures. A unique practice "Baad" is followed by which a girl child is gifted as compensation for wrong doings by a family to another. It is estimated that 600 prisoners in 2001 is increased to 19000 in 2011. In Afghan jails the responsibility of prison was shifted from Ministry of justice to interior, in view of escape of 476 prisoners from Afghan jail. Moreover Taliban's are not in the position to respect International Human Rights Convention and procedures which cause untold havoc and miseries among civilians in Afghanistan.

### **CRISIS IN IRAQ AND RIGHTS VIOLATIONS**

United States of America is having a crucial role in the "war of attrition" in Iranian crisis. The Oil Diplomacy failed with Saddam Hussein regime caused a great war between U.S.A and Iraq ultimately ended up with hanging Saddam Hussein with the assistance of due course of International criminal procedures which termed Hussein as war criminal. The aftermath of

hanging was untold miseries in Iraq in which more number of human rights violations occurred. U.S.A assured of withdrawal of its forces in 2011, but the promises are kept in abeyance or dissolved.

The conditions of detainees, journalists and Opposition activists are very poor in prisons. In Feb 2011 there was a huge protest by 1000 people against Federal Iraqi authorities and Kurdistan Region Government (KRG) which was retaliated by violent means. In Feb 21, 2011 there was a nationwide protests and demonstration in which 12 were killed, particularly targeting journalists by confiscating their memory cards from cameras. In June 10, Government backed thugs armed with knives, iron pipes, beaten and stabbed, peaceful protesters which is termed as atrocious and humiliating by International Human Rights Watch group. In Feb 20, the Security forces burnt the National Radio And Television Broadcast (NRTB) causing huge amount of losses for the media, Journalists in Kurdistan are facing harassments and violence and they went hiding because of major in human activities of security forces. In April, the government passed a law by which a person or group in suits against any religion will be imposed with penalty of 1 year jail and 8600 us dollars of fine, which particularly targets the media persons. The elite security forces in Iraq possess unlimited powers of pacifying demonstrations, which got reported only to the Prime minister. These divisions are having areas called "Camp honor" in which the detainees are tortured with all types of mechanical implements and tools. On the part of Women, the discrimination is huge enough. Men got privileged status and can commit with four polygamous marriages, thus spoiling the status of women. There were also forced prostitution, domestic abuse and trafficking which is quite normal happenings in the Kurd region. It is reported that comparatively, there are increased percentage of civilians with either mental or physical disability in Iraq in the recent period.

## **CONCLUSION**

The upcoming civilization conflicts will be only on the basis of religion or ethnic, opined by Huntington. The Nation State System and International Order are organized with lot of tough efforts by world leaders for in order to save humanity from further clashes and conflicts. The existing issues all around the world pose a great threat to all the nations. Conflicts differ from Nation to Nation accordingly on the basis of the problem which it poses. For instance Afghanistan is witnessing a very serious crisis in which government plays along with local militia in unleashing violence against the peaceful protesters. U.S.A with strong backing of Anglo-French-United Nations is fighting with various terrorists organizations for bringing permanent peace in the war torn area. Knowingly or unknowingly Afghanistan is facing severe economic and social crisis which could not be tackled over by its leaders of Afghanistan. Most of the countries at the present junction reform themselves for providing job opportunities only for its people. Most of the Anglo-American countries are denying visa for Islam community, due to major incidents which happened worldwide. If state machinery fails to deliver its inherent duties, then it is up to the International order to decide over the future functioning of the victim Nation. But in view of the nature of the crisis in Iraq and Afghanistan the U.S.A backed NATO forces are facing stiff résistance from the local people and violations of rights in these nations are indefinite.

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# **THE RELATIONSHIP BETWEEN ORGANIZATIONAL CULTURE AND WORK MOTIVATION AMONG EMPLOYEES IN HOTEL INDUSTRY IN KUCHING, SARAWAK**

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## **ABSTRACT**

This study is conducted to investigate the relationship between organizational culture and work motivation among employees in the chosen hotel in Kuching, Sarawak. Independent variable in this study is the dimensions of organizational culture; leadership, communication, and reward system. Besides, the dependent variable is the level of work motivation towards organizational culture. This is a survey research which involves the use of questionnaire to collect the data. Sixty-three (63) employees were randomly chosen for this study. The questionnaire used is an adaptation questionnaires from the previous researcher. The data was analyzed using a Statistical Packages for Social Science Version 20.0 (SPSS version 20.0). The result of this study showed a significant relationship between organizational culture and its elements towards work motivation. This significant relationship was shown by leadership, communication as well as reward system.

**Keywords:** Organizational culture, Work motivation

## **INTRODUCTION**

Nowadays, the concept of organizational culture that applied in an organization has become a significant theme in area of management and business research. It is to deal with a range of organizationally and individually desired outcome such as motivation, loyalty, turnover intentions, and satisfaction. In such a way, organizational culture is used as an effective tool to measure the way a business functions in today's business environment. A positive culture would create a positive work environment and improve the performance of an organization in different ways. Thus, members would possess a positive colleague interactions and approach tasks in a way that helps them to achieve personal satisfaction and meet organizational goals. Takada and Westbrook (n.d.) found that culture plays a significant role in employee retention. This could lead organizations to move toward an organic culture with an emphasis on motivators in order to make their organizational culture more conducive to higher employee retention. Through this research, component that found in the organizational culture includes three main components, which is leadership, communication, and reward system. Based on these three components, this research is to determine whether the organizational culture that applied in the organization can influence employees' work motivation.

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## METHOD

### Materials and Method

The sample included 63 employees, currently working at three (3) local selected hotel in Kuching, Sarawak. Work motivation was measured using SHL Motivation Questionnaire (MQ). Higher score reflects better work motivation. Good reliability was found with 10 questions of SHL Motivation Questionnaire (MQ) having Cronbach's alpha of 0.88. The reliability of the instrument is considered high if the alpha value is nearer to 1. Fraenkel and Wallen (as cited in Ahmad Sandara Lela Putera, 2009) explained that the alpha value should be at least 0.70 if possible. It should be higher to be used in research purposes.

### Data Analysis

Data gathered for this study were processed and analyzed using Statistical Package for the Social Sciences (SPSS) for Windows Version 20.0. In this research, the descriptive analysis was used to organize and present data in convenience by researcher to analyze the participants' demographic background data. From the information collected, frequency and percentage were used to explain the distributions of respondents' demographic characteristics such as gender, age, length of service, educational level and income. At the second stage, the Pearson's Correlation Test was carried out to test the relationship among the two variables and to determine the significance of a result whether the samples can represent the actual population or not.

## RESULTS

Data were collected from 63 of employees (27 male and 36 female) from three selected hotels of Kuching, Sarawak. The range of age of all the respondents is between 21 to 45 years old. Majority of respondents were have been in service for 5 to 7 years (38.1%), followed by 1 to 4 years (36.5%), less than 1 year (14.3%) and more than 7 years (11.1%). Most of the respondents in this survey reported their highest level of education as Sijil Pelajaran Malaysia (SPM) (30.2%), followed by Diploma (23.8%), Bachelor's Degree (23.8%) and Sijil Tinggi Pelajaran Malaysia (STPM) (22.2%). Most of them are having a salary more than RM1500 per month (50.8%), followed by RM1201 – RM1500 per month (28.6%), RM901 – RM1200 per month (19.0%) and RM600 – RM900 per month (1.6%). Table 1 provides a summary of the demographic characteristics of the hotel employees.

**Table 1: Demographic Characteristics of Survey Respondents (n=63)**

Characteristics	Frequency (n)	Percent (%)
Gender		
Male	27	42.9
Female	36	57.1
Age		
21 – 25 years	17	27.0
26 – 30 years	25	39.7
31 – 45 years	21	33.3

Length of Service			
Less than 1 year	9	14.3	
1 to 4 years	23	36.5	
5 to 7 years	24	38.1	
More than 7 years	7	11.1	
Educational Level			
SPM	19	30.2	
STPM	14	22.2	
Diploma	15	23.8	
Degree	15	23.8	
Monthly salary			
RM600 – RM900	1	1.6	
RM901 – RM1200	12	19.0	
RM1201 – RM1500	18	28.6	
More than RM1500	32	50.8	

**Table 2: Bivariate Correlations between the Work Motivation, Leadership, Communication and Reward System (n=63)**

Variable	(1)	(2)	(3)
1. Work motivation	1		
2. Leadership	0.61**	1	
3. Communication	0.53**	0.69**	1
4. Reward system	0.46**	0.48**	0.41**

\*\*Correlation is significant at the 0.01 level (2-tailed)

Table 2 showed that there was a significant relationship between leadership and work motivation among the hotel employees in which the significant value was smaller than 0.01 ( $p < 0.01$ ),  $p = 0.0001$  at the significant level of 0.01. Therefore, alternative hypothesis was accepted. The value of  $r = 0.61$ , indicated that there is a moderate relationship between leadership and work motivation.

This is also determined that the leadership factor influenced the level of work motivation of the employees in hotel industry. Results of this study supported the research that have been conducted by Chaudhry, Javed, & Sabir (2012) on the effect of transformational and transactional leadership styles on the motivation of employees in Pakistan. Besides, the result also revealed that there was a significant relationship between communication and work motivation among the hotel employees with the significant value was smaller than 0.01 ( $p < 0.01$ ),  $p = 0.000$  at the significant level of 0.01. Thus, alternative hypothesis was accepted. The value of  $r = 0.531$ , showed that there was a moderate relationship between communication and work motivation. This indicated that the work motivation of the employees in hotel industry was determined by the factor of communication. These findings were supported by the research done by Rajhans (2012) on organizational communication and motivational practices followed in a large manufacturing company. He found that facilitating effective communication has helped

to improve employee motivation and performance in the organization. In addition, the result revealed that there was a significant relationship between reward system and work motivation among the hotel employees in which the significant value was smaller than 0.01 ( $p < 0.01$ ),  $p = 0.000$  at the significant level of 0.01. As a result, alternative hypothesis was accepted. The value of  $r = 0.455$ , showed that the strength of relationship between reward system and work motivation was moderate. Findings of this study showed that the reward system were related with the level of work motivation of the employees in the hotel industry. These findings were consistent with the study that have been done by Bishop (as cited in Hafiza, Shah, & Jamsheed, 2011) in which he indicated that the reward system can influence work motivation. He emphasized the impact of reward on employee motivation and have also suggested that pay is directly related with productivity.

## **DISCUSSION AND CONCLUSION**

This research was conducted to discover the relationship between organizational culture and work motivation among the employees in hotel industry. Our results indicated that the organizational culture variables which consist of leadership, communication, and reward system positively correlated with work motivation. This is due to the fact that hotel industry has provided great organizational culture to those working in the hotel. Our study identified organizational culture as a powerful effect on employees by steering them to act or to behave in a certain way when the path is otherwise unclear.

Organizational culture is shaped mostly by how the leaders act in order to make sure the leadership team embodies the type of organization an individual want to be. This is because every leader has the utopian vision of running an organization where everyone's happy, has fun, loves their coworkers, brings their dogs to the office and specialize at various departments such as marketing, design, engineering and sales. Of cause, always communicate the organization's values and culture explicitly and continuously, both internally and externally. Employees must understand an organization's culture, and why it is important. In addition, reward employees who advance the organization's culture, and be open and honest with those who do not.

Several limitations constrain the interpretation and application of the study's findings. Firstly, this study only focused to the respondents at local area of Sarawak state which is Kuching, such that the results may not apply directly to all states in Malaysia. The restriction of this study makes it difficult to verify results and interpretations with similar studies in other organizations in Malaysia. Secondly, the respondents of this study only consisted of employees in hotel industry. This might be influence employees' perception due to its practices and other factors. Thirdly, this study was limited to a certain dimensions of organizational culture and covers only one type of employee attitude which is employees' work motivation. It is important that other main constructs related to organizational culture dimensions such as innovation, effective decision making, risk taking for creativity, supportiveness, and stability should be included in the conceptual framework underlying this study. Also, a wider range of employees' work-related outcomes such as job characteristics, role ambiguity, role conflict, career satisfaction, and job satisfaction can be included in a more comprehensive study.

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# JUDICIAL INDEPENDENCE IN NIGERIA: BETWEEN GLOBAL TREND, DOMESTIC REALITIES AND ISLAMIC LAW

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## ABSTRACT

Judicial independence has its origin in the theory of separation of powers. As for the judiciary, the theory means both the judiciary as institution and all individual judges and other personnel must be able to carry out their professional responsibilities free from any influence or interference by the Executive or Legislature or any other person or institution outside or within the judiciary. Undoubtedly, it is only an independent judiciary that can competently provide the necessary checks on the excesses of other arms of government particularly on breaches of rights and freedoms of the citizenry. This paper establishes that independence of judiciary is an indispensable ingredient of good governance. It also analyses judicial independence in Nigeria in line with some global trends and discovered ironically that even though the Nigerian Constitution guarantees one's rights to have one's cause heard by an independent and impartial judge, it does not guarantee institutional independence of Nigerian judiciary at all. And this could have been the reason why the fortunes of Nigerian judiciary is day by day dwindling as it is compelled by lack of constitutional guarantees to always beg either the executive or the legislature for one 'favor' or another. The paper also analyses some of the causes of the persistent crisis in the Nigerian judiciary and also highlights on some lessons to be learnt from judicial independence under Islamic law.

**Keywords:** Judiciary, judges, interference, impartiality, fairness

## INTRODUCTION

Judicial independence or independence of judiciary has its origin in the theory of separation of powers. By this theory the Executive, the Legislature and the Judiciary are three separate, distinct and independent branches of government; each arm is independent of the other arm in all it gets and does. As for the judiciary, the theory means both the judiciary as an institution and all individual judges presiding over cases must be able to carry out their responsibilities free from any influence or interference by the Executive or Legislature or any other person or institution. This principle therefore emphasizes that the judiciary should be separated from legislative and executive power, and shielded from inappropriate pressure from these branches of government, and from private or partisan interests. Ideally, independence of judiciary connotes 'complete' judicial freedom in all its ramifications. Scholars and legal writers have for long attempted unsuccessfully to provide convincing answers as to what are the exact conditions required for judicial independence. Is it about absolute budgetary control?<sup>1</sup> Is it about its independence to choose or select its own members without interference from the executive? Or is it about the security of tenure of individual judges? Is it about the decision-making and freedom to render judgments without any influence either from the executive or the legislature or the public? I will briefly touch a number of these propositions in this paper.

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<sup>1</sup> Pilar Domingo, (2000) *Judicial Independence: the Politics of the Supreme Court in Mexico*, 32 J. LATIN AMERICAN STUDIES 705

## **GLOBAL TREND**

Interestingly and perhaps for its importance, all the international human rights conventions and declarations and other regional human rights instruments recognize the notion of independence of judiciary in their provisions by guaranteeing the right to fair hearing in civil and criminal proceedings before an independent and impartial court or tribunal. Legal scholars, international human rights organizations and human rights activists all have emphasized the potentially important role an independent judiciary can play in good governance and in securing constitutionally guaranteed rights. In fact “some assert that it is the indispensable link in the machinery for securing individual protection against states’ human rights abuses”.<sup>2</sup> Undoubtedly, it is only an independent judiciary that can safeguard good governance by providing the necessary checks on the excesses of other arms of government particularly on breaches of rights and freedoms of the citizenry.

Article 10 of the Universal Declaration of Human Rights, Article 14(1) of International Covenant on Civil and Political Rights, Article 26 of the African Charter on Human and Peoples Rights, Article 8(1) of the American Convention on Human Rights and Article 6(1) of the European Convention on Human Rights all guarantee the right of *everyone to be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law*. At the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August - 6 September 1985, the General Assembly adopted the Basic Principles on the Independence of the Judiciary<sup>3</sup>, which set forth standards for achieving independent judiciary for countries all over the world. Although the basic principles do not have a force of law, they have been recognized internationally as setting model for countries on judicial independence. And over the past two decades, there has been established trend globally for adopting these principles in constitutions of several countries. Many of the constitutions written after 1970s, constituting two thirds of world’s constitutions have adopted certain provisions of these principles under their bill of rights, directly or indirectly.<sup>4</sup> Generally speaking, these principles “represent a substantial degree of global consensus on what judicial independence is or should be”<sup>5</sup>.

## **THE TREND IN NIGERIA**

In Nigeria, section 17(1)(e) of the Nigerian Constitution 1999 [CFRN] provides that “the independence, impartiality and integrity of Courts of Law, and easy accessibility thereto shall be secured and maintained”. Section 36(1) also guarantees right of every person to fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality. Ironically, the word “independence” was mentioned only nine times in CFRN and the phrase “judicial independence” or “independence of judiciary” has never been mentioned at all. Nevertheless, under section 17(1)(e) of the non-justiciable Chapter II in furtherance of its social order the Nigerian state shall strive to ensure the maintenance of the “independence, impartiality and integrity of courts of law and easy accessibility thereto”. It can also be argued strongly that Section 36(1) only guarantees one’s rights to have one’s cause heard by an independent and impartial judge and does not guarantee institutional independence of Nigerian judiciary at all. And this could have been the

<sup>2</sup> Linda Camp Keith, *Judicial Independence and Human Rights Protection Around the World* Retrieved from <https://www.utd.edu/~lck016000/JudicatureJudicialIndependence.pdf>, accessed on 20<sup>th</sup> January, 2014

<sup>3</sup> See Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

<sup>4</sup> Albert P. Blaustein, Gisbert H. Flanz (2002) *Constitutions of the Countries of the World*(Oceana Publications) Vol. 52

<sup>5</sup> ibid, Linda Camp Keith

reason why the fortunes of Nigerian judiciary is day by day dwindling as it is compelled by lack of constitutional guarantees to always beg either the executive or the legislature for one financial favour or another. The Chief Justice of Nigeria, Hon. Justice Mariam Aloma Muktar had on Monday, September 23, 2013, while inaugurating the 2013/2014 Legal Year mentioned this worrisome concern when she said:

"Statistics have shown that funding from the Federal Government has witnessed a steady decline since 2010, from N95bn in that year to N85bn in 2011, then N75bn in 2012 and dropped again in the 2013 budget to N67bn. Indeed, with this, if the amount allocated to the extrajudicial organisations within the judiciary is deducted, the courts are left with a paltry sum to operate"<sup>6</sup>

However, in the last two or three appropriation years the National Assembly has been engulfing over N150bn and the executive has "equally been taking good care of itself with more jets being added to the presidential fleet and humongous amount in the neighborhood of a billion naira appropriated for meals and incidentals, yet the fortunes of Nigeria's judiciary dwindles."<sup>7</sup> Of course this is unbelievable. Even though the drafters of the 1999 Constitution introduced the National Judicial Council [NJC] in good faith to secure independence of Nigerian judiciary, practically speaking for a number of reasons, political and non-political, and even constitutional, as far as budgetary allocation and control is concerned the NJC is nothing to the executive and legislature but a toothless bull dog. It should be noted that, a financially handicapped judiciary couldn't safeguard good governance or protect the rights and freedoms of citizenry.

### **Appointment of Judicial Officers in Nigeria**

Under the Nigerian Constitution 1999, as far as the appointment of judicial officers is concerned the National Judicial Council is the dominant agency constitutionally responsible for making recommendations of qualified candidates to high bench at state and federal levels.<sup>8</sup> Its recommendations for appointment by the President is subject to the confirmation of the Senate in some cases like in the case of Chief Justice of Nigeria, Justices of the Supreme Court, President of the Court of Appeal and Chief Judge of the Federal High Court, Chief Judge of the High Court of the FCT, Grand Kadi of the Sharia Court of Appeal, Abuja and President of the Customary Court of Appeal Abuja.<sup>9</sup> Justices of the Court of Appeal, judges of the Federal High Court, judges of the High Court of FCT, Kadi of the Sharia Court of Appeal of FCT and judges of the Customary Court of Appeal of FCT are appointed by the President on simple recommendation of the NJC without approval of the Senate.<sup>10</sup> For the appointment of Chief Judge of the state, Grand Kadi of the Sharia Court of Appeal and the President of the Customary Court, the Governor shall make the appointment on the recommendation of the NJC subject to the confirmation of the State House of Assembly.

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<sup>6</sup> The Punch, October 19<sup>th</sup>, 2013. Retrieved from <http://www.punchng.com/opinion/the-many-travails-of-nigerian-judiciary/>

<sup>7</sup> Jide Ojo, *The Many travails of Nigerian Judiciary*, Punch, October, 9<sup>th</sup> 2013 available at <http://www.punchng.com/opinion/the-many-travails-of-nigerian-judiciary/> accessed on 12<sup>th</sup> January, 2013

<sup>8</sup> Section 1, Part 1 of the Third Schedule to the 1999 Constitution

<sup>9</sup> Sections 231(1);(2); 238(1); 250(1); 261(1) and 266(1) all of the 1999 Constitution of the Federal Republic of Nigeria

<sup>10</sup> Sections 238(2); 250(2); 256(2); 261(2) and 266(2) all of the 1999 Constitution of Federal Republic of Nigeria

It is to be noted that in Nigeria like in many countries the executive – governor of a state or the President, is surprisingly making majority of the judicial officers' appointments at both state and federal levels. It can be argued that appointment by the executive does not in itself raise any doubt about the independence of judiciary of a country or of a particular judge concerned. In New Zealand for instance, Justices of the Supreme Court, Court of Appeal and judges of High Court, are appointed by the Governor-General on the recommendation of the Attorney General advised by the Chief Justice and the Solicitor-General. For appointments to district courts, the Attorney General who receives advice from the Chief District Court Judge and the Secretary for Justice advises the Governor-General.<sup>11</sup>

In the United States, the President of the United States, with the approval of the U.S Senate, appoints all Article III Judges i.e Justices of the Supreme Court and Court of Appeals and district judges. And traditionally, Presidents "most often appoint judges who are members, or at least generally supportive, of their political party"<sup>12</sup> – however, that doesn't mean that judges are given appointments solely for partisan reasons. In United States each state has its own state judiciary, including the Supreme Court. There are varied strange patterns of appointment that evolved over time. Generally, for appointment to the high court, there is a pattern in about eight states i.e Alabama, Illinois, Louisiana, New Mexico, New York, Pennsylvania, Texas, West Virginia by which judges run on a party ticket as republicans or democrats and get appointed on that platform. Thereafter, they run for uncontested non-partisan elections to retain their offices. And in Arkansas, Georgia, Idaho, Kentucky, Michigan, Minnesota, Mississippi, Montana, Nevada, North Carolina, North Dakota, Ohio, Oregon, Washington, Wisconsin judges are initially appointed on merit and years after they run for an election to retain their offices on the basis of their judicial record.<sup>13</sup> In 1986 three Justices of the Supreme Court of California were recalled because of their vocal opposition to death penalty.

Cumulatively therefore, it is not strange that in Nigeria, just like in Russia, US and Brazil that appointments of the superior courts judges and justices are being made by the executive. There is no doubt that the NJC is established by the Constitution to ensure independence of the judicial officers even from their appointment and to minimize executive interference, influence and manipulation. Nevertheless, its composition has been subject to a number of scornful criticisms. It has been argued that the composition of NJC has grossly violated the principle of federalism,<sup>14</sup> is full of federal dominance and states have not been given any role to play in the appointment. The trend for selection globally leans towards a very widely publicized transparent mechanism, which involves wide consultations and in some places, advertisement of judicial vacancies, publicity of candidates' names, backgrounds, qualifications etc. It is also best practice globally that the public are invited to comment on the shortlisted candidates. The judicial councils should also compose not only judicial officers but other actors like lawyers, law professors, judges of inferior courts so as to enhance the quality of the selection and minimize possible influence from the executive or partisan selection from other judicial officers in the council or even influence by the chief justice or other senior judges. In some countries like Chile,

<sup>11</sup> See New Zealand Judicial Appointment Protocol 2013 Retrieved from [http://www.crownlaw.govt.nz/artman/docs/cat\\_index\\_6.asp](http://www.crownlaw.govt.nz/artman/docs/cat_index_6.asp) accessed on 23rd January, 2014

<sup>12</sup> See *How the Federal Courts are Organized: Federal Judges and How they Get Appointed*, Retrieved from <http://www.fjc.gov/federal/courts.nsf/autoframe?OpenForm&nav=menu3c&page=/federal/courts.nsf/page/A783011AF949B6BF85256B35004AD214?opendocument> accessed on 13<sup>th</sup> September, 2013

<sup>13</sup> See ABA Fact Sheet on Judicial Selection Methods in The States, Retrieved from [http://www.americanbar.org/content/dam/aba/migrated/leadership/fact\\_sheet.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/leadership/fact_sheet.authcheckdam.pdf), accessed on 12<sup>th</sup> January, 2013

<sup>14</sup> J. O. Akande, (2001) *Introduction to The 1999 Nigerian Constitution* Lagos: NIJ Professional Publishers, at 496 – 49

even before nominating candidates to judicial council, transparent examination is being conducted. When a candidate passes the exam his name is then submitted to the council for further verification and public tests.<sup>15</sup> Diversity is also something to be considered during judicial selection. A judiciary that reflects the diversity of its country "is more likely to garner public confidence"<sup>16</sup> Nevertheless, under section 288(1) of the 1999 Constitution of Federal Republic of Nigeria the President is enjoined while appointing justices of the Supreme Court and the Court of Appeal to have regard to the need to ensure there are among them persons learned in Islamic personal law and persons learned in Customary law.

Generally speaking, there is no guidance globally as to one pattern of appointing judicial officers. The most important is that regardless of the pattern of selection used, the qualifications and personal integrity of the persons to be appointed should always constitute the criteria for the selection. This is exactly what Principal 10 of the Basic Principles.

Finally, it is to be noted however, that in countries where politicians are making judicial appointments, the trend leans more towards accountability in the judicial affairs rather than total independence of the judiciary.

### **Security of Tenure**

This is the notion that once appointed, a judge cannot be removed during his term of office except for good cause i.e unethical or unprofessional conduct or unfitness upon following formal proceedings or hearing. A judge who can be removed at any time is naturally vulnerable to both external and internal pressures to do what is wrong. In some countries, like in France and Germany, not only that a judge cannot be removed without decision of a court, no judge can even be transferred or promoted without his consent. Security of tenure of judicial officers in Nigeria is a matter of constitution and is covered under sections 291 and 292 of CFRN. Accordingly, all heads of superior courts for federation and state in cannot be removed from office before their age of retirement except by the President or governor acting on an address supported by two-thirds majority of the Senate or House of Assembly for the state.

However, section 291 and 292 do not in any way provide the necessary security of tenure to Nigerian judicial officers based on the best practices globally. In light of realities of the global trends on security of tenure of judicial officers, the shallowness of section 292 of the 1999 Constitution is surprising. It literally left the mechanism for removing judicial officers on the hands of politicians. All that the section requires the President or the Governor to do is to garner 2/3 political support in the Senate or House of Assembly for an ordinary letter stating that the judicial officer be removed for misconduct or contravention of Code of Conduct, inability to discharge his functions as a result of infirmity of mind etc.

The most surprising constitutional defect of the section 292 is that it does not at all provide any opportunity to the judicial officer to be removed to defend himself in person or by a legal practitioner of his own choice before the Senate or House of Assembly. It does not contemplate a hearing at all, either before the President or the Governor as the case may be makes his political address before the Senate or the House of Assembly. This is a clear dreadful breach of section 36 of CFRN guaranteeing right to fair hearing. Constitution against itself! It is

<sup>15</sup> See *Guidance for Promoting Judicial Independence and Impartiality* (Office of Democracy and Governance, USAID, 2002) pp. 16 - 18 Retrieved from <http://www.usaid.gov/democracy/> accessed on 14<sup>th</sup> December, 2006

<sup>16</sup> ibid, pg. 19

devastating to find this arrangement in the constitution of the Federal Republic of Nigeria, especially as it relates to the offices of highly placed judicial officers like the Chief Justice of Nigeria, Chief Judges of States etc.

Surprisingly however, the constitutional arrangement for the removal of judicial officers in Nigeria under sections 276 and 277 of the 1989 Constitution of Federal Republic of Nigeria was much more in line with global best practices. One step forward, ten steps backward!

It is to be submitted that in jurisdictions where there is stringent and transparent impeachment procedure after a trial, judges are more confident and independent because they cannot deliver a decision today and wake up tomorrow just to find out on the dailies they are removed in the night. In the US for example, in the last 222 years, only “fifteen federal judges have been impeached. Of those fifteen: eight were convicted by the Senate, four were acquitted by the Senate, and three resigned before an outcome at trial.”<sup>17</sup> In the last 222 years the US has only 17 Chief Justice, while Nigeria had 12 in the last 53 years. In the last 222 years the US had only 112 Justices of the Supreme Court and Nigeria has had 95 in 57 years.<sup>18</sup>

### **Financial Independence:**

Funding judiciary in Nigeria is matter provided for by the 1999 Constitution. The Constitution has recognized directly and indirectly financial autonomy of the judicial arm in very clear terms. In fact funding the Nigerian judiciary is granted the status of “first line charge” by the Constitution.

In 2004 the total budgetary allocation to NJC was N30, 000,000,000 (2.3% of the Nigeria’s budget) while in 2012 the allocation was N85, 000,000,000 (1.7% of the country’s budget). And in 2013 the sum of 67,000,000,000 was allocated to NJC – just 1.3% of the country’s budget, which was N4,924,604,000,000. One can see how the institutional independence of Nigerian judiciary is corroding and crumbling year after year by the disproportionate treatment judiciary gets through ‘conspiracy’ between the executive and legislature. The negative implication of this doesn’t stop at the judiciary as an institution; it is more detrimental and injurious to a common man than to the judiciary itself. This is because “all the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.”<sup>19</sup> A poor-funded judiciary breeds poor members, intellectually and rationally who do not care about efficiency, honesty or integrity. The poor state of Nigerian judiciary and its catalogue of disclosed and undisclosed unprofessional allegations, corruption, bribery and judgment procurement is not unconnected with its poor funding; so also the poor performance of some of the judges at state and federal level. Charles Evans Hughes told us that:

“A poor Judge [in terms of integrity] is perhaps the most wasteful indulgence of the community. You can refuse to patronize a merchant who does not carry good stock, but you have no recourse if you are haled before a Judge whose mental or

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<sup>17</sup> Judgepedia at [http://judgepedia.org/Impeachment\\_of\\_federal\\_judges](http://judgepedia.org/Impeachment_of_federal_judges) accessed on 29th January, 2014

<sup>18</sup> A case for Elongation of Tenure of Nigerian Judges, Retrieved from <http://www.channelkoos.com/index.php/features/301-a-case-for-elongation-of-tenure-of-nigerian-judges>, accessed on 19th January, 2014

<sup>19</sup> Andres Jackson, Brainy Quotes, available at <http://www.brainyquote.com/quotes/quotes/a/andrewjack401401.html> accessed on 23rd January, 2014

moral goods are inferior. An honest..., able and fearless Judge is the most valuable servant of democracy, for he illuminates justice as he interprets and applies the law"<sup>20</sup>

The situation is even worse in the state judiciary as pointed out by the former Chief Justice of Nigeria, Hon. Justice Dahiru Musdapher when he said:

"It is regrettable that some state chief executives treat the judiciary as an appendage of the executive arm. While it is true that, in some cases, this is self-inflicted (because of the way some Judges portray themselves), it does not invariably follow that a distinct arm of government should, because of the actions of a few, be treated with disdain. Sadly, the judiciary in several states still goes cap in hand to the executive begging for funds...The plight of the state judiciaries is compounded by the fact that, in spite of the best efforts of the NJC, the processes of appointment and removal of Judges/security of tenure is the subject of political theatrics."<sup>21</sup>

## JUDICIAL INDEPENDENCE UNDER ISLAMIC LAW

Appointment of judges in Sharia is being done objectively and independently by the head of government based on merit or by election by group of prominent scholars. This is to ensure that upon appointment judges are independent of the government that appoints them. One very unique feature of judiciary in Islam is its independence. In Islam, judicial rulings, decisions and interpretations are based on Quran and Sunnah of the Holy prophet (SAW). This guarantees that the rulings and decisions would be quite accurate, precise and perfect free from personal whims of the individual judges. And this also means that decisions and interpretations as opposed to other legal systems are going to be uniform and the same all over Islamic state and would continue for generations. And for this reason therefore judges under Sharia are further enjoined to pass down their decisions without any discrimination between the rulers and the ruled, rich or poor, old or young. Deciding cases based on social status, political affiliation or influence is not only unethical and wrong in Sharia but is a crime and deviation from Allah. The Holy Prophet (SAW) was reported to have said:

"Judges are of three types, two of whom will be in Hell and one in Paradise: a man who judges unjustly and knowingly will be in Hell; a judge who has no knowledge and destroys people's rights will be in Hell; and a judge who judges in accordance with the truth will be in Paradise".<sup>22</sup>

It should be noted however, that even though judicial decisions in Sharia must be based on Quran and Sunnah, the judge himself is encouraged to exercise ijtihad (independent reasoning)

<sup>20</sup> Charles Evans Hughes, quoted in Itse Sagay: (1988)*Recent Trends in the Status and Practice of the Rule of Law* Ibadan: ASUU Press, pg. 36

<sup>21</sup> Hon. Justice Dahiru Musdapher, *The Nigerian Judiciary: Towards reform of the Bastion of Constitutional Democracy* (Institute of Advanced Legal Studies, 2011) Retrieved from <http://nials-nigeria.org/pub/THE%20NIGERIAN%20JUDICIARY%20Towards%20Reform%20Of%20The%20Baston%20Of%20Constitutional%20Democracy.pdf> accessed on 11<sup>th</sup> January, 2014

<sup>22</sup> Narrated by Al-Tirmizi, book of Judgments p.1322, Abu Dawud (3573), and Ibn Majah (2315). Al-Albani said the hadith is correct; review: Sahih Al-Jami (4447

on issues without clear reference from Quaran, Sunnah, analogy or consensus of Islamic jurists. The Holy Prophet was reported have said:

"When a judge gives a decision, having tried his best to decide correctly and is right, there are two rewards for him; and if he gives a judgment after having tried his best (to reach a correct decision) but erred, there is one reward for him"<sup>23</sup>

Judges under Sharia must also be paid adequate salary in order to prevent them from taking gifts or bribe. The Prophet (peace be upon him) said:

"Whosoever from you is appointed by us to a position of authority and we gave him fees, what he takes more than that would be misappropriation (of public funds)"<sup>24</sup>

A judge in Sharia as opposed to other legal system is not only a judicial officer but also religious officer and his authority included performing other functions and duties not purely judicial because of his knowledge of Islamic law. These include performing prayers at mosque, supervising religious places, taking custody of missing funds, missing persons, supervising pilgrimage, delivering Friday sermons etc.<sup>25</sup> Shams-al-Din Ibn Tulun told us Taj-al-Din Al-Subki one of prominent judges of Damascus, was a judge, taught in school, delivered Friday sermons at Tulun mosque, gave fatwas at Da-al-Adl (the house of justice) etc.<sup>26</sup>

Under the Islamic law judges are expected to be just and to administer the law as ordained by Allah without giving any regard to the parties' social status or political position. Al Sayuti in his Tarikh Al-Khulafa (the history of caliphs) also mentioned another story demonstrating full independence of judiciary under Islamic Law. He said that there was a land dispute between a merchant and a commander of the Caliph Jaafar al Mansur. Caliph Jaafar Al-Mansur wrote a letter to the judge of Basra Swar ibn Abdullah requesting him to henceforth confiscate the piece of land and deliver the title to his commander. Swar wrote back to Caliph that the said land belonged to the merchant not the commander and he could not confiscate anything which by evidence was established to belong to someone. When the Caliph insisted upon his request and without success he said: "By Allah, I spread justice, and my judges guided me to the right".

Under Islamic law judges can summon caliphs and governors for testimonies or to defend cases filed against them. In one incident porters of Madina filed an action against Caliph Jaafar al Mansur who wanted to eject them to Levant. The case came before Muhammad ibn Imran Al-Talhi judge of Madina. The caliph was summoned. The judge warned his secretary not to call the Caliph with his title but with his ordinary name a party to the suit. When the Caliph arrived the court ibn Imran did not stand up to welcome him. At the end of the suit, judgement was given in favour of the porters i.e against the Caliph. It is at the end of the proceedings that ibn Imran greeted the Caliph. Al-Mansur was happy with the conduct of the judge and granted him Ten Thousand Dinars.<sup>27</sup>

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<sup>23</sup> Narrated by Al-Bukhari : *Book of Judgments* (6919), and Muslim: *Book of Judicial Decisions* (15)

<sup>24</sup> Narrated by Abu Dawud on the authority of Buraydah ibn Al-Hasib: *Book Tribute, Spoils, and Leadership* (2943)

<sup>25</sup> Ibn Kathir: *Al-Bidayah wa Al-Nihayah* 13/380

<sup>26</sup> Shams-al-Din ibn Tulun: *Qudat Dimashq* (the Judges of Damascus), p104.

<sup>27</sup> Alsuyuti, *ibid*, 229

## **CONCLUSION**

Mere googling the phrase “crisis in Nigerian judiciary” will send a message that all is not well there. The result is extraordinarily revealing of the so many crisis bedeviling our courts, our judges and other officers of courts ranging from demanding or accepting bribes, judgement procurement to some light unethical practices of being partisan.

One of the shocking reports is from the Nigerian Tribune (online) of 26<sup>th</sup> August, 2011. The report is titled “*FG uncovers corruption in judiciary – N106 bn traced to judgement procurement-judges own luxury houses in UK, UAE, S/Africa*”.<sup>28</sup> The paper claimed to base its findings on a ‘secret report’ submitted to the federal government “which indicted a number of judicial officers of monumental corruption”. The paper alleges that according to investigations some properties were bought globally especially in Dubai, UAE, South Africa and London and the real owners were believed to be Nigerian judicial officers whose total emoluments cannot in anyway justify the purchases. The report further stated, a source privy to the paper informed them that some of the judicial officers were “found to send their children to some of the most expensive schools in the world, without taking loans.”<sup>29</sup>

During a 2 day workshop on the rule of law organized by the NBA the CJN, Hon. Justice Mariam Aloma Mukhtar had in May 2013 said that “21 judges are being investigated for alleged breaches of principles of the Code of Conduct for Judicial Officers, in the on-going efforts of the National Judicial Council (NJC) at overhauling and reforming the judiciary”.<sup>30</sup>

Another disturbing story appeared on the Vanguard of 4<sup>th</sup> January 2014 captioned “EFCC Moves to Prosecute Seven Corrupt Judges”.<sup>31</sup> The most disturbing is that “suspected judges are from the State and Federal High courts as well as the Court of Appeal”.<sup>32</sup>

Of course one may find it difficult to ascertain the authenticity of some of these reports. Nevertheless, objectively speaking, even if these reports contain some doubtful facts and speculations, the allegations ought to be investigated in a very transparent way so that the public will know what really is happening. This is because in a transparent society, media reports like this one are like canary songs. Coal miners used to carry caged canaries into the mines with them. When the canaries stopped singing, they knew they were in trouble and they had better get out fast. The media in government and other large organizations are, in a way, our canaries. When they are free to ‘sing,’ those institutions are healthy. When they are silenced, we are in trouble.

The big question then remains thus: how can Nigerians have a crises-free judiciary? Nigerians can have crises-free judiciary when the government ensures the implementation of constitutional arrangements guaranteeing independence of judiciary. Nigerian judiciary can be crises-free when the government ensure full implementation of all the principles in the international instruments guaranteeing ‘inalienable right’ of judiciary to be independent - like the

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<sup>28</sup> Rivers State, Television Channel 22, available on <http://www.rstv22.tv/component/content/article/1-latest-news/278-fg-uncovers-corruption-in-judiciary.html> culled from Nigerian Tribune Newspaper pf 26<sup>th</sup> November, 2011 accessed on 21 May, 2012

<sup>29</sup> ibid;

<sup>30</sup> The Nigerian Voice, of 15<sup>th</sup> May, 2013, available at <http://www.thenigerianvoice.com/nvnews/113670/1/njc-probing-21-judges-for-corruption-cjn.html> accessed on 17th June, 2013

<sup>31</sup> Available on <http://www.vanguardngr.com/2014/01/efcc-moves-prosecute-seven-corrupt-judges/> accessed on 10<sup>th</sup> January, 2014

<sup>32</sup> ibid;

Basic Principles on the Independence of the judiciary 1985, like the Basic Principles on the Role of Lawyers, 1990. Nnaemeka-Agu:

"What cannot be doubted is that a judge must be completely independent, free and freed from all forms of external influence and control, before he can perform his functions well. This is true of judges all over the world. But, it is perhaps true in Nigeria where naira is the lord and some people think that even justice is a commodity which can be bought and sold."<sup>33</sup>

Unless judges play their respective key roles to the full in maintaining justice in Nigerian society impartially, there is a risk that a culture of impunity will prevail and justice can be for sale. Independence of judiciary connotes so many things. The judiciary must attain independence in all its ramifications. It must independently handle all matters pertaining to it. It must have independence as to administrative and financial matters. It must be independent as to its decision-making, appointments and promotions, training and education etc

The Chief Justice of Nigeria while marking commencement of the 2012/2013 legal year and the inauguration of 25 new Senior Advocates of Nigeria at the Supreme Court in Abuja said:

"It is the judiciary which has to ensure that the law is observed and that there is compliance with the requirements of law on the part of the government. Our courts should be independent and subject only to the Constitution and the law, which they apply impartially, without fear, favour and prejudice. Without judicial independence, there can be no preservation of democratic values."<sup>34</sup>

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<sup>33</sup> P. Nnaemeka-Agu, (1993) *Enhancing the Efficacy and Independence of the Judiciary in the Third Republic* 4(3) JUS 9 at 16.

<sup>34</sup> The Nation, of 18<sup>th</sup> September, 2012 available at <http://www.thenationonlineng.net/2011/index.php/law/61811-how-to-ensure-judicial-independence-by-lawyers.html> accessed on 13th October, 2012

# **MODEL TATA KELOLA KLASTER DALAM RANGKA PENGEMBANGAN INDUSTRI RUMPUT LAUT**

## **(Kajian Budidaya, Agribisnis dan Pengembangan Produk Karagenan Berbasis Rumput Laut di Kabupaten Sumenep, Provinsi Jawa Timur)**

Noor Harini<sup>1</sup>  
David Hermawan<sup>2</sup>

### **ABSTRACT**

Kabupaten Sumenep merupakan daerah penghasil rumput laut terbesar di Jawa Timur, produksi rumput laut yang dihasilkan adalah 549.717,56 ton basah dari beberapa klaster. Pengklasteran rumput laut di Kabupaten Sumenep terbagi atas 3 zona Kecamatan yaitu : Zona I di Kecamatan Bluto, Saronggi, Talango, Giligenting dan Masalembu; Zona II di Kecamatan Gapura, Dungkek, Batuputih, Dasuk, Ambunten, Pasongsongan dan Ra'as; dan Zona III di Kecamatan Kangayan, Arjasa dan Sapeken. Masing-masing zona didasarkan atas perkembangan usaha perikanan dengan 4 sub sistem yaitu : sarana produksi, proses produksi, penanganan dan pengolahan hasil serta permodalan. Pengembangan klaster agribisnis rumput laut dilakukan guna mengembangkan tata kelola rumput laut yang dilakukan oleh petani yang meliputi jumlah petani, jumlah rakti, luas, produksi (basah dan kering), nilai produksi (basah dan kering). Tahapan pengembangan klaster industri rumput laut meliputi tahap diagnostik, kolaborasi, implementasi, sosialisasi dan mobilisasi, monitoring dan evaluasi. Produksi dari klaster selanjutnya dikembangkan dengan mengekstraksi menjadi karagenan.

**Kata Kunci:** Klaster, Rumput Laut, Karagenan

### **PENDAHULUAN**

Pengembangan budidaya rumput laut di Indonesia pada saat ini menjadi salah satu prioritas revitalisasi pembangunan setor perikanan dan kelautan di Kementerian Kelautan dan Perikanan (KKP) Republik Indonesia. Program pengembangan tersebut di tingkat petani disusun oleh pemerintah dalam bentuk klaster. Pada saat ini telah disiapkan sejumlah 60 klaster di seluruh Indonesia. Maksud dari pengklasteran tersebut adalah dalam upaya peningkatan kualitas dan kuantitas dari rumput laut melalui perbaikan tata kelola sistem budidaya , pengolahan hingga ke pemasaran. Dari hasil klaster tersebut pemerintah Indonesia menargetkan bahwa pada tahun 2014 harus mencapai 10 juta ton. Salah satu pengembangan tata kelola rumput laut melalui klaster tersebut diantaranya adalah dikembangkan di Kabupaten Sumenep Provinsi Jawa Timur, terutama untuk jenis *Euchema cottonii* dan *Gracilaria* spp. Untuk mendorong tata kelola rumput laut dan kinerja dari petani, maka pada saat ini Kementerian Kelautan dan Perikanan Indonesia telah melakukan pembatasan untuk ekspor rumput laut dalam bentuk kering (*dried seaweed*). Kebijakan ini dikeluarkan guna mendorong pertumbuhan industri pengolahan pangan berbahan baku rumput laut, sebagai bahan baku untuk makanan, farmasi, kecantikan, dan tekstil. Salah satu produk dari rumput laut tersebut diantaranya adalah karagenan yang

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berfungsi sebagai stabilator (pengatur keseimbangan), *thickener* (bahan pengental), pembentuk gel, pengemulsi, dan lain-lain. Berdasarkan fenomena tersebut, maka dalam tata kelola rumput laut yang dikembangkan di Kabupaten Sumenep, Provinsi Jawa Timur selain di arahkan kepada sistem budidaya dan pemasaran (Agribisnis) juga diprioritaskan pengembangan rumput laut untuk produk pangan khususnya karagenan.

## BAHAN DAN METODE

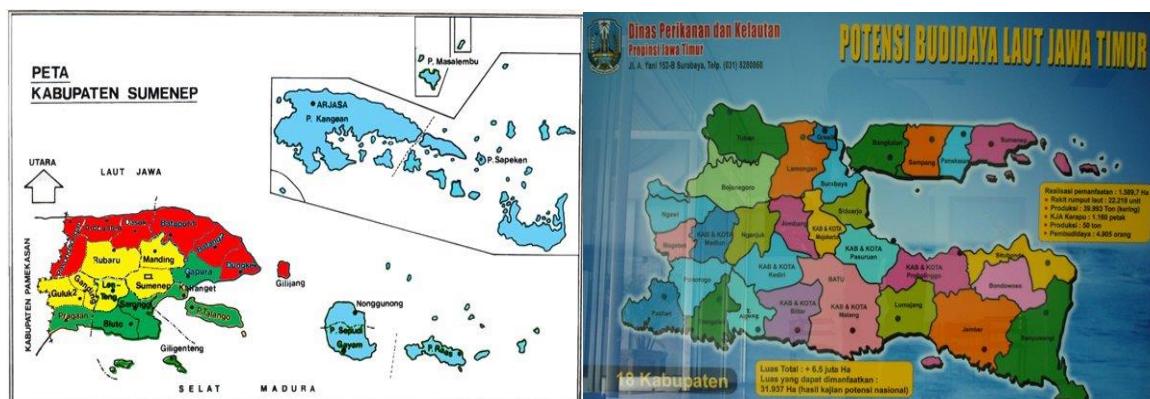
Kajian tata kelola budidaya dan agribisnis rumput laut dilaksanakan di Dinas Kelautan dan Perikanan di Kabupaten Sumenep Provinsi Jawa Timur, sedangkan kajian pengelolaan pengembangan pangan usahanya dilaksanakan pada UMKM (Usaha Mikro-Kecil-Menengah) di Kecamatan Bluto Kabupaten Sumenep Provinsi Jawa Timur dan wilayah Malang Raya, serta kajian laboratorium dilaksanakan di Laboratorium Ilmu dan Teknologi Pangan, Universitas Muhammadiyah Malang. Penelitian dilaksanakan pada April sampai dengan Oktober 2014.

Metode penelitian disusun dalam 3 (tiga) tahap kegiatan yaitu : 1) analisis pengembangan klaster industri rumput laut di Kabupaten Sumenep Provinsi Jawa Timur; 2) analisis agribisnis; dan 3) pengembangan produk karagenan dari rumput laut. Analisis data yang digunakan dalam penelitian ini disusun secara kualitatif meliputi tahap pengolahan, interpretasi dan analisis data secara deskriptif. Demikian juga pengembangan produk pangan yang mempunyai prospek yang cukup berkembang di pasar dunia seperti karagenan.

## HASIL DAN PEMBAHASAN

### Pengembangan Klaster Industri Rumput Laut di Kabupaten Sumenep Provinsi Jawa Timur

Kabupaten Sumenep merupakan penghasil utama rumput laut terbesar di Jawa Timur, pada tahun 2012 luas lahan rumput laut 243.254 ha dengan sebaran seperti pada Gambar 1.



Gambar 1. Peta Wilayah Kabupaten Sumenep dan Peta Budidaya Rumput Laut

Pada saat ini kelompok petani rumput laut yang dibentuk dan berjalan dengan baik hanya ada 45 kelompok dari 965 yang terbentuk. Namun demikian, dalam sistem pengelolaannya atau tata kelola, masih belum terintegrasi. Petani hanya berperan sebagai pembudidaya semata belum ada lembaga keuangan yang berperan sebagai pemodal, sehingga keberlangsungannya sangat tergantung kepada tengkulak, sehingga sering kali daya tawar petani menjadi rendah, yang

berdampak pada harga jual. Berdasarkan permasalah tersebut, maka dalam kajian ini dilakukan permodelan dengan sistem intergrasi dari hulu sampai hilir, yaitu dengan sistem perbankan dan perusahaan sebagai inti, seperti dengan PT MADURA PRIMA INTERNA sebagai pengolah *Basic product* menjadi *intermediate product*.

Petani di Kabupaten Sumenep sebagian besar menanam rumput laut jenis *Euchema cottonii* yang tersebar di 10 Kecamatan dengan luas potensi lahan 243.254 Ha dan luas pengelolaan sebesar 143.004 Ha. Sistem penamanan menggunakan sistem rakit (69.808 unit) dan sistem *longline* (9.158 unit) dengan jumlah Pembudidaya sebanyak 7.090 orang. Tahapan pengembangan klaster industri rumput laut di Kabupaten Sumenep adalah : Tahap 1 : Diagnostik : a) Identifikasi dan pemetaan potensi, b) Analisis SWOT (*Strength, Weakness, Opportunity* dan *Treated*), c) Penyusunan *Roadmap*; Tahap 2 : Sosialisasi dan Mobilisasi:a) Sosialisasi program, b) Menarik partisipasi aktif para *Stakeholders*, c)Merumuskan kerangka kolaborasi calon anggota klaster; Tahap 3 : Kolaborasi : a) Pemantapan kompetensi inti anggota klaster, b) Penyusunan rencana aksi jangka menengah dan panjang, c)Menyusun Pokja (Kelompok Kerja) implementasi dan strategi kolaborasi; Tahap 4 : Implementasi: a) Mengembangkan infrastuktur, b)Peningkatan SDM (sumberdaya manusia), c) Dukungan akses financial, dan d) Start up bisnis baru dan dukungan pengembangan bisnis; Tahap 5 : Monitoring dan Evaluasi: a) Monitoring dan evaluasi pelaksanaan klaster dengan parameter yang jelas.

Untuk mempermudah pengklasteran rumput laut, maka beberapa disusun dalam 3 zona dari Kecamatan yang memproduksi rumput laut sebagai berikut :

- |          |   |
|----------|---|
| Zona I   | : Bluto, Saronggi, Talango, Giligenting dan Masalembu                 |
| Zona II  | : Gapura, Dungkek, Batuputih, Dasuk, Ambunten, Pasongsongan dan Ra'as |
| Zona III | : Kangayan, Arjasa dan Sapeken.                                       |

Dari setiap zona tersebut, maka diamati perkembangan infrastruktur yang meliputi jalan dan tempat pendaratan perahunya. Selanjutnya diamati perkembangan usaha perikanannya melalui 4 sub sistem yaitu : 1) sarana produksi seperti kebun bibit, budidaya rumput laut (sistem rakit atau longline); 2) proses produksi (masa pemeliharaan bibit, masa budidaya dan pembersihan); 3) penanganan dan pengolahan hasil; 4) penunjang seperti permodalan. Selain itu pada program pembiayaan yang dibutuhkan juga dirinci atas 6 bagian yaitu : 1) Program bidang perikanan; 2) Program Infrastruktur Sarana dan Prasarana; 3) Program bidang Permodalan; 4) Program pengembangan SDM (sumberdaya manusia); 5) Program bidang kelembagaan; 6) Program bidang transportasi. Contoh model berikut sesuai klaster atau zona rumput laut sebagai pada Tabel 1.

Tabel 1. Kawasan Berikat Minneapolis Rumput Laut di Kabupaten Sumenep

Kondisi/Aktivitas	Zona/ Kecamatan		
	I	II	III
Luas (Ha)	307.452,46	80.879,63	112.443,01
Pembibitan dan budidaya	Bluto Saronggi Giligenting Talango Masalembu	Pasongsongan Ambunten Dasuk Batuputih Dungkek Ra'as	Arjasa Kangayan Sapeken
Pengolahan	Batuan	Batuan	Batuan

Pemasaran	Batuan	Batuan	Batuan
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Sumber : Dinas Kelautan dan Perikanan Kabupaten Sumenep (2012)

# Pengembangan Agribisnis Rumput Laut

Budidaya rumput laut meliputi jumlah petani, jumlah rakit, luas, produksi (basah dan kering), nilai produksi (basah dan kering) di beberapa Kecamatan yang ada di Kabupaten Sumenep terlihat pada Tabel 2.

Tabel 2. Jumlah Petani, Rakit, Luas, Produksi (Basah dan Kering) dan Nilai Produksi Budidaya Rumput Laut di Kabupaten Sumenep tahun 2010

Sumber : Dinas Kelautan dan Perikanan Kabupaten Sumenep (2010)

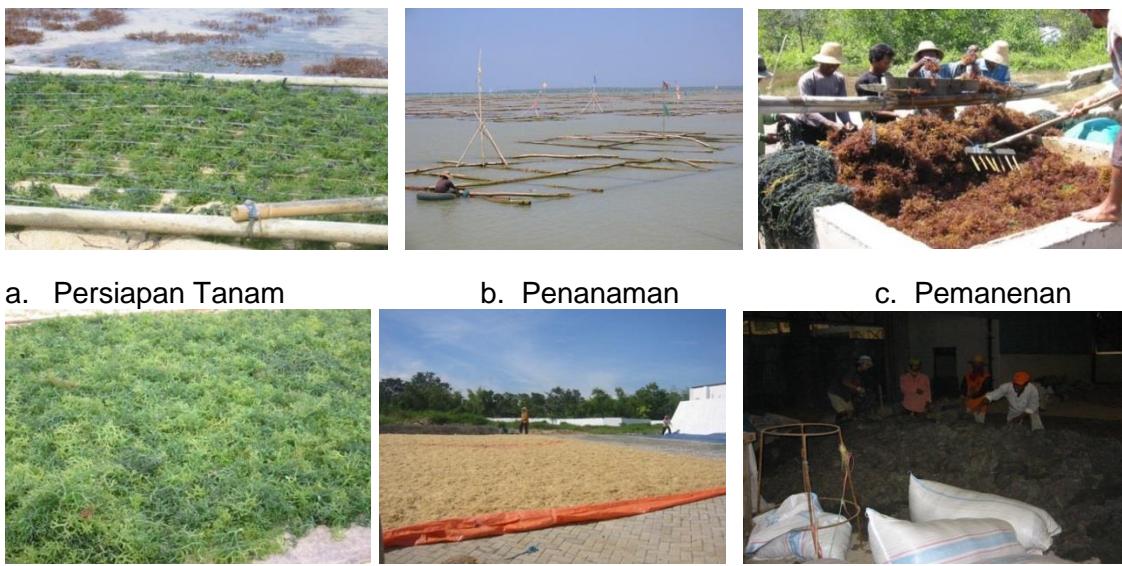
Sedangkan jumlah sarana, luas dan produksi (Basah dan Kering) dari Budidaya Rumput Laut di Kabupaten Sumenep pada Tahun 2012 terlihat pada Tabel 3.

Tabel 3. Jumlah Sarana, Luas dan Produksi (Basah dan Kering) dari Budidaya Rumput Laut di Kabupaten Sumenep pada Tahun 2012

Kecamatan	Banyaknya Petani	Sarana		Luas	Produksi	
		Rakit	Longline		Basah	Kering
Bluto	1.629		-	8.917,0	105.035,26	17.505,88
Saronggi	1.593	23.658	-	6.728,0	115.210,95	19.201,83
Giligenting	551		-	12.927,0	46.258,51	7.709,75
Ambunten	40	21.627	235	520,0	646,69	107,78
Dungkek	390	5.485	-	11.690,0	45.539,48	7.589,91
Gapura	375	-	-	3.587,0	32.962,30	5.493,72
Talango	635	5.265	-	17.167,0	58.027,61	9.671,27
Ra'as	271	5.438	815	8.492,0	5.961,00	993,50
Arjasa	365	8.335	1.460	32.180,0	17.726,40	2.954,40
Sapeken	1.241	-	6.648	40.796,0	142.283,21	23.713,87
	7.090	69.808	9.158	143.004,0	569.651,41	94.941,9

Sumber : Dinas Kelautan dan Perikanan Kabupaten Sumenep (2012)

Adapun kegiatan budidaya rumput laut sejak persiapan tanam, penanaman, pemanenan, pengeringan I dan II serta pengemasan seperti terlihat pada Gambar 3.



Gambar 3. Tahapan Budidaya dan Pasca Panen Rumput Laut

Permasalahan yang dihadapi pada industri rumput laut meliputi :

- Aplikasi teknologi budidaya terapan
- Penanganan pasca panen

- Nilai tambah produk rumput laut rendah
- Belum cukup tersedia *Research and Development* bidang rumput laut
- Belum ada koperasi yang khusus menangani usaha rumput laut
- Dukungan pembiayaan dari lembaga keuangan masih lemah.

Langkah/strategi yang telah dilakukan adalah:

- Revitalisasi perikanan (udang, nila, kerapu, rumput laut)
- Mengadakan pembinaan, penyuluhan dan percontohan cara budidaya, penanganan panen dan pasca panen rumput laut yang benar.
- Mengadakan pelatihan pengolahan rumput laut menjadi makanan yang siap dikonsumsi dengan teknologi sederhana.
- Menarik Investor, khususnya Perusahaan Pengolah Rumput Laut.
- Dukungan peralatan pasca panen.
- Mengikuti pasar lelang komoditas Jatim sebulan sekali.

### Pengembangan Produk Karagenan dari Rumput Laut

Rumput laut hasil kelompok tani selanjutnya diekstraksi menjadi karagenan, terutama dari jenis *Euchema cottonii*, terdiri dari rantai poliglikan bersulfat dengan massa molekuler (Mr) lebih dari 100.000 serta bersifat hidrokoloid. Karagenan tidak mempunyai nilai nutrisi dan digunakan pada makanan sebagai bahan pengental, pembuatan gel dan emulsifikasi. Tiga tipe utama karagenan yang digunakan dalam industri makanan adalah  $\beta$ -karagenan,  $\kappa$ -karagenan (*E. cottonii*) dan  $\lambda$ -karagenan (*E. spinosum*). Karagenan diperoleh melalui ekstraksi rumput laut yang dilarutkan dalam air atau larutan basa, kemudian diendapkan menggunakan alkohol atau KCl. Alkohol yang digunakan terbatas pada metanol, etanol, dan isopropanol. Karagenan dapat digunakan pada makanan hingga konsentrasi 1500 mg/kg. seperti terlihat pada Gambar 4.



Gambar 4. a.Rumput laut kering I b. Rumput laut kering II c. Jelly rumput laut I d. Jelly

Karagenan merupakan senyawa yang termasuk kelompok polisakarida galaktosa. Sebagian besar karagenan mengandung natrium, magnesium dan kalsium yang dapat terikat pada gugus ester sulfat dari galaktosa dan kopolimer 3,6-anhydro-galaktosa. Karagenan banyak digunakan pada sediaan makanan, sediaan farmasi dan kosmetik sebagai bahan pembuat gel, pengental atau penstabil. Karagenan dapat diekstraksi dari protein dan lignin rumput laut dan dapat digunakan dalam industri pangan, karena karakteristiknya yang dapat berbentuk gel, bersifat mengentalkan dan menstabilkan material utamanya. Karagenan tidak dapat dimakan oleh manusia dan tidak memiliki nutrisi yang diperlukan oleh tubuh, sehingga karagenan hanya digunakan dalam industri pangan oleh fungsi karakteristik yang digunakan untuk mengendalikan kandungan air dalam bahan pangan utama, mengendalikan tekstur dan menstabilkan makanan. Pembuatan Karagenan dimanfaatkan untuk digunakan dalam berbagai bidang industri seperti dalam industri makanan (es krim dan sherbers, flavor, meat product,

pasta ikan, produk saus), industri pengolahan limbah, bioteknologi, kosmetik, tekstil, industri sutera dan lain-lain.

Karagenan terdiri dari tiga jenis yaitu Iota karagenan ( $\iota$ -karagenan), Kappa karagenan ( $\kappa$ -karagenan) dan Lambda karagenan ( $\lambda$ -karagenan) sebagai berikut :

### 1. Iota karagenan ( $\iota$ -karagenan)

Iota karagenan adalah jenis yang paling sedikit jumlahnya di alam, dapat ditemukan di *Euchema spinosum* (rumput laut) dan merupakan karagenan yang paling stabil pada larutan asam serta membentuk gel yang kuat pada larutan yang mengandung garam kalsium. Karagenan tipe iota mengandung gugus 4-sulfate ester dalam semua gugus D-galaktose dan gugus 2-sulfate ester dalam 3,6 anhydro-D-galaktose. Ketidakberaturan gugus 6-sulfate ester mengantikan gugus ester 4-sulfate dalam D-galaktose. Gugus ini dapat digantikan dengan pengolahan dalam kondisi basa untuk meningkatkan kekuatan gel.

### 2. Kappa karagenan ( $\kappa$ -karagenan)

Kappa karagenan merupakan jenis yang paling banyak terdapat di alam (menyusun 60% dari karagenan pada *Chondrus crispus* dan mendominasi pada *Euchema cottonii*). Karagenan jenis ini akan terputus pada larutan asam, namun setelah gel terbentuk, karagenan ini akan resisten terhadap degradasi. Kappa karagenan membentuk gel yang kuat pada larutan yang mengandung garam kalium. Karagenan kappa memiliki struktur D-galaktose dan beberapa gugus 2-sulfate ester pada 3,6 anhydro-D-galaktose yang ditunjukkan gambar. Gugus 6-sulfate ester mengurangi daya kekuatan gel namun dapat mengurangi loss akibat pengolahan dengan menggunakan basa. hal ini akan memberikan keteraturan rantai yang lebih baik.

### 3. Lambda karagenan ( $\lambda$ -karagenan)

Lambda karagenan adalah jenis karagenan kedua terbanyak di alam serta merupakan komponen utama pada *Gigartina acicularis* dan *Gigartina pistillata* dan menyusun 40% dari karagenan pada *Chondrus crispus*. Selain itu, lambda karagenan adalah yang kedua paling stabil setelah iota karagenan pada larutan asam, namun pada larutan garam, karagenan ini tidak larut. Karagenan tipe lambda mengandung residu disulfated-D-galaktose yang tidak mengandung gugus ester 4-sulfate namun sejumlah gugus ester 2-sulfate.

Pembuatan karagenan mengikuti tahapan sebagai berikut : rumput laut (*Euchema cottonii*) direndam dalam air tawar selama 12 – 24 jam, kemudian dibilas dan ditiriskan. Selanjutnya rumput laut direndam kembali dalam air kapur selama ± 2 – 3 jam. Kemudian rumput laut dicuci kembali dan dibilas menggunakan air sampai bersih. Tahap berikutnya adalah dikeringkan dalam oven suhu 80°C selama 4 jam. *Euchema cottonii* diblender menjadi butiran kecil dan dilakukan pengayakan. Bahan yang diekstraksi lolos saringan 90 mesh. *Euchema cottonii* ditimbang seberat 200 gram dan dimasukkan dalam ekstraktor. Ekstraksi dilakukan pada suhu 90 – 95 °C menggunakan larutan NaOH selama 2 jam. dengan perbandingan pelarut dan bahan baku 20 ml : 1 gram. Hasil ekstrak disaring dan filtratnya ditambahkan HCl sampai pH netral (pH 7). Proses pemutihan (*bleaching*) dilakukan apabila warna keruh. Filtrat selanjutnya ditambahkan bahan pengendap dan diaduk dan dibiarkan selama 15 menit. Endapan disaring kemudian dikeringkan, selanjutnya hasilnya ditimbang. Adapun ciri-ciri dari ketiga jenis karagenan seperti terlihat pada Tabel 4.

Tabel 4. Ciri-ciri Tiga Jenis Karagenan

Iota karagenan	Kappa karagenan	Lambda karagenan
a. Larutan memperlihatkan karakteristik thiksotropik	a. Larut dalam air panas	a. Aliran bebas, larutan pseudo-plastik non-gel dalam air
b. Larut dalam air panas, Natrium karagenan iota larut dalam air dingin dan air panas.	b. Penambahan ion Kalium menyebabkan pembentukan gel yang tahan lama, namun rapuh, serta manambah temperatur pembentukan gel dan pelelehan.	b. Larut sebagian dalam air dingin, dan larut dengan baik dalam air panas.
c. Penambahan ion kalsium akan menyebabkan pembentukan gel tahan lama, elastic, dan meningkatkan temperatur pembentukan gel dan pelelehan.	c. Kuat, gel padat, beberapa ikatan dengan ion $K^+$ dan $Ca^{++}$ menyebabkan bentuk helik terkumpul, dan gel menjadi rapuh	c. Tidak terbentuk gel, rantai polimer terdistribusi acak
e. Gel bersifat elastis, membentuk heliks dengan ion Kalsium.	d. Gel berwarna transparan	d. Kekentalan bervariasi dari kekenatalan rendah hingga tinggi
f. Gel bening	e. Diperkirakan terdapat 25% ester sulfat dan 34% 3,6-AG	e. Penambahan kation memberikan efek yang kecil terhadap viskositas.
g. Stabil dalam keadaan dingin	f. Sesuai dengan pelarut yang dapat bercampur dengan air	f. Sesuai untuk pelarut yang dapat bercampur dengan air
h. Tidak dapat larut dalam sebagian besar pelarut organik	g. Tidak dapat larut dalam sebagian besar pelarut organik	g. Tidak dapat larut dalam sebagian besar pelarut organik
i. Diperkirakan mengandung 32% ester sulfat dan 30% 3,6-AG	h. Penggunaan konsentrasi 0.02-2.0%	h. Stabil dalam berbagai variasi temperatur, termasuk temperatur pembekuan
j. Penggunaan konsentrasi 0.02-2.0%		i. Larut dalam larutan garam 5%, baik dingin maupun panas
		j. Diperkirakan mengandung 35% ester sulfat dan sedikit atau bahkan tidak mengandung 30% 3,6-AG sama sekali
		k. Penggunaan konsentrasi 0.1-1.0%

Karagenan adalah hasil ekstraksi getah rumput laut dengan air atau larutan alkali dari kelas *Rhodophyceae* (alga merah). Karagenan merupakan senyawa hidrokoloid yang terdiri dari ester kalium, natrium, magnesium dan kalsium sulfat. Karagenan dibagi atas tiga kelompok yaitu : *kappa*, *iota*, dan *lambda* karagenan. Karagenan juga dapat diperoleh dari alga merah dari

kelompok *Euchema* sp. Jenis rumput laut lain adalah *Kappaphycus alvarezii* yang mengandung kappa karagenan dan pada industri makanan dimanfaatkan untuk pengawet daging dan penstabil minuman coklat dan krim (Xia, 2005). Kappa karagenan juga mampu berperan sebagai *cryoprotectant*. Karagenan semi murni berfungsi sebagai *cryoprotectant* pada surimi, karena sifatnya dapat meningkatkan daya ikat air, memperbaiki daya iris dan melindungi produk pembekuan dan proses *thawing*, sehingga meningkatkan kualitas surimi pada penyimpanan beku.

## KESIMPULAN

1. Pengembangan klaster yang dilakuakn di Kabupaten Sumenep meliputi pengembangan sistem agribisnis rumput laut, meliputi sistem budidaya meliputi jumlah petani, jumlah rakit, luas, produksi (basah dan kering), nilai produksi (basah dan kering). Tahapan pengembangan klaster industri rumput laut di Kabupaten Sumenep adalah tahap diagnostik, kolaborasi, implementasi, sosialisasi dan mobilisasi, monitoring dan evaluasi. Dalam tataran kelola belum terjadi sinergi yang harmonis antara pemerintah Kabupaten, Provinsi dan Pusat, sehingga dalam tataran pelaksanaan pembinaan di petani rumput laut Nampak parsial belum secara pasti terintegrasikan dalam implementasi programnya.
2. Pengembangan produksi rumput laut yang ada di kluster Kabupaten Sumenep telah di tata kelola untuk diekstraksi menjadi karagenan, pola kemitraan dengan perusahaan sebagai inti dapat meningkatkan kesinambungan dari usaha masayarakat Kabupaten Sumenep, sehingga dapat meingkatkan pendapatan selain menyerap tenaga kerja. Karagenan hasil olahan di Kabupaten Sumemp digunakan pada sediaan makanan, sediaan farmasi dan kosmetik sebagai bahan pembuat gel, pengental atau penstabil.

## SARAN

Program pengembangan kluster rumput laut di Kabupaten Sumenep, agar bisa berkembang sesuai dengan harapan, maka perlu diperhatikan hal-hal sebagai berikut:

1. Pembinaan yang intesif dari pemerintah Kabupaten, Provinsi dan pemerintah pusat secara terpadu, sehingga keberlanjutan petani rumput laut dapat terjaga yaitu produksinya tinggi, kualitasnya terjaga dan kontinuitas produksinya terjamin.
2. Perlu dilakukan proses kemitraan dengan perusahaan yang lebih besar lagi, agar mampu menyerap produksi rumput laut yang diproduksi oleh masyarakat Kabupaten Sumenep untuk mengoptimalkan potensi lahan yang masih besar

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# **WORLD SOCIETY IN THE 21<sup>ST</sup> CENTURY: SOME REFLECTIONS IN PHILOSOPHY**

Dr. P. Vijandran<sup>1</sup>

## **ABSTRACT**

The millennium old world civilization has come across a plethora of clashes among different communities. Protective mechanisms in order to prevent those conflicts and clashes are scarce enough which ultimately led to heavy casualties across different phases of world society. There were a great amount of philosophers and statesman who tried to prevent these clashes. But still it persists. In the contemporary world, super national organisations and regional organisations to a large extent plays a quintessential role in order establish conflict less world. However the human community is suffering a lot due to the scour ages of war. War starts not in the battlefield, but it starts from the minds of the people stated by UNESCO. Individuals and their emancipation is the need of the hour in the contemporary world order. Individuals and nation states conflicts with one another on the bases viz., religion, ethnic, colour, and caste so on so forth. These bases are known for its sentimental composition which provokes the fellow humans to contradict with each other. Eastern philosophers and western bolsters various remedial steps in order to have ideal global order. Gandhism in India played pivotal role in shaping India and as well as Indians. Likewise each and every country has its own great social philosophers who fought for ideal order of human living. This piece of descriptive paper endeavours to scrutinize appropriate philosophical ideals in order to carve out ideal global order.

**Keywords:** Conflicts, Enlightenment, Emancipation, Ideal World Order, Self-Interest.

## **INTRODUCTION**

Since from the age of antiquity, conflicts among social beings are inherent which are harsh facts in the annals of the world history. The failure of state machinery in Afghanistan; civil strife in Iraq, religious terrorism, border disputes among nations targeting civilians are all the reflections which kindle questions on the very basis of the state. "Will not force is the basis of the state" enunciated by T.H Green, the celebrated philosopher of Great Britain. When we scrutinize the happenings of the recent past, force theory is being substantiated for the origin of state. Almost all the state and nation states are in different turmoil across the globe. Either it may be the belief system or non-belief system, or the reason which has to be pondered by scholars and exponents. Why states are clashing with one another? Is realist theory is the only option to study the international relations? Whether states are organised by force or will? Religion is good or bad? In the name of religion can war be substantiated? What are all the modes of globalization? Whether globalization do well for the developing and under developed nations? What changes has to be made in U.N.O? The impact of regional organizations in the world order. These afore-stated premises seems to be the "dialogic research" patronized by Socrates. Philosophers of such great kind without expectation of material benefits are always to be

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applauded in great manner. But the moot point of the research problem is whether the existing world order is the one which was aimed by the ideal philosophers. The supremacy of U.S.A, nuclear amelioration, Globalization favouring developed nations, religious fundamentalism, defence expenditures, Missile technological developments, and Cybercrimes are various burning issues which has to be tackled over by the world governments and statesmen.

### **POLITICALLY ORGANISED SOCIETY**

"State exists for the happiness of its subjects" stated by Aristotle in politics. State was formed by the mutual contract among different types substantiated by Hobbes, Locke, and Rousseau. Although these contractualists differed in their viewpoints regarding the human nature, they opined same in the existence of the state. It is to prevent them from the strong community, the weaker fought for the contract and thus the outcome was the politically organised society. But the question is whether the modern world is safe and secured or not. Locke opined in "Two treatises of government" that men surrendered all rights except right to life, liberty and property. If these rights are not protected by the state, then people have utmost right to revolt against the existing government. Modern and recent revolution in Libya Egypt, Tunisia are all the evidences for the Locke's theses. But on the other hand we cannot give full assurance for the democratic form of governance. In India during 1970's emergency was declared which curtailed several rights of the people.

Ironically the emergency era was highly applauded by non-political subjects who favoured the direct rule. Each and every type of governance has its own limitations. Only thing to hope is the ruling body which should be a composition of ideal rulers as mentioned by Plato in his "Republic". The concept of the philosopher king is a unique and as well as apt remedy for the existing mis-governance or wrong governance. In Indian constitution the founding fathers believed that the smooth functioning of the governance depends upon not the code of conduct but rulers who implement the one. We may find any number of lapses in democratic governance also. For the past 67 years and above, India is considered as a largest democracy along with U.S.A., but in the sector of poverty eradication, literacy and political education, India is lagging behind for the reason which is unknown. Democracy as such is having its quintessential elements, such as liberty equality and fraternity which was slanted as slogan during the French revolution in 1789. These afore stated principles and its implications in the developed and under developing countries raises series of controversies. Arab and African countries protested against dictatorial regimes in order to establish democratic governance in their own. But almost all the countries are facing unstable conditions, since political chaos prevailed in these nations. "People gets the government what it deserves" said by Jefferson and obviously the statement is proved in all these nations.

### **RELIGIOUS AND ETHNIC IMBROGLIO**

The predominant struggle among the nations of the world at present is on the basis of religion and ethnic components. Religion, obviously is a controlling and coordinating factor between different groups but in the name of religion and its misinterpretations, there are untold and unprecedented events that are happening in the world. Religious based terrorism and its counterpart pose always a great threat for the survival of the entire human community. Marx opined that "religion is an opium". The radical feature expressed by Marx has to be scrutinized to a large extent. 100's and 1000's of people are killed and massacred every day in Iraq, Afghanistan and Palestine for the well-known cause. Metaphysically there is no strong or

concrete substantial for the existence of super natural power. Even though it is a hard fact, nobody can deny that religion plays a vital role in the day to day human life and relationships. Voltaire sustained that "if there is no religion in this world I will create a new one". Thus religion make peaceful minds and that is the ultimate motto of every human life. The mis-guided and mis-interpreted religious ideals makes various group to clash with one another thus causing a great setback for human efforts to establish perpetual peace. Political leadership is the main gamut that has to be purified or philosophized in order to establish peace. Eternal peace was the main motto of Kant's political philosophy which serves as a main ideal for all statesmen in this world

### **MORAL INTERNATIONAL ORDER**

Morals and ethical principles are the controlling contrivance for in order to have ideal global order. Like international law, the world order does not have international or universal moral principles U.N.O and its specialized agencies are doing yeomen services to the entire humanity but the organization is having its own limitations and restrictions. "Universal moral constitution" can be made out by getting consensus from among the nations of general assembly. Among all the existing moral principles Mazzini's "humanitarian nationalism" can be incorporated as valuable additions. The IVth general principles goes this way "every mission constitutes a pledge of duty and everyman is bound to consecrate his every faculty to its fulfilment. He will desire his rule of action from the profound conviction of that duty. The duty oriented performance is also the single motto of Hindu religion i.e., "Bhagawat gita". Do your duty and expect not the result is the main tenet of Hindu religion

Every act of egotism is a violation of fraternity says the 13<sup>th</sup> general principle. Ego tic attitude and the subsequent performance either by individual or nations ends in devastating effects. The first prime minister of India said that "we must have self-interest that must be an enlightened self-interest. Enlightened self-interest circumvents around common interest which should be prioritised.

According to 17<sup>th</sup> principle "every people has its special mission, which will cooperate towards the fulfilment of the general mission of humanity. That mission constitutes its nationality.

Nationality is sacred. General mission or which is good for all be given higher status. The world community may think of the world order by which no individual or nation should suffer with any kind of common essentialities.

And the 19<sup>th</sup> principle says, "humanity will only be truly constituted when all the peoples of which it is composed have acquired the free exercise of their sovereignty, and shall be associated in a republican confederation governed directed by a common declaration of principles and a common pact, towards the common aim the discovery and fulfilment of the universal moral law.

### **PERPETUAL PEACE BY KANT**

The law of nations ought to be founded upon a federation of Free states. Nations, as states, like individuals, if they live in a state of nature and without laws, by their vicinity alone commit an act of lesion. One may, in order to secure its own safety, require of another to establish within it a

constitution which should guarantee to all their rights. This would be a federation of nations, without the people however forming one and the same state, the idea of a state supposing the relation of a sovereign to the people, of a superior to his inferiors. Now several nations, united into one state, would no longer form but one; which contradicts the supposition, the question here being of the reciprocal rights of nations, inasmuch as they compose a multitude of different states, which ought not to be incorporated into one and the same state.

But when we see savages in their anarchy, prefer the perpetual combats of licentious liberty to a reasonable liberty, founded upon constitutional order, can we refrain to look down with the most profound contempt on this animal degradation of humanity? Must we not blush at the contempt to which the want of civilization reduces men? And would one not rather be led to think that civilized nations, each of which form a constituted state, would hasten to extricate themselves from an order of things so ignominious? But what, on the contrary, do we behold? Every state placing its majesty (for it is absurd to talk of the majesty of the people) precisely in this independence of every constraint of any external legislation whatever.

The sovereign places his glory in the power of disposing at his pleasure (without much exposing himself) of many millions of men, ever ready to sacrifice themselves for an object that does not concern them. The only difference between the savages of America and those of Europe, is, that the former have eaten up many a hostile tribe, whereas the latter have known how to make a better use of their enemies; they preserve them to augment the number of their subjects, that is to say, of instruments destined to more extensive conquests. When we consider the perverseness of human nature, which shews itself unveiled and unrestrained in the relations of nations with each other, where it is not checked, as in a state of civilization, by the coercive power of the law, one may well be astonished that the word has not yet been totally abolished from war-politics and that a state has not yet been found bold enough openly to profess this doctrine. For hitherto Grotius, Pufendorf, Wattel, and other useless and impotent defenders of the rights of nations, have been constantly cited in justification of war; though their code, purely philosophic or diplomatic, has never had the force of law, and cannot obtain it; states not being as yet subjected to any coercive power. There is no instance where their reasoning's, supported by such respectable authorities, have induced a state to desist from its pretensions. However this homage which all states render to the principle of right, if even consisting only in words, is a proof of a moral disposition, which, though still slumbering, tends nevertheless vigorously to subdue in man that evil principle, of which he cannot entirely divest himself. For otherwise states would never pronounce the word right, when going to war with each other; it were then ironically, as a Gallic prince interpreted it. "It is," said he, "the prerogative nature has given to the stronger, to make himself obeyed by the weaker."

However, the field of battle is the only tribunal before which states plead their cause; but victory, by gaining the suit, does not decide in favour of their cause. Though the treaty of peace puts an end to the present war, it does not abolish a state of war (a state where continually new pretences for war are found); which one cannot affirm to be unjust, since being their own judges, they have no other means of terminating their differences. The law of nations cannot even force them, as the law of nature obliges individuals to get free from this state of war, since having already a legal constitution, as states, they are secure against every foreign compulsion, which might tend to establish among them a more extended constitutional order.

Since, however, from her highest tribunal of moral legislation, reason without exception condemns war as a mean of right, and makes a state of peace an absolute duty; and since this

peace cannot be effected or be guaranteed without a compact among nations, they must form an alliance of a peculiar kind, which might be called a pacific alliance (*foeditis pacificum*) different from a treaty of peace (*pactum pads*) inasmuch as it would forever terminate all wars, whereas the latter only finishes one. This alliance does not tend to any dominion over a state, but solely to the certain maintenance of the liberty of each particular state, partaking of this association, without being therefore obliged to submit, like men in a state of nature, to the legal constraint of public force. It can be proved, that the idea of a federation, which should insensibly extend to all states, and thus lead them to a perpetual peace, may be realized. For if fortune should so direct, that a people as powerful as enlightened, should constitute itself into a republic (a government which in its nature inclines to a perpetual peace) from that time there would be a centre for this federative association; other states might adhere thereto, in order to guarantee their liberty according to the principles of public right; and this alliance might insensibly be extended. That a people should say, "There shall not be war among us: we will form ourselves into a state; that is to say, we will ourselves establish a legislative, executive, and judiciary power, to decide our differences," can be conceived.

But if this state should say, "There shall not be war between us and other states, although we do not acknowledge a supreme power, that guarantees our reciprocal rights"; upon what then can this confidence in one's rights be founded, except it is upon this free federation, this supplement of the social compact, which reason necessarily associates with the idea of public right?

The expression of law of nations, taken in a sense of right of war, presents properly no idea to the mind; since thereby is understood a power of deciding right, not according to universal laws, which restrain within the same limits all individuals, but according to partial maxims, namely, by force. Except one would wish to insinuate by this expression, that it is right, that men who admit such principles should destroy each other, and thus find perpetual peace only in the vast grave that swallows them and their iniquities.

At the tribunal of reason, there is but one mean of extricating states from this turbulent situation, in which they are constantly menaced with war; namely, to renounce, like individuals, the anarchic liberty of savages, in order to submit themselves to coercive laws, and thus form a society of nations (*civitas gentium*) which would insensibly embrace all the nations of the earth. But as the ideas which they have of the law of nations, absolutely prevent the realization of this plan, and make them reject in practice what is true in theory, there can only be substituted, to the positive idea of an universal republic (if all is not to be lost) the negative supplement of a permanent alliance, which prevents war, insensibly spreads, and stops the torrent of those unjust-and inhuman passions, which always threaten to break down this fence.

## SUMMARY

The world order and its impact is entirely hinges upon the individual order. All the above-mentioned Mazzini's and Kant's humanitarian philosophy portrays for the sake of holistic development of individual as a community. Conflicts are permanent. Clashes are a cursed phenomenon. Religion is a must for the civilized development of individual and groups. Religion is an integrating factor of mind and as well as groups. Ethnic segregation should be approached with an enlightened vision of human mind. These theses can be substantiated by the following founding truths of Aurobindo and Lord Emerson.

- Non-duality is the highest metaphysical truth
- The world is the real and joyful manifestation of spirit's bless
- The soul evolves spiritually through the divine process of life itself
- Life's purpose is to surrender to divine power and realize non-duality
- Awakening transforms the soul into a perfect instrument for cosmic will in perfect harmony with all for creation.
- Terrestrial evolution is the progressive revelation of spirit
- Evolution is advancing ineludibly toward the realization of the life divine here on earth.

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# POVERTY REDUCTION STRATEGY IN INDONESIA

Masduki<sup>1</sup>

## ABSTRACT

As long as this is understood, so the severity of the problem of poverty has to be decomposed and solved. This is due to multispektrum of the meaning of poverty, so the definition and measurement is not easily accomplished in one sense only. In more detail, the theoretical study on the conception of poverty in depth by classifying the definition and measurement of poverty in four perspectives (Laderchi,, 2003: 247 -262). *First.* monetary approach, *Second*, the approach capability, *Third*, the approach of social exclusion *Fourth*, the perspective of participatory methods. If mapped, the weakness can be explained as follows: first, anti-poverty policies implemented uniformly (general) without linking with social context, economics, and culture in each region (community). Secondly, the handling of antipoverty programs had bureaucratization too deep, so many have failed due to the entanglement procedure is too long., Third last but not least, anti-poverty policies are often politically motivated diboncengi very thick, so it has no meaning for the poor socio-economic strengthening. Some things are worth paying attention to is a matter of addressing poverty linkages in accordance with the concept of cultural context, poverty is not just the size of the monetary aspects (income) alone, the involvement of the poor to define and decide the programs that fit their needs, and the failure of bureaucracy to lead and run well of anti-poverty programs. Hence the principles of sustainable development will be achieved if supported by good governance (good governance). Good governance is considered good if the resources and public issues managed effectively, efficiently which is a response to the needs of the community.

**Keywords:** Multi-spectral poverty, social policy, bureaucracy, corporate social responsibility, good governance

## MULTI SPEKTRUM KEMISKINAN

Akhir-ahir ini pemerintah sering dituding "berbohong" mengenai indikator-indikator perekonomian ( angka kemiskinan, besaran pendapatan perkapita dll). Pemerintah pun menyangkal keras, dengan menyatakan bahwa angka-angka tersebut resmi berasal dari Badan Pusat Statistik (BPS) yang notabene sudah melewati tahap pendataan dan uji ilmiah yang ketat. Berdasarkan data Badan Pusat Statistik (BPS) jumlah penduduk miskin di Indonesia pada Maret 2012 mencapai 29,13 juta orang (11,96 persen dari total penduduk Indonesia), berkurang 0,89 juta orang (0,53 persen) dibandingkan dengan penduduk miskin pada Maret 2011 yang sebesar 30,02 juta orang (12,49 persen). Padahal, berdasarkan target pertama pembangunan milenium atau *Millennium Development Goals* (MDGs), Indonesia terbebas dari kemiskinan pada tahun 2015.

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Apa sebenarnya inti persoalan tudingan itu? Bisa kita lihat bahwa problem pokoknya bersumber dari kesenjangan yang luar biasa antara besaran angka-angka tersebut dengan realitas sehari-hari yang dirasakan langsung oleh masyarakat. Betapa orang awam tidak tercengang ketika BPS melansir bahwa pendapatan perkapita Indonesia pada tahun 2010 mencapai Rp. 27 juta, sementara dalam realitasnya mereka harus bergulat menafkai keluarga dengan pendapatan yang tak sampai seperduapuluhan jumlah tersebut.

Pemerintah mungkin tidak berbohong dengan angka-angka itu, juga tidak memanipulasinya, tetapi anka-angka itu sendirilah yang mengandung persoalan ketika mereka dibanggakan sebagai tolok ukur kinerja pemerintah.

Seperti yang dipahami selama ini, persoalan kemiskinan telah sedemikian peliknya untuk diurai dan dipecahkan. Hal ini disebabkan adanya multispektrum dari makna kemiskinan, sehingga definisi dan pengukurannya tidak mudah dituntaskan dalam satu pengertian saja. Merancang dan mengembangkan program penanggulangan kemiskinan di Indonesia tidaklah mudah.

Secara konseptual, perdebatan yang muncul selama ini mengambil tempat yang bisa dipetakan dalam dua sisi yang kerap bertabrakan, yakni mendudukkan kemiskinan dalam aspek ekonomi semata atau memposisikan kemiskinan sebagai isu sosial. Jika kemiskinan dianggap sebagai soal ekonomi, maka biasanya kemiskinan disederhanakan sebagai kekurangan pendapatan (perkapita) atau jumlah kalori yang dikonsumsi oleh individu. Sebaliknya, pendekatan sosial memandang kemiskinan itu merupakan keterbatasan individu untuk terlibat dalam partisipasi pembangunan, baik akibat ketidakcukupan ketrampilan/pendidikan maupun pengucilan sosial (*social exclusion*), sehingga membuat individu tersebut tidak mampu memperoleh kesejahteraan. Ketegangan dua pandangan itu sampai sekarang belum sepenuhnya bisa dicairkan, baik karena alasan sosiologis maupun teknis-ekonomis.

Secara lebih detail, kajian teoritis tentang konsepsi kemiskinan tersebut dapat diteruskan secara mendalam dengan mengklasifikasikan definisi dan pengukuran kemiskinan dalam empat perspektif (*Laderchi, 2003 :247 -262*).

Pertama. pendekatan moneter (*the monetary approach*). Pendekatan ini yang paling jamak digunakan untuk mendefinisikan dan mengukur kemiskinan, yakni melihat kemiskinan sebagai kekurangan individu untuk mencapai tingkat konsumsi pendapatan) secara minimum. . Melalui pendekatan ini, kesejahteraan diukur dari total konsumsi (kalori) yang dinikmati oleh individu, yakni diukur dari data pengeluaran atau pendapatan. sehingga individu yang memiliki pengeluaran atau pendapatan di bawah level minimum (garis kemiskinan) tergolong sebagai warga miskin. Pendekatan ini diterima secara populer, baik pada level domestik maupun internasional, salah satunya karena alasan mudah untuk diterapkan dan gampang dicarikan jalan keluarnya.

Kedua, pendekatan kemampuan (*the capability approach*). Pendekatan ini, yang salah satu pionernya adalah *Amartya Sen*, menganggap bahwa pembangunan seharusnya dilihat sebagai ekspansi dari kemampuan manusia (*human capabilities*), bukan sekadar maksimalisasikan kegunaan (*utility*) atau proksi atas kegunaan itu, yakni pendapatan. Dengan demikian, pendekatan ini menolak konsep pendekatan moneter dan lebih memfokuskan kepada indikator kebebasan (*freedom*) untuk menafkahi nilai-nilai kehidupan itu sendiri. Secara eksplisit Sen menyatakan bahwa hakikat terdalam dari pembangunan adalah kebebasan (*development as freedom*). Dengan begitu, tugas terbesar dari pembangunan adalah meruntuhkan sumber-sumber utama penyebab ketidakbebasan (*unfreedom*), seperti tirani kemiskinan. kelangkaan

peluang ekonomi sebagai akibat dari perusakan sistem sosial secara sistematis, mengabaikan fasilitas publik, dan represi negara yang tidak dapat ditoleransi. (Amartya Sen, 1999).

Dalam kerangka konseptual ini, kemiskinan didefinisikan sebagai pencabutan/kehilangan (*deprivation*) kemampuan atau kegagalan individu untuk mencapai kemampuan dasar/minimal, di mana kemampuan dasar (*Basic capabilities*) tersebut tidak lain adalah kapabilitas untuk memaksimalisasikan fungsi-fungsi yang penting dari individu agar memperoleh level kecukupan hidup yang minimal (*minimally adequate levels*). Beberapa indikator yang digunakan dalam pendekatan ini adalah: harapan hidup, kesehatan, ketangguhan tubuh, perasaan (imajinasi), emosi, dan afiliasi (interaksi sosial, perlindungan dari diskriminasi).

Ketiga, Pendekatan pengucilan sosial (*social exclusion*). Pendekatan ini populer di negara-negara maju (*industrialized countries*) untuk mendeskripsikan terjadinya proses marginalisasi dan pencabutan hak-hak dasar ekonomi. Meskipun kelihatannya hal ini mudah, tetapi dalam realitasnya masih sering terjadi di negara maju yang telah menyediakan kesejahteraan secara komprehensif. Secara lebih spesifik, komunitas Uni Eropa, misalnya, mendefinisikan pengucilan sosial ini sebagai proses di mana individu atau kelompok secara menyeluruh atau parsial dikucilkan dari keterlibatan penuh (*full participation*) dalam masyarakat di mana mereka hidup. Di negara maju definisi

tersebut ditejemahkan secara aplikatif melalui variabel-variabel pengukuran semacam pengangguran, akses terhadap perumahan, pendapatan minimum dan kontak sosial, dan keterbatasan kewarganegaraan (*lack of citizenship*) atas hak-hak demokratis (democratic rights). Meskipun pendekatan ini populer di negara maju, tetapi sebagian negara berkembang juga sudah mengadopsinya, seperti India, Venezuela, Tanzania, Tunisia, Kamerun, dan Thailand.

Keempat, perspektif metode partisipatif (*participatory methods*). Selama ini, baik pendekatan moneter maupun kemampuan, melihat kemiskinan sebagai soal yang selalu didefinisikan dari pihak luar (*externally imposed*), tanpa pernah melihat kemiskinan dari perspektif kaum miskin sendiri (*views of poor people themselves*). Pendekatan ini, yang diinisiasi oleh Chambers, bertujuan untuk merombak dan mengubah praktik turun-temurun tersebut dengan melibatkan mereka dalam pengambilan keputusan untuk mendefinisikan kaum miskin dan besaran (*magnitude*) kemiskinan. Konsep penilaian kemiskinan partisipatif (*PPA/participatory poverty assessment*) ini diadopsi dari konsep '*participatory rural appraisal (PRA)*', yang didefinisikan sebagai metode untuk memampukan masyarakat lokal untuk berbagi, merencanakan dan bertindak. Dalam operasionalisasi prinsip-prinsip yang digunakan dalam aplikasi PRA adalah: suatu pembalikan pemahaman (belajar dari masyarakat desa), belajar secara cepat dan progresif, menyeimbangkan bias, optimalisasi pertukaran, membuat jaringan titik-titik pengukuran.

Mencari keanekaragaman, pemberian fasilitas (untuk penyelidikan, analisis, penyajian, dan pemahaman oleh masyarakat desa sendiri), kesadaran dan tanggung jawab diri yang kritis, dan saling berbagi informasi dan gagasan antar masyarakat antar elemen. (Lihat Robert Chambers, 1996). Secara praktikal, pendekatan ini dibagi dalam tiga kategori, yakni (i) diasosiasi dengan penentuan diri (*self-determination*) dan pemberdayaan; (ii) diasosiasi dengan peningkatan efisiensi program, dan (iii) menekankan pada pembelajaran yang menguntungkan (*mutual learning*). Tentu saja pendekatan yang terakhir ini lumayan rumit untuk diaplikasikan; karena menyangkut aspek yang multiragam, seperti sosial, budaya, ekonomi, dan lokalitas lingkungan politik. Tetapi, kecenderungannya model ini sekarang mulai intensif dikerjakan karena dipandang pendekatan-pendekatan terdahulu gagal untuk menuntaskan persoalan kemiskinan secara meyakinkan.

## **MERETAS KEBIJAKAN MENGATASI KEMISKINAN**

Apabila perspektif definisi dan pengukuran kemiskinan di atas direlasikan dengan penanganan masalah kemiskinan di Indonesia, maka akan didapati sebuah deskripsi yang menarik.

Pertama, seperti sudah dimengerti oleh semua kalangan, persoalan kemiskinan ini telah ditangani oleh pemerintah sejak puluhan tahun lalu. khususnya semasa pemerintahan Orde Baru. Beragam kebijakan penanganan kemiskinan sudah diproduksi dengan tingkat intensitas dan besaran yang berbeda-beda. Hasilnya di samping terdapat beberapa program penanganan kemiskinan yang cukup berhasil, juga terdapat banyak kebijakan kemiskinan yang gagal mencapai tujuannya.

Kedua bila diurai secara saksama, terdapat fakta bahwa pemerintah telah mencoba menangani persoalan kemiskinan dari banyak spektrum, di mana hal ini bisa diidentifikasi dari beragam kebijakan yang diluncurkan. Kebijakan tersebut ada yang berbasis sektor (misalnya memisahkan sektor pertanian, industri, dan jasa), wilayah (desa dan kota, atau wilayah timur dan barat), dan alokasi sumberdaya (subsidi input, skema keuangan/permodalan, dan distribusi/pemasaran). Menyangkut durasi waktu, program-program anti kemiskinan tercatat sudah dikerjakan sejak lama. Misalnya, sejak awal dekade 1960-an pemerintah telah menangani kemiskinan lewat program pemenuhan kebutuhan pokok rakyat yang dituangkan dalam Pembangunan Nasional Berencana Delapan Tahun (Penasbede), kemudian pada dekade 1970-an dimulai program Bimbingan Massal (Bimas) dan pembukaan akses permodalan terhadap penduduk miskin (terutama yang bekerja di sektor pertanian), dan dilanjutkan pada dekade 1980-an dengan kebijakan pengurangan kemiskinan yang dilakukan secara massif.

Secara lebih lanjut, pada awal-awal dekade 1990-an diinisiasi program kemitraan (bapak angkat) antara usaha besar dan kecil agar terdapat hubungan yang saling menguntungkan. Seluruh program-program tersebut sempat terinterupsi pada tahun 1997/1998 akibat instabilitas politik yang dipicu oleh krisis ekonomi yang sangat dalam. Pemerintah kemudian berkonsentrasi lagi pada medio tahun 2000 untuk menangani soal kemiskinan setelah situasi politik mulai stabil, yang sekarang ini program PNPM Mandiri dan program MDGs. Jadi, tampak bahwa komitmen pemerintah untuk menyelesaikan masalah kemiskinan ini sudah tumbuh sejak lama. Serangkaian kebijakan pengurangan angka kemiskinan di atas,

Jika dipetakan, kelemahan itu dapat dijelaskan sebagai berikut: *pertama*, kebijakan antikemiskinan dilaksanakan secara seragam (*general*) tanpa mengaitkan dengan konteks sosial, ekonomi, dan budaya di setiap wilayah (komunitas). Akibatnya, kebijakan sering tidak relevan disatu tempat (komunitas), walaupun di tempat (komunitas) lain program itu berhasil. "definisi dan pengukuran kemiskinan lebih banyak dipasok dari pihak luar (*externally imposed*) dan memakai parameter yang terlalu ekonomis (*moneter*). Implikasinya, konsep penanganan kemiskinan mengalami bias sasaran dan mereduksi hakikat dari kemiskinan itu sendiri. *Kedua*, penanganan program antikemiskinan mengalami birokratisasi yang terlampaui dalam, sehingga banyak yang gagal akibat belitan prosedur yang terlampaui panjang., *last but not least*, kebijakan antikemiskinan sering diboncengi dengan motif politik yang amat kental, sehingga tidak memiliki makna bagi penguatan sosial ekonomi kelompok miskin. *Ketiga*, konsep pengentasan kemiskinan belum diintegrasikan dengan peran swasta (perusahaan) dengan program CSR (Corporate social responsibility).

Satu hal lagi yang perlu untuk dipertimbangkan dengan saksama, terdapat cukup fakta bahwa kebijakan antikemiskinan dalam operasionalisasinya kerap dibajak oleh kelompok-kelompok tertentu, entah elemen pemerintah (birokrasi), masyarakat (pelaku ekonomi skala besar), maupun kelompok kritis (misalnya Ornop/LSM), sehingga penikmat kebijakan antikemiskinan tersebut bukanlah kaum miskin itu sendiri. banyak LSM 'merpati' yang memperoleh profit dengan memanfaatkan celah ketidaklayakan konsep yang didesain oleh pemerintah.

### **BIROKRASI : KEKUATAN ATAU ANCAMA**

Dalam literatur ilmu sosial, birokrasi umumnya dipandang sebagai aktor yang sekadar menerapkan kebijakan yang telah diputuskan oleh pihak yang memiliki otoritas. Namun, dengan memperhatikan berbagai pengalaman yang ada di masyarakat akan didapati kenyataan bahwa birokrasi tidak hanya mendominasi kegiatan administrasi pemerintahan, tetapi juga kehidupan politik masyarakat secara keseluruhan. Di banyak negara yang sedang membangun, aparatur negara itulah yang menjadi inisiatör dan perencana pembangunan yang mencari dana dan yang menjalankan investasi pembangunan. Implikasinya, birokrasi sekaligus menjadi manajer produksi maupun redistribusi outputnya, bahkan juga menjadi konsumen terbesar dari hasil kegiatan pembangunan itu.

Jadi, birokrasi negara muncul bukan sekadar untuk mengantisipasi perluasan dan kompleksitas tugas-tugas administratif pemerintahan. Di sini tampak bahwa wilayah birokrasi dapat diurai dalam dua level. pertama, mengurus tugas teknis-administrasi pemerintahan. Ke dua, membuat perencanaan dan implementasi program pemerintah yang langsung bersentuhan dengan masyarakat. Tentu tidak ada yang salah dengan fungsi birokrasi di atas, karena sudah lazim dikerjakan semua birokrasi di dunia. Masalahnya, pada saat fungsi perencanaan dan implementasi program tersebut menyatu, selalu terdapat dilema antara menempatkan birokrasi sebagai aktor pembangunan (sampai tahap implementasi) atau sekadar memposisikan birokrasi sebagai penentu target dan pemandu program.

Jika pilihan pertama yang diambil, maka sering kali program pembangunan, khususnya kebijakan Anti kemiskinan, gagal mencapai tujuannya karena berhadapan dengan watak birokrasi yang terlambau prosedural sehingga tidak responsif dengan kebutuhan. Sebaliknya, apabila pilihan kedua yang diambil, maka birokrasi akan kehilangan ruang untuk turut mempengaruhi secara langsung proses pembangunan, dalam hal ini kebijakan antikemiskinan. Dilema ini tidak mudah untuk dipecahkan, karena masing-masing pilihan menimbulkan biaya yang tidak sedikit, lebih-lebih apabila motif ekonomi dan politik birokrasi dipertimbangkan sebagai variabel tersendiri. Belajar dari pelaksanaan kebijakan PNPM Mandiri ini, segera tampak dua hal penting menyangkut peranan birokrasi .

Pertama, peranan birokrasi terlalu dalam sehingga proses yang paling teknis sekalipun ditangani oleh birokrasi, misalnya penyaluran dana. Akibatnya, penyaluran dana kerap terlambat akibat prosedur birokrasi yang tidak ramah dengan kebutuhan masyarakat, bahkan tidak responsif terhadap jadwal yang telah disusunnya sendiri

Kedua, pernah birokrasi yang eksesif mengakibatkan munculnya bias dalam implementasi program, misalnya soal penentuan siapa yang berhak memperoleh kredit usaha. Hal ini terjadi karena birokrasi bukanlah agen yang netral, tetapi dipenuhi oleh beragam motif yang bersumber dari kepentingan-kepentingan ekonomi maupun politik. Dengan deskripsi tersebut, tampak bahwa birokrasi akhirnya lebih nampak menjadi ancaman dari implementasi program antikemiskinan ketimbang sebagai kekuatan yang hadir untuk mensukseskan kebijakan

tersebut. Faktor inilah yang nantinya harus menjadi bahan kajian penting untuk menentukan peran dan letak birokrasi dalam program antikemiskinan.

## **PERAN PEMERINTAH DALAM KEBIJAKAN SOSIAL**

Deskripsi di atas tentu saja menjadi pembelajaran yang sangat baik bagi pemerintah Indonesia untuk memformulasikan kebijakan antikemiskinan yang lebih baik. Beberapa hal yang layak untuk diperhatikan adalah soal keterkaitan konsep penanganan kemiskinan sesuai dengan konteks budaya masyarakat, ukuran kemiskinan yang bukan sekadar aspek moneter (pendapatan) semata, keterlibatan kaum miskin untuk mendefinisikan dan memutuskan program yang sesuai dengan kebutuhannya, dan kegagalan birokrasi untuk menuntun dan menjalankan secara baik dari program antikemiskinan. Hal yang penting lainnya, sering kali kebijakan antikemiskinan gagal dijalankan bukan akibat konsep yang buruk, tetapi akibat ketergesa-gesaan pengambil kebijakan (*pemerintah/birokrasi*) untuk menjalankan program tersebut tanpa diimbangi dengan infrastruktur yang memadai sebagai prasyarat keberhasilan program. Lebih parahnya lagi, acapkali birokrasi terjebak untuk melihat hasil program yang diluncurkannya secara cepat. padahal dampak (*impact*) dari suatu kebijakan pasti memerlukan waktu yang tidak pendek (*time lag*).

Masalahnya, jika hasil itu tidak segera tampak, birokrasi biasanya langsung menghentikan dan mengganti dengan kebijakan baru lainnya. Mestinya, kebijakan kemiskinan tersebut harus memiliki target indikator, baik waktu maupun capaian- capaian sosial ekonomi, sehingga evaluasi kegagalan atau keberhasilannya diukur dari indikator-indikator tersebut. Praktik yang sering terjadi, kebijakan antikemiskinan dikerjakan tanpa pemanfaatan target keberhasilan sehingga alat ukur untuk menilainya menjadi sumir. Selanjutnya, yang terjadi adalah bongkar pasang kebijakan sehingga tidak memiliki, efek keberlanjutan.

Pendapatan kaum miskin mungkin saja meningkat ketika kebijakan diluncurkan, tapi sebetulnya tidak terjadi transfer daya (*power*) sehingga dalam jangka panjang mereka rentan masuk dalam jurang kemiskinan lagi, karena tidak termaktub nilai pemberdayaan (*empowerment*) di dalamnya. Implikasinya, kaum miskin tidak memiliki proses pembelajaran sosial (yang ada hanya pembelajaran ekonomi, itupun semu) yang sangat penting sebagai pilar partisipasi dan penghidupan kelembagaan lokal. Hal-hal seperti inilah yang relatif belum tersentuh dari kebijakan arrikemiskinan di Indonesia, termasuk kebijakan PNPM mandiri dan BLT (Bantuan Langsung Tunai).

Salah satu hal penting yang perlu ditangani adalah memformalisasikan hak kepemilikan kaum miskin melalui beberapa cara. Namun, dari beberapa modus yang bisa dipakai, ide yang ditularkan oleh *de Soto* dengan melakukan sertifikasi aset tidak kaum miskin merupakan gagasan yang murah dan mudah untuk diterapkan. Studi yang dilakukan oleh *De Soto* (2000:6-7) menunjukkan bahwa sebenarnya kaum miskin itu memiliki modal; hanya tidak dapat dimanfaatkan karena tidak ada hak kepemilikan (*poverty rights*) yang jelas. Misalnya, mereka punya lahan tanpa sertifikat, memiliki rumah tanpa IMB, dan mempunyai-usaha tanpa surat ijin. Itu semua membuat aset-aset menjadi mati, sehingga tidak dapat digunakan untuk masuk ke pasar, seperti menjadi agunan untuk mengambil kredit. Oleh karena itu, program 'representasi aset' (*asset representation*) merupakan hal niscaya yang harus dikerjakan oleh pemerintah, agar rakyat kecil bisa menggerakkan kegiatan ekonominya.

Oleh karena itu konsep pembangunan berkelanjutan adalah suatu yang perlu untuk dimasukkan dalam kebijakan sosial. Komisi Dunia untuk lingkungan dan pembangunan (WCED) yang

pertama kali menggulirkan pembangunan berkelanjutan mendefinisikan bahwa pembangunan berkelanjutan adalah pembangunan yang ditujukan untuk memenuhi kebutuhan generasi sekarang tanpa mengorbankan kemampuan generasi yang akan datang untuk memenuhi kebutuhan mereka sendiri. Pembangunan berkelanjutan adalah pembangunan yang diorientasikan untuk memenuhi kebutuhan generasi sekarang tanpa mengorbankan kemampuan generasi yang akan datang untuk memenuhi kebutuhan mereka sendiri. Makanya prinsip-prinsip pembangunan berkelanjutan tersebut akan bisa terwujud jika didukung oleh Pemerintahan yang baik (*good governance*). *Good governance* dikategorikan baik jika sumber-sumber daya dan masalah-masalah publik dikelola secara efektif, efisien yang merupakan respon terhadap kebutuhan masyarakat. *Good governance* sebagaimana dirumuskan oleh ICEL (1999) mempersyaratkan lima hal:

1. lembaga perwakilan yang mampu menjalankan fungsi kontrol dan penyalur aspirasi masyarakat (*effective representative system*)
2. pengadilan yang mandiri, bersih dan profesional (*judicial independence*)
3. birokrasi yang responsif terhadap kebutuhan masyarakat dan memiliki integritas (*reliable and responsive bureaucracy*)
4. masyarakat sipil sehingga mampu melaksanakan fungsi kontrol (*strong and participatory civil society*). Masyarakat yang partisipatif yang dicerminkan dalam bentuk *public pressure* akan membantu penegakan hukum lingkungan.
5. desentralisasi dan lembaga perwakilan yang kuat (*democratic decentralization*)

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# **THE IMPACT OF MONITORING IN INSTITUTION BUILDING IN NIGERIA: ANALYSIS OF BASIC EDUCATION DELIVERY IN NIGERIA**

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## **ABSTRACT**

The study examines the impacts of monitoring in the development of Universal Basic Education (UBE) in Nigeria. There is need for proper monitoring of funds disbursed to the State Universal Basic Education Boards as well as Local Government Education Authority for the success of UBE. Data were collected through in-depth interviews with 15 respondents ranging from school administrators, Parent Teachers Association, Non-governmental organizations and Nigerian union of teachers. Secondary data were source from the journals, text books and newspapers. The findings revealed that the commission is given powers to audit and examine the financial records of the SUBEBs by checking their receipts and expenditure of the accessed FGN-UBE intervention but it seem that the program is living a lot of issues untouched leading to corruption, mismanagement of funds as well under utilization of UBE. The paper suggests proper monitoring of funds allocated to the commission as well as commitment of government toward realization of education for all by the year 2015.

**Keywords:** State, Education, Monitoring, Corruption & Finance

## **INTRODUCTION**

The role of government in providing quality education cannot be over-emphasised, but there are key issues to consider in transformation of education. The first is to place education in the wider context of public service reform, as an essential element in fostering values of openness and democracy. All over the world, there is a debate about the way public services operate, and the way they need to develop in order to reflect and promote these values. For quality education in any country, there are eight dimensions of good schools, which include good finance including per capita and needs driven funding, good governance and community links, good leadership and management, good teaching, good student outcomes, a good curriculum appropriate to the ages and needs of the students, good ethos, where learning, social responsibility and personal development are valued and a good environment, where best use is made of physical facilities and resources (David, 2011; Prasad & Tata, 2003).

Nigeria has been a signatory to many international treaties on eradicating illiteracy, such as EFA, NEEDS and MDGs. UNESCO has developed educational norms which have come to provide an important guiding tool. The UNESCO constitution adopted in London at the end of World War II, committed the world to the great principle of full and equal opportunities for all

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(UNESCO, 2004). From this, came the convention on the rights of the child and the UNESCO convention on the elimination of all forms of racial discrimination. All these have been of great impetus to the ideas of our common ownership of the globe; they have provided the context facilitated by the globalising forces of technological innovation, in which sense of ownership has taken the form of massive movement of people, goods, ideas and opportunities around the world. The Constitution of Nigeria, 1999 recognised the importance of education when it stated that the government shall provide good and enabling environment for educational development based on science and technology which will help in eradication of illiteracy; education should be free, qualitative and compulsory (Okoroma, 2006).

The national philosophy of education in Nigeria is enshrined in the National Policy on Education. According to this policy, the five national goals which Nigeria's philosophy of education draws its focus from are free and democratic society, just and egalitarian society, united, strong and self-reliant nation, great and dynamic economy and land full of bright opportunities for all citizens (National Policy on Education, 2004).

Based on the above national aspirations, the philosophy of the Nigerian education seeks to achieve objectives, such as the development of the individual into a sound and effective citizen, the full integration of the individual into the community and the provision of equal access to educational opportunities for all citizens of the country at the primary, secondary and tertiary levels. In order to make the philosophy of education work harmoniously for Nigeria's goals, education in Nigeria has to be tailored towards self-realisation, right human relations, individual and national efficiency, effective citizenship, national consciousness, national unity as well as towards social, cultural, economic, political, scientific and technological progress. To this end, the Nigerian education system is value-laden and aims at the betterment of the citizens to live a better life and contribute to the advancement of society (NPE, 2004; Benedict, 2008; David, 2008 & Adesina, 2011).

In September 2000, UN delegates gathered in Senegal (Dakar) for a summit on millennium declaration and an evolutionary global commitment to reduce poverty and its antecedents was adopted. The MDGs were identified which targeted the year 2015. These include eradication of extreme hunger and poverty, universal basic education, gender equality, education in child mortality; improved maternal health campaign against HIV/AIDs and malaria etc., issue of environmental sustainability and global partnership for development (UNESCO, 2008 & Ogbonnnaya, 2000).

The ambiguous functions among three tiers of government of financing primary education resulted in chaos in education, duplication of offices, wastage of national resources, and competition in discharge of its functions (Torgler, Schneider & Macintyre, 2012). As a result, the sector was in crisis and a major renewal of all systems and institutions was required. With a dearth of reliable data, Nigeria seems to have more primary age children out of school than any other country in the world, learning achievements are the lowest in Sub-Saharan Africa, and no statutory mechanisms are in place to ensure that state plans rhyme with national objectives. For UBE to achieve its objectives, administrative obstacles and policy disagreements will need to be overcome before the resource could be fully utilised (Nick, et al., 2009; Rose 2005; Emmanuel 2011 & Usman, 2011).

UBE is a laudable effort of the government but it appears that it is leaving many issues unresolved which are bedeviling the programmes, just as the UPE scheme has, because there is lack of government support. Also, enrolment quota limitation might hinder effective implementation of the scheme (Enemuo, 2000). The country, in the last 30 years, both during

military and civilian administrations, endeavored to make budgetary allocations to sustain the system aimed at providing free educational opportunities for the citizens.(Chuta, 1986; Abu, Franca, Ebuara, Ekpoh, 2009; EFA, 2011; Kanayo, 2010 & Abdullahi, 2010).

The studies of education expenditure can be classified into two, i.e., micro-labour and macro-growth. Micro-labour literature mainly concentrates on the rate of return on education for individuals; whereas macro literature underlines the effect of education on macro-economic growth (Abiodun & Iyiola, 2011).

There is correlation between government expenditure and economic growth. The functions of government are divided into two: maintenance of law and order and public finance, i.e., provision of public goods, such as health services, infrastructural development, defense and education (Ojo, 2010). Government spending on health and education raises labour productivity and increases output; spending on projects such as roads and power supply reduces production cost, accelerates private investors' participation and economic growth (Hinchliffe, 1995, Ajayi 2007; World Bank, 2010).

Educational finance policies also must be devoted to social welfare that prioritises investment in the lower levels of education and acquisition of general rather than occupational specific skills (George, 2006). According to Durosoro (2004) & Ajibola (2011), financing education in Sub-Saharan Africa has not been given sufficient coverage in the relevant literature. The paucity of empirical research on financing education can be partially attributed to the assumption that national governments finance education, and thus, the need for studying it is not significant except, in the context of national budget (Ostrom, 1997; Jesicca, 2011 & Ijaiya, 2004).

## **RESEARCH QUESTION**

1. What are the constraints to monitoring of basic education in Nigeria?
2. How can monitoring enhance basic education in Nigeria?
3. What are the strategies ways of improving monitoring of basic education delivery in Nigeria?

## **OBJECTIVES OF THE STUDY**

1. To examines the constraints to monitoring of basic education in Nigeria.
2. To explain how monitoring enhances basic education in Nigeria.
3. To analyze the strategies ways of improving monitoring of basic education delivery in Nigeria.

## **THEORETICAL FRAMEWORK**

North (1991) developed an analytical framework for explaining the ways in which institutions and institutional change affect the performance of economies. The reason why institutions exist is due to the uncertainties in human interaction which consist of constraints that structure interaction. Institutions vary widely in their consequences for economic performance; some economies develop institutions that produce growth and development, while others develop institutions that produce stagnation. He explored the nature of institutions and explained the role

of transaction and production costs in their development. Institutions create the incentive structure in an economy, and organisations will be created to take advantage of the opportunities provided within a given institutional framework. The kinds of skills and knowledge fostered by the structure of an economy will shape the direction of change, and gradually alter the institutional framework. Institutional development may lead to a path-dependent pattern of development. Also, North explained the implications of this analysis for economic theory and economic history. He indicated how institutional analysis must be incorporated into neo-classical theory and explored the potential for the construction of a dynamic theory of long-term economic change (North, 1991).

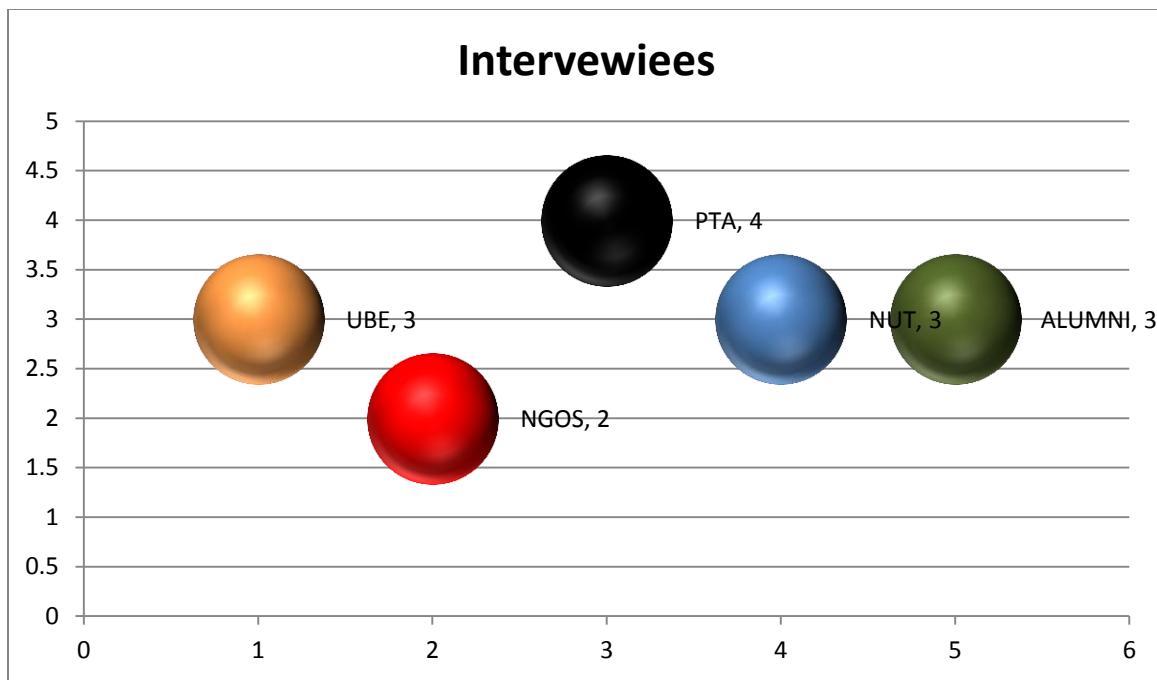
An institution is based on the rules of the game of a society or more humanly devised constraints that structure human interaction. They are composed of formal rules (statute law, common law, regulations), informal constraints (conventions, norms of behaviour and self-imposed codes of conduct), and the enforcement characteristics or both. The basic assumption of institutional theory is that:-

1. The continuous interaction of institutions and organisation in the economic setting of scarcity and hence competition is the key to institutional change.
2. Competition forces organisations to continually invest in skills and knowledge to survive. The kinds of skills and knowledge individuals and their organisations acquire will shape evolving perceptions about opportunities, and hence choices that will incrementally alter the institution.
3. The institutional framework dictates the kinds of skills and knowledge perceived to have the maximum pay-off.
4. Perceptions are derived from the mental constructs of the players.
5. The economies of scope, complementariness, and network externalities of an institutional matrix make institutional change overwhelmingly incremental and path dependent (North, 1991).

The implication of this theory is that political institutions will be stable only if they are supported by organisations with an interest in their perpetuation. It is essential to change both the institutions and the belief systems for successful reform since it is the mental models of the actors that will shape choices. Evolving norms of behaviour that will support and legitimise new rules is a lengthy process, and in the absence of such reinforcing norms, polities will tend to be unstable. While economic growth can occur in the short-run with autocratic regimes, long-run economic growth entails the development of the rule of law and protection of civil and political freedoms. Informal constraints-norms of behaviour, conventions, and code of conduct are a necessary, but not sufficient requirement, for economic performance. Societies with norms favourable to economic growth can sometimes prosper even with unstable or adverse political rules (North, 1991).

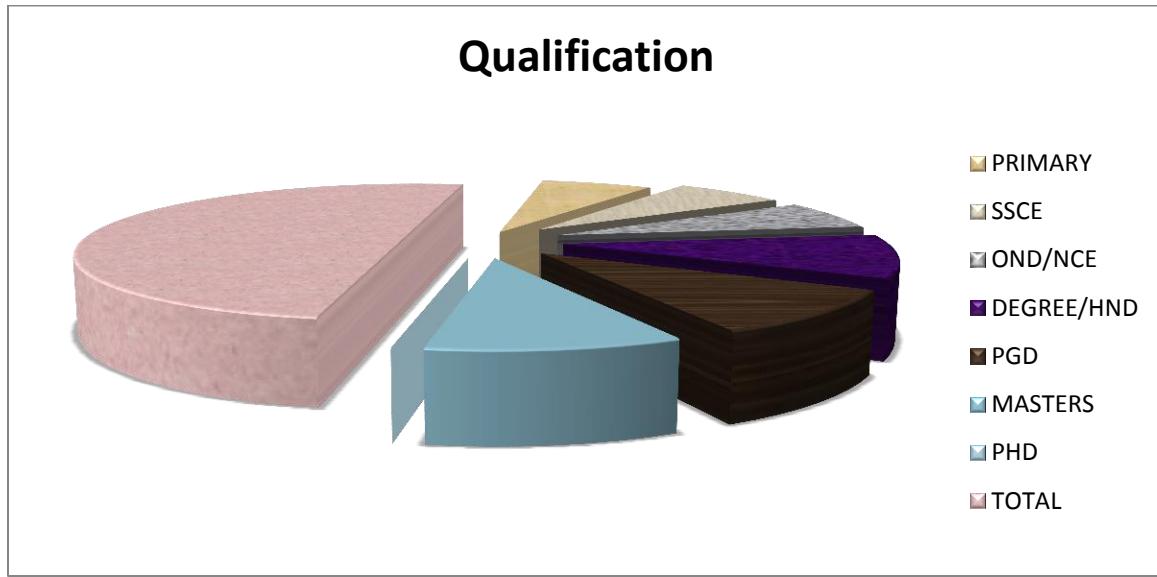
## METHODS OF DATA COLLECTION

The data were source through interviews. Interviews were conducted with the staff of UBE, as well as the parent teachers association, Non-governmental organizations, Nigerian union of teachers numbering fifteen. In order to validate the findings the study also reviewed past literatures such as text books, journals and newspapers.



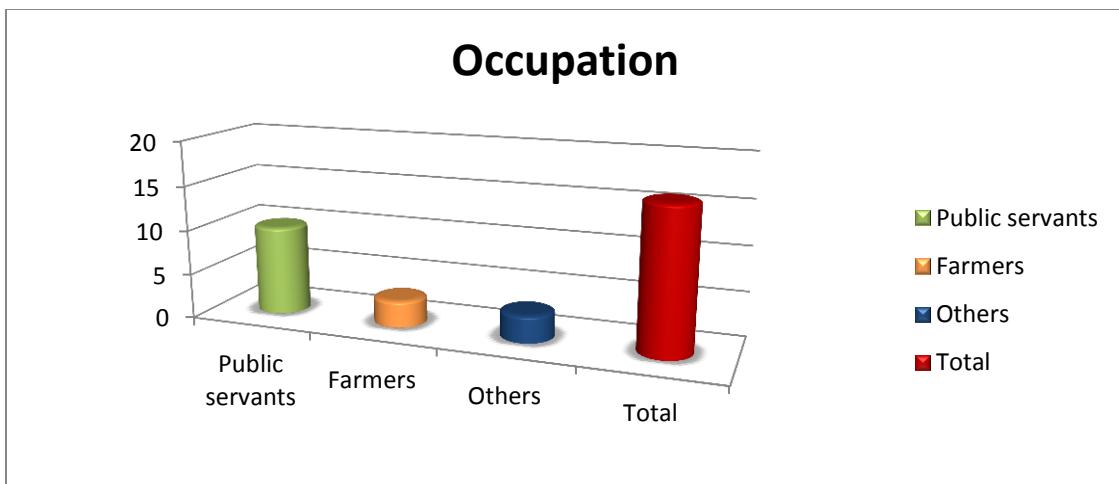
**Figure 1.1: The respondents interviewed**

The above table shows the respondents interviewed UBE (3), NGOS (2), PTA (4), NUT (3) and Alumni (3).



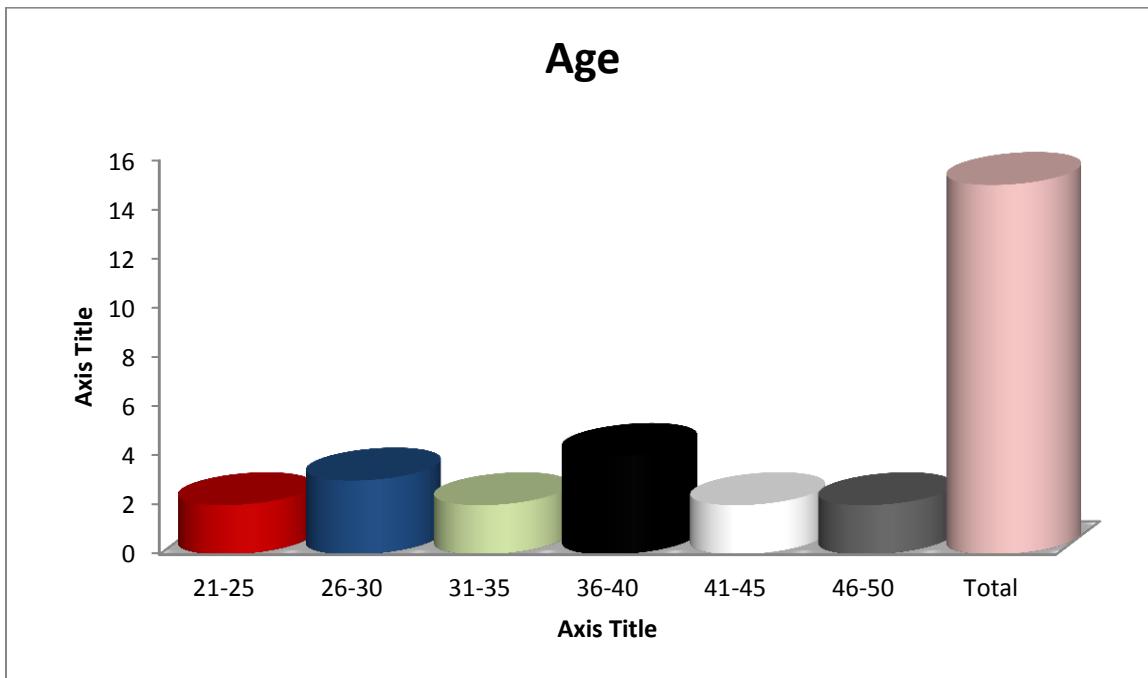
**Figure 1.2: Qualification of the interviewees**

From the table above primary certificate has (2), SSCE (2), OND/NCE (2), Degree (3) PGD (3) and Masters (3).



**Figure 1.3: Occupational distributions of the interviewees**

The above table shows that majority of the respondents are public servants with 10 respondents followed by farmers with 3 respondents and others 3 respondents respectively.



**Figure 1.4 : Age distributions of the interviewees**

From the table above, the ages of interviewees range from 46-50 (2), 41-45 (2), 36-40 (4), 31-35 (2), 26-30 (3) and 21-25 (2).

## THE FINDINGS

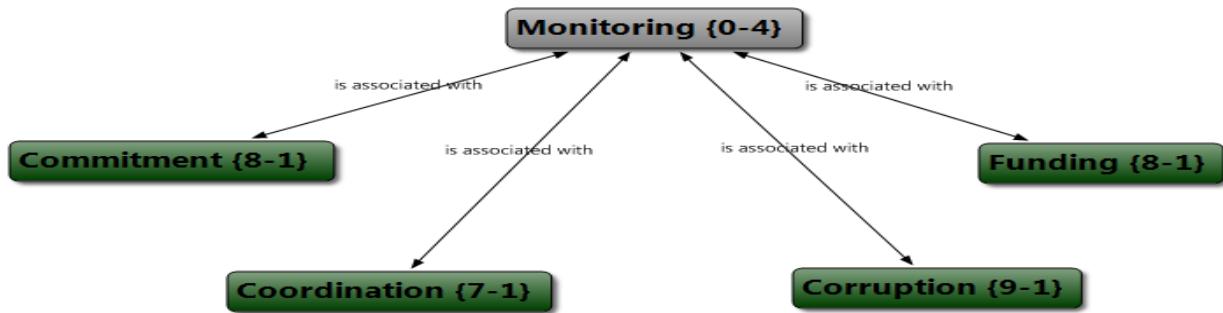


Figure 1:1 Theme and sub theme on Monitoring of basic education

From the research conducted (Figure 1:1) themes were generated and below are the sub-theme and number of interviewees.

### The commitment of government

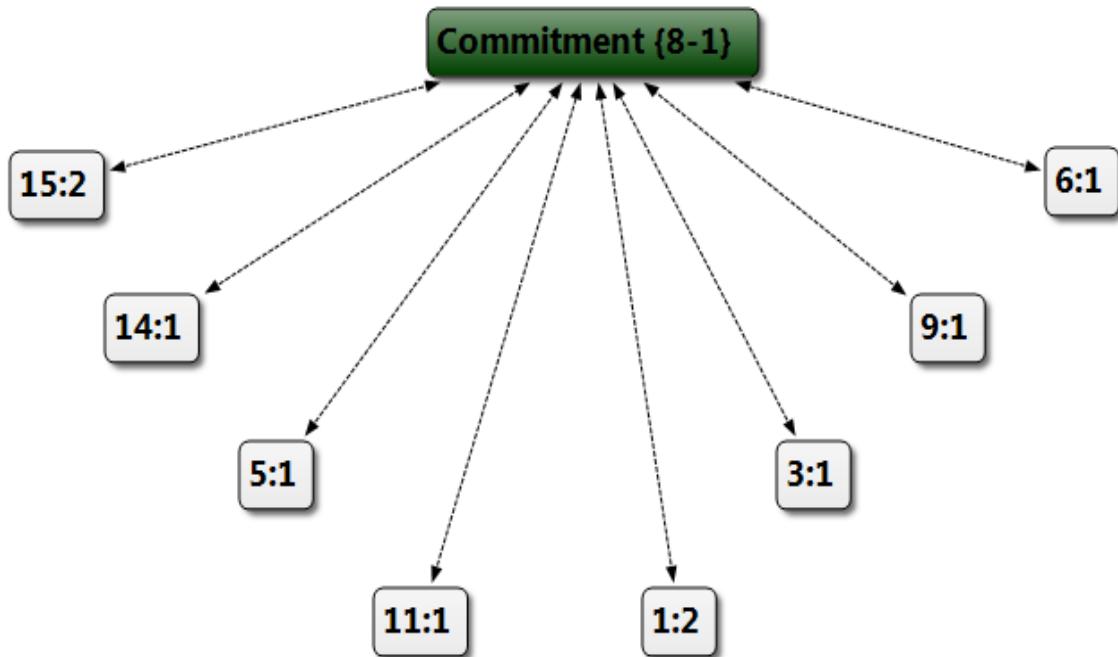


Figure 1:2: The commitment of government

According to Rufa'i (2013), there are different levels of commitment by the states in Nigeria which affect the basic education delivery; the federal government is committed and most of the problems that led to slow implementation of the programme came from states; some states are more committed than others in terms of education provision.

The federal, state and local governments are not committed to the advancement of basic education in Nigeria. The reason often cited is that the 2% consolidated revenue allocated to basic education is not enough to transform the system into a vibrant organisation. The commission has weak monitoring system, due to logistics problem in area of transport, most of the vehicles available to the board are either not functioning or not available, going round to monitor inputs is impossible (1:2)

In support of the above, another interviewee said that “ineffective monitoring system also led to poor education performance and the reason for it is poor commitment” (3:1). The system has “weak monitoring system to check and balance disbursement to the various institutional settings” (6:1).

It is common in our ministry to see inspectors or supervisors moving from one office to another doing nothing, they are people with nothing to do rather than waste government resources, supervisors concentrate on administration rather than effective facilitation of task due to financial constraints (11:1).

Monitoring and evaluation also pose a problem because “vehicles are not enough to cater for the activities of basic education due to poor commitment” (15:2). “The incentive to go for monitoring is not available which affects day-to-day achievements of the objectives of UBE” (14:1). The problem of implementation of the UBE is lack of utilisation of the recommendations after monitoring as opined by another respondent:-

From time to time, the board went for monitoring of the schools, but the problem hinged on unutilisation of the monitoring reports even if we go and come back with report, nothing will be done at the end due to politics involved in it (9:1).

The problem of education in Kebbi is as a result of lack of effective supervision and monitoring due to “lack of executive will” (6:1). The board which is charged with the responsibility of monitoring day-to-day activities of the school is not financially vibrant to embark on monitoring and supervision of the schools. Over the years, “the vehicles allocated to the board are not in good shape due to one or two forms of mechanical problems” (3:1). In another development, a respondent added that:-

Non release of funds for the monitoring and evaluation of the UBE projects at federal, state and local governments levels constitute problems to the UBE (1:2).

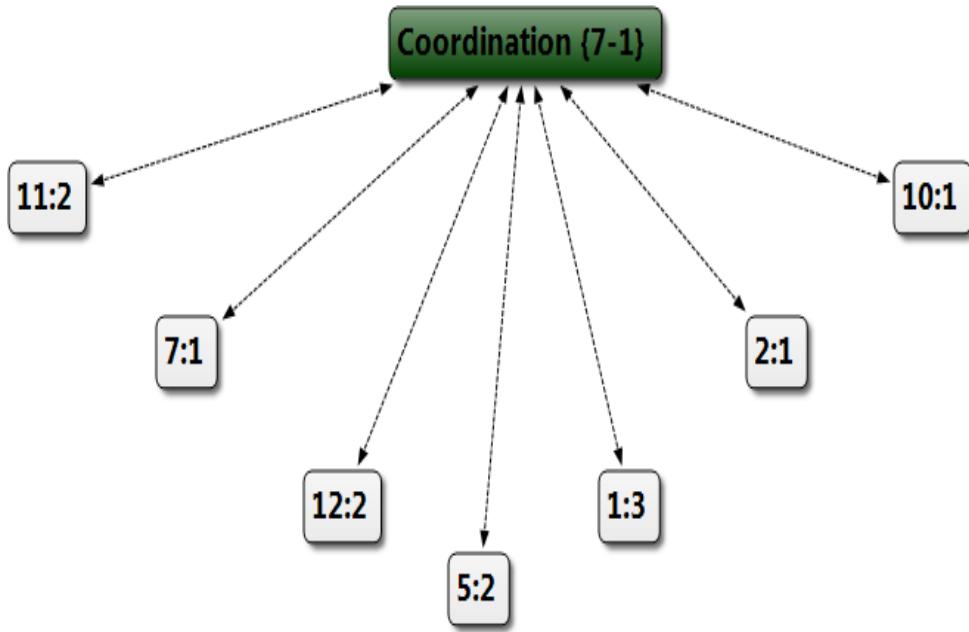


Figure 1:3: Coordination

In order to ensure the success of the UBE, the UBEC, with branches in all the states and local governments in Nigeria, was given powers to coordinate all the activities. To ensure the success of the UBE, the federal government works in close collaboration with the states and local governments. The commission is saddled with powers to ensure quality education delivery in Nigeria as observed by a respondent:-

The institutional arrangement of the commission is that, the commission plays a vital role in policy implementation, receives feedback from the federal government, formulates minimum standards, liaises with states and local governments to monitor federal government input and ensure collaboration with the international partners (7:1).

The institution arrangement is that at the highest hierarchy, there is a minister followed by the SUBEB; there are also zonal offices all over the federal, state and local government offices. “The arrangement is cumbersome as a result affecting the policy output of the UBE” (12:2). Another interviewee stated that “the interaction between ministry of education, UBE commission and SUBEB affects the UBE due to bureaucratic bottleneck involved” (5:2). According to the interviewee, the institutional arrangement is affected by:-

There is rivalry between the Ministry of Education and the Universal Basic Education Board especially at the state level; the mother ministry sees the board as attempt to take over their powers and responsibilities (7:1).

2:1 put it that “although the law establishing UBE is clearly spelt out, the Ministry does impose things to the UBEC. In another development, the institutional arrangement between the federal, state and local governments toward education finance is not cordial in basic education provision; as a result it creates funding problem”. There is always a conflict between the three tiers of governments as another interviewee put it:-

UBE programme is well designed; the state as well as federal government and local government have responsibilities, state is the coordinating body, federal government supports basic education, while local government also provides funds for educational development, local government for instance always complained that they are the government closer to the people with many responsibilities but received small proportion of allocation from the federal account (10:1).

In addition that “there is no proper arrangement between the federal, state and local governments as well as UBEC/SUBEB in utilisation and disbursement of UBE funds; as a result, there is no effective utilisation of public funds. Furthermore there is also variation between political procurement and budgetary allocation and government input to the UBE. The institution arrangement created problems, such as underutilisation of funds and lack of commitment by other level of governments” (12:2).

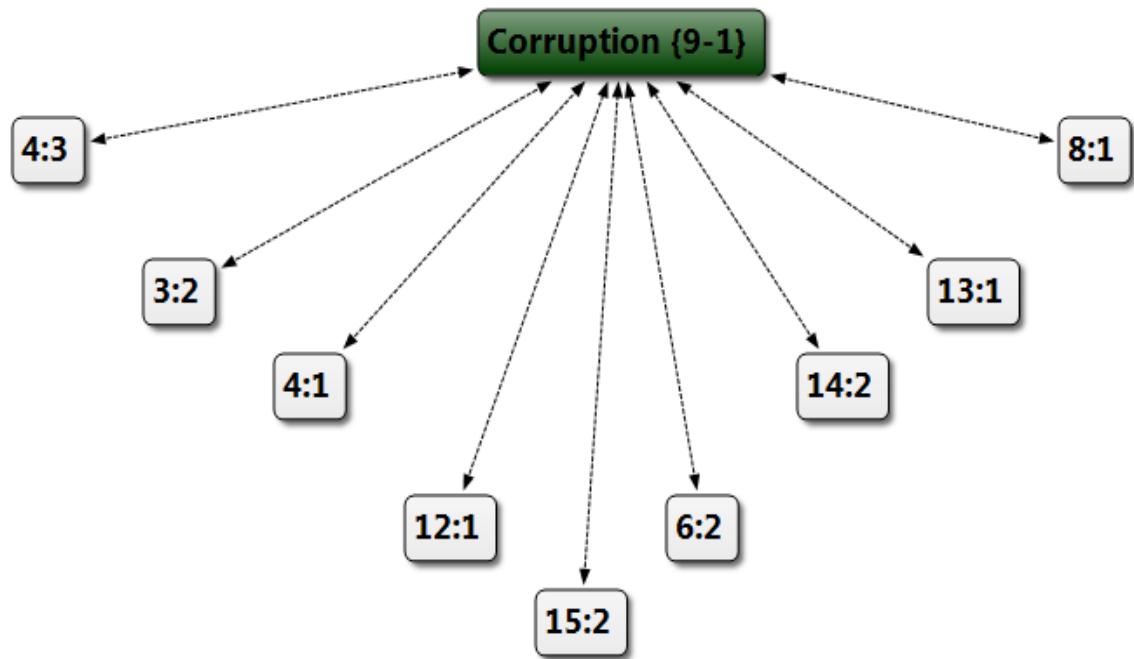


Figure 1:4: Corruption

The top management staff charged with the responsibility of monitoring “divert the money meant for the monitoring for their private ends” (4:1). In addition to the above, another interviewee added that the “UBE had suffered from lack of executive capacity to implement the policy and programme especially monitoring and supervision of the resources injected into the programme” (12:1).

Also, there is poor inspection of UBE funds. The federal government failed to supervise the utilisation of the matching grant as well as the counter funding by the state governments (Anselm and Fredrick, 2013).

Corruption is another factor affecting education development in Nigeria, the basic instructional materials meant for schools are not reaching the schools due to the fact that it is being diverted for private ends (15:2).

The reason for the corrupt practices cannot be far from low salaries of teachers and the employees of the UBE (6:2). Another respondent said that:-

Favouritism is another problem bedeviling basic education in Nigeria, sometimes, the directors will put the names of the whole of his family in the vouchers list and they will not come to the office to teach, they only come to the school at the end of the month to collect their salaries (14:2).

In addition to that, “the reason for rampant cases of corruption is greed” (8:1). There is also problem of “low motivation and delay in payment of staff” (13:1). “Poverty also influences corruption in Nigeria and large family size”.

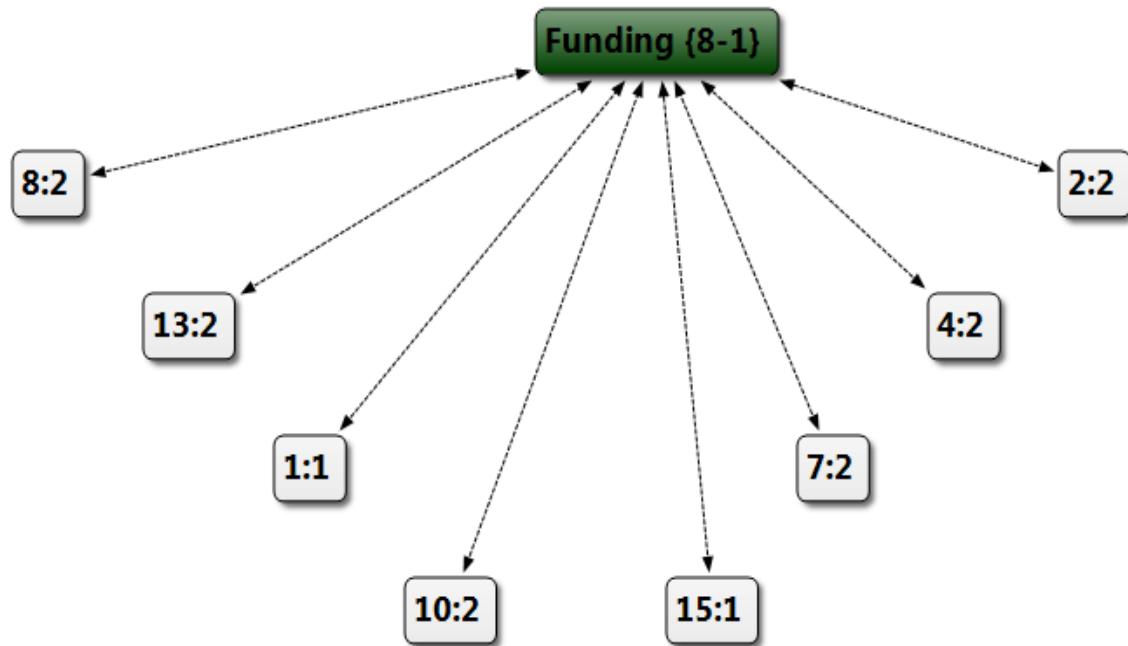


Figure 1:5: Funding

Funding is a very important factor that affects education provision in Kebbi, the interest of government as well as the strategies in basic education provision are lacking, they are just after accumulation for their selfish interest which affects growth and development of UBE (2:2).

Hinchliffe (2013) observed that Nigeria needs to double her investment in primary education for the achievement of MDGs as well as vision 2020.

Another interviewee supported this by saying “the problems arise as a result of inadequate funding of the organisation in focus” (10:2). In another development, “Inadequate funding created problems such as logistic e.g., transportation, is a major problem affecting education

development in Kebbi and contributes to poor monitoring and supervision"(15:1) towards efficiency and effectiveness of the schools; there is a need for proper monitoring but such thing is lacking in virtually all the primary schools as one respondent put it:-

For instance, in Kebbi, no proper monitoring because it involves a lot of funds, we have 1,709 schools; we can't monitor even one quarter of these schools in a year, no vehicles for monitoring, no money to pay the allowances of monitoring staff (4:2).

## **DISCUSSION**

Based on the factors highlighted above its led to the following:-

From the interviews conducted, it was discovered that one of the major problem affecting the institution is government commitment. The commitment of government toward basic education delivery is very low as a result it led to the poor performance of the organization.

The interviews also revealed that there is poor coordination with the stake holders and tiers of governments which invariably affect the quality of education. The stake holders are not mobilize to know the importance of basic education, as a result there is no adequate collaboration between the government, private sector and informal organization which affect the growth and development of education in Nigeria.

In addition to the above, the interviews also revealed poor funding of the programme. This is as a result of lack of commitment of the state to basic education provision. The rate of poverty has also increased which affect the education provision in Nigeria. The National Office of Statistics observed that over 112 million Nigerians lives below the poverty line and earn less than a dollar per day, therefore contribute nothing towards betterment of their children as a result affect education delivery in Nigeria.

Finally, Corruption is another factor affecting education development in Nigeria, the basic instructional materials meant for schools are not reaching the schools due to the fact that it is being diverted for private ends. The reason for the corrupt practices cannot be far from low salaries of teachers and the employees of the UBE. Favouritism is another problem bedeviling basic education in Nigeria, sometimes, the directors will put the names of the whole of his family in the vouchers list and they will not come to the office to teach, they only come to the school at the end of the month to collect their salaries. The finding is in tandem with that of Transparency International 2012.

Table 1:1 Summary of the interviews

THEME	P1	P2	P3	P4	P5	P6	P7	P8	P9	P10	P11	P12	P13	P14	P15	TOTAL S:
Commitment	1	0	1	0	1	1	0	0	1	0	1	0	0	1	1	8
Coordination	1	1	0	0	1	0	1	0	0	1	1	1	0	0	0	7

Corruption	0	0	1	2	0	1	0	1	0	0	0	1	1	1	1	9
Funding	1	1	0	1	0	0	1	1	0	1	0	0	1	0	1	8
TOTALS:	3	2	2	3	2	2	2	2	1	2	2	2	2	2	3	32

## SUMMARY

The paper is on the impacts of monitoring in institution building using universal basic education as a unit of analysis. However from the research conducted with was discovered that the institution is facing problems such as inadequate funding, corruption, poor coordination and lack of commitment which affects the basic education delivery in Nigeria and resulted to 10.5 out of school children in Nigeria, inadequate infrastructures, influx of teachers from teaching profession in search for greener pasture etc.

## RECOMMENDATIONS

1. Establishing child-friendly school principles as minimum benchmarks for effective schools linked to community empowerment.
2. Creating school management committees with community involvement and participation.
3. Collaborating with Government and other stakeholders in monitoring the activities going on in the schools.
4. Monitoring and evaluating of education programmes and strengthening inspectorate service division.
5. Promoting synergy between federal, state and local government in basic education programmes.
6. Service delivery – on a partnership basis with all stakeholders providing facilities (instructional materials, water, toilets and libraries, etc.) for the promotion of quality education.
7. Developing School Based Teacher Development Programme to help build Teachers capacities and skills so that the learning outcomes of the pupils will improve.
8. Students' Tutoring, Mentoring and Counseling Programme (STUMEC) has been rolled out and is being implemented in the project States to help reduce the failure and drop out rates of pupils and also of disadvantaged boys.

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# **TURNOVER INTENTION AMONG MALAYSIAN OPERATORS IN ELECTRICAL AND ELECTRONICS SUB-SECTOR:LEADERSHIP STYLE PERSPECTIVE**

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Helmi Sumilan

Heng Chin Siong

Husna Johari

## **ABSTRACT**

Job turnover is traditionally faced by organizations in many industries. Resource wastage and low productivity can be derived from turnover issue. Turnover intention was found to be a reliable predictor of actual turnover in previous studies. Consequently, this cries for some insights on turnover intention issue, especially within Malaysian context. This paper will concentrate on determining the relationship of leadership style on turnover intention among manufacturing operators in focusing on Electrical and Electronics sub-sector. The survey was taken amongst the operators of manufacturing industry in Peninsular Malaysia (N=800). Considering that Malaysia manufacturing industry has recorded a substantial economic growth through heavy investment in economic activities, it is significant for all manufacturing companies to retain talented employees and reduce turnover problem in order to be more competitive. The findings had accepted the research hypothesis. Dimensions of leadership style (i.e. transactional) had significantly correlated and contributed to the turnover intention. The findings had contributed to the theoretical significance through the examination of direct relationships between leadership style on turnover intention among local operators in manufacturing sector based on the high turnover rate in Malaysia manufacturing sector between the years 2008 until early of 2011.

**Keywords:** Leadership Style, Transactional, Turnover Intention and Manufacturing

## **INTRODUCTION**

Since 2010, Malaysia manufacturing sector has shown a strong economic growth through large investment in economic activities. As a result, job vacancies available in the manufacturing sector have raised compared to other sectors at 39 percent of total positions out of the 1.8 million positions offered (Economic Report, 2010). With the high employment opportunities in this sector, it is important for all manufacturing companies to retain talented employees and reduce turnover problem in order to be more productive and competitive. Furthermore, with significant contribution to Malaysian economy based on its reputation and fast development, the real value-added per worker in the manufacturing sector has increased from RM49, 013 in 2000 up to RM78,707 in 2010 (Economic Report, 2010).

However, being globalised orientation these days, manufacturing sector is struggling to stay substantial in marketplaces in many ways (Zhang & Sharifi, 2000; Fathi, Eze & Goh, 2011), including reducing the turnover rate among employees. The turnover issue is a common

problem that is constantly faced by the management in companies and industries. In a recent development, Malaysia manufacturing sector has become a critical sector for employee turnover issue compared to other sectors.

Besides, even with job opportunities are highly offered, high employee turnover is recorded in this sector and has become a crucial stage in the manufacturing sector to address this issue. The turnover rate in the manufacturing sector in many countries, including Malaysia is high compared to the other sectors due to employee turnover complexity. According to Ministry of Human Resource Malaysia (2011) also known as MOHR, the manufacturing sector is the highest sector with job turnover difficulty since 2008 until 2010 as shown in Table 1.1.

Based on the report, a total of 36,392 employees in the manufacturing sector was involved in job turnover crisis. This number represents 75 percent of the total turnover rate from all sectors in Malaysia. Although the unemployment rate is high, the Labour Department of Peninsular Malaysia (2010) reported that 11,957 of the employees left companies voluntarily from year 2008 until 2010 and 86 percent of the total number came from manufacturing companies.

Voluntary turnover spells disaster for companies because of the loss of money and time resource spent on recruitment, re-skilling as well on training and development activities for new joiners. As stated by Hasin and Omar (2007), in order to retain and develop excellent performance in organizational, managers have to focus on actual voluntary turnover due to the high cost involved in the loss of employees. To avoid such waste, companies should manage it by investigating more on turnover intention aspect as the best predictor for actual voluntary turnover is turnover intention (Mobley, 1982).

The current number stated for voluntary turnover in Table 1.1 is a precursor to the importance of examining the rationality and causes that influence turnover intention. As stated by Foreman (2009), high rate of turnover correlates with turnover intention compared to those employees who plan to stay in companies. As a result, the purpose of this study is to examine factors that lead to turnover intention among manufacturing workers in Malaysian environment.

**Table 1.1**  
Statistics of Voluntary and Involuntary Turnover Based on Sector from Year 2008 to 2010.

<b>Sector</b>	<b>Voluntary Turnover</b>	<b>Involuntary Turnover</b>	<b>Total</b>
	<b>No of Worker</b>	<b>No of Worker</b>	
Real Estate, Renting & Business Services	336	2,274	2,610
Community, Social & Personal Service Activities	209	1,496	1,705
Electricity, Gas & Water Supply	5	156	161
Hotels & Restaurants	26	796	822
Health & Social Work	0	125	125
Finance	196	568	174
Construction	150	775	925
<b>Manufacturing</b>	<b>10,321</b>	<b>26,071</b>	<b>36,392</b>
Education	0	22	22
Transport, Storage & Communication	359	880	1,239
Public Administration, Defence & Compulsory Social Security	27	179	206
Wholesale & Retail Trade, Motor Vehicle, Motorcycle, Household	296	2,080	2,376
Mining & Quarrying	32	210	242
Agriculture, Hunting & Forestry	0	996	996
<b>Total</b>	<b>11,957</b>	<b>36,628</b>	<b>48,585</b>

Source: Report from Labour Department of Peninsular Malaysia (2010).Ministry of Human Resource Malaysia.

## **OBJECTIVE**

To determine the significance relationship of transactional leadership styles on turnover intention among manufacturing operators, particularly in Electrical and Electronics sub-sector.

## **LITERATURE REVIEW**

There is some evidence on the relationship between leadership style and turnover discipline. Mobley (1982) has declared that one of the contributors toward employee's turnover is the supervision adopted by leaders within organization. The failure to organize and structure will be affected on subordinate's behaviour outcomes. The importance of leadership study on withdrawal behaviour also has been established by Jackofsky and Slocum (1987). A model of an integrated process of turnover and performance, which are discussed as leader's behaviour is a moderator in influencing the thoughts of quitting, intention to quit as well actual job turnover for a final step. The application of appropriate leadership techniques are important to persuade employees for better performance and subsequently reducing job turnover.

According to Krackhardt, McKenna, Porter and Steers (1981), the aim direction to reduce turnover rate is still not comprehensible although the role of supervisor towards employees is appeared as a crucial factor. Moreover, intention to quit was associated with lower job satisfaction that caused by manager's supervision practices (Westlund, 2007). Hence, the supervision styles should be comprised of high efficiency in vision, judgement and communication for turnover intention reduction (Riley, 2006).

The definition of leadership is based on the perspective of the researchers itself. Leadership refers to a "social influence process shared among all members of a group" (Hughes, Ginnett & Curphy, 1993, p 8). According to Allen (1987), the manners and approaches used by a responsible leader in conducting followers are considered as leadership behaviour. Meanwhile, leadership styles can be described as a leader's action towards his/her employees that are shown through the attitudes which may well affect employees' perspective (Huang, 1994).

Lee and Chuang (2007) defined contemporary leadership style as an interactive practice based on different setting such as transformational and transactional leadership style. A transformational-transactional is a leadership theory that based on Full Range Leadership model developed by Burns in 1978. The transformational approach is an "exchangeable value" between leaders and followers which contains of commitment values such as respect and trust to both side parties. On the other side, a "mutual exchange" between leaders and followers as employees will be rewarded based on performance desired by employers and it reflects the concept of transactional leadership style (Kuhnert & Lewis, 1987). Dissimilarity approaches between transactional leadership style and transformational leadership style have lead to the comparison study and independently examined of both styles.

In Taiwan context, the impact of transformational and transactional leadership style on job stress and turnover intention particularly in insurance industry has been tested by Lee and Chuang (2007). Findings showed that both leadership styles have a positive relationship on turnover intention meanwhile job stress has brought to high turnover intention among insurance

operators. To conclude, managers in insurance industry are recommended to apply of both leadership styles for operator's motivation and performance.

The variables of transactional and transformational leadership styles were discussed in term of job satisfaction in Malaysia insurance industry (Ho, Fie, Ching & Ooi, 2009). The researchers claimed that it is important to evaluate the effectiveness of leadership styles for employee's satisfaction. According to Spector, Allen, Poelmans, Lapierre, et al., (2007), work satisfaction is accomplished through good performance and lower turnover intention. Results indicated that both of leadership styles are valuable to job satisfaction development.

Later, Heravi et al., (2010) claimed that there is lack of literature discussions on how leadership styles employ may affect on turnover intention. Based on the study, the preferences of IT workforce is on transformational instead of transactional leadership style in Iran context. It means that there is no significant relationship between transactional style and turnover intention for IT personnel. Other factors such as intrinsic motivation and non-monetary factor are found significantly predict turnover intention.

Subsequently, there were three types of leadership style namely transactional, transformational and laissez faire has been analyzed for identify intention to leave among telecommuter by Overbey (2010). Both transformational and laissez faire techniques showed significant relationships on turnover which transformational affected on intention to stay while laissez faire influenced on turnover intention. This study suggested that transactional leadership style is more effectual to produce high retention rate. As stated by Riaz and Haider (2010), transactional leadership practice also has contributed on job satisfaction such as job and career success.

According to Bass (1985) "transactional leadership is most likely to appear in more routine, stable environment where goals and structures are clear and/or where members work under formal contracts" (Hoogh, Hartog & Koopman, 2005; p.843), and this description is relevant to production operators environment. It is because operators are not allowed to perform tasks that are unstated within agreement contacts. Additionally, transactional leadership is a tradition method for leaders to gain desired outcomes among lower level employees (Rich, 2002). As claimed by Fleishman (1998), supervisors who are exercising a high structured manner of leaderships (i.e. transactional leadership and autocratic) towards followers has lead to lower job satisfaction and actual turnover. The prior studies (Riley, 2006; Lee & Chuang, 2007; Heravi et al., 2010) have defined transactional leadership style as predictor in examining turnover intentions.

The continuing for literatures contribution in leadership subject has presented by Wells and Peachey (2011) study. Similar to other studies discussed, this study has used both transformational and transactional to examine turnover intention and job satisfaction as mediating role among sportspersons. This study revealed that leadership styles in sport setting have direct and indirect influence on turnover intention outcome. The findings also indicated that people in sports industry are surrounding with reward-based and competitiveness and has made transactional leadership as preferable instead of transformational leadership.

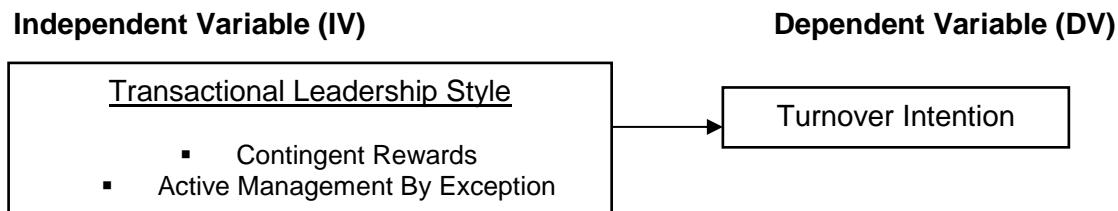
There are two types of "management by exception" of transactional leadership named as active or passive. Both styles of management are defined differently in nature as well towards employee's perspective. As stated by Velkova (2011), followers are able to perform according to standards through the implementation of transactional leadership style. It is based on extra

effort for task accomplishment and to sustain in status quo. In contrast, passive management by exception is perceived as less involvement of leaders except for any error occurs. As in contingent rewards dimension, literature on the relationship between both styles of management by exception have been discussed in numerous studies.

The dimensions included in transactional leadership style (contingent reward, active management by exception and passive management by exception) have found to be influenced turnover intention diversely based on context of study. Contingent rewards approach capable to provide some great impacts on leader's effectiveness and satisfaction and gain some extra effort from followers (Chan & Chan, 2005). Numerous studies (i.e. Epstein, 2005; Overbey, 2010; Riley, 2006; Russell, 1996) discovered that the subordinate's perception towards leader's contingent reward method has significantly influenced in negative relationships on turnover intention. Environment of salesperson, professional, nurses and telecommuter has been covered on directly relationship between transactional leadership and turnover intention. However, the literature expended for this subject is needed for manufacturing context particularly in Malaysia.

Most of Asian firms like Malaysia and Thailand prefer to practise transactional leadership style in supervision as this approach can support high collectivism culture and high power distance (Brazier, 2004; Limsila & Ogunlana 2007) including in manufacturing sector (Rich, 2002). Thus, the transactional leadership approach is chosen to identify the influence of its dimensions namely contingent rewards, active management by exception and passive management by exception on turnover intention in Malaysia environment. Moreover organizational commitment can be affected by transactional leadership method which mostly practised in Malaysia manufacturing industry setting (Lo et al., 2009).

The theoretical framework for this paper is as follows.



The hypothesis seeks to examine the relationships between dimensions of transactional leadership style on employee's turnover intention.

- H 1: Transactional leadership style significantly correlates with turnover intention.
- H1.1: Subordinate's perception of leaders' contingent reward leadership significantly correlates with turnover intention.
- H1.2: Subordinate's perception of leaders' active management by exception leadership significantly correlates with turnover intention.
- H1.3: Subordinate's perception of leaders' passive management by exception leadership significantly correlates with turnover intention.

## METHODOLOGY

This research had adopted a quantitative approached by using structured set of questionnaires. The research conducted was based on field study and it was in a non-contrived setting which means this research has engaged with the natural environment. There were two phases involved in data collection which are: (1) pilot study for examining the reliability and validity of instruments adopted while (2) main study which using the revised instrument to examine the relationships among variables. The unit of analysis for this study is individual operator in manufacturing companies. Based on data reported by MOHR (2010), there were about 302,925 of operator's population in Peninsular Malaysia. Meanwhile, the E&E sub-sector of manufacturing was chosen to be the scope for this study due to the significance contribution to Malaysian economic (Economic Report, 2010). The interest on E&E sub-sector is highlighted instead of the other sectors because of E&E sub-sector is recorded as the highest contributor on employee's turnover since year 2008 until 2010 as showed in the table below.

Table 1.2

Statistics of Employee Turnover based on Manufacturing Sub-sector from Year 2008 to 2010

<b>Manufacturing Sub-sector</b>	<b>No. of Turnover</b>
Food products	1,309
Beverages & tobacco products	116
Textiles	5,651
Leather products	54
Wood products	1,693
Paper, printing & publishing products	361
Chemicals & chemicals products	445
Furniture products	662
Petroleum products	32
Rubber & plastics product	3,928
Non-metallic mineral products	915
Basic metal products	637
Fabricated metal products	1,128
Machinery & equipments	769
<b>Electronics &amp; electrical products</b>	<b>12,231</b>
Transport equipments products	1,234
Basic pharmaceutical products & pharmaceutical preparations	10
Electricity, gas, steam & air conditioning supply	12
Other sub-sector	5,195
<b>Total</b>	<b>36,392</b>

Source: Report from Labour Department of Peninsular Malaysia (2010).Ministry of Human Resource Malaysia.

According to the Labour Department (2010), there are 302,925 operators in Peninsular Malaysia. The sample chosen is based on the table provided by Krejcie and Morgan (1970) (as in Sekaran and Bougie, 2010) that generalized scientific guidelines for the sample size decisions. Based on Table 1.3 384 out of 302,925 operators are needed as the sample in the study. However, this study had distributed 800 sets of questionnaires to the respondents. The cronbach alpha for the reliability test is 0.83.

## FINDINGS

There were seventeen of electrical and electronics manufacturing companies that are involved with data collection activity. Based on respondent's feedback, a total of 645 sets of fully answered questionnaires were received.

The information related to the distribution of questionnaires is summarized in the Table 1.3 below.

**Table 1.3**  
*Response Rate*

Item	No of Questionnaire Sets
Total questionnaires distributed	800
Questionnaires returned	770
Incomplete questionnaires	125
Usable questionnaires	645
Response rate	81%

The characteristics of respondents according to their demographic profile. From the 645 respondents that were selected in this study, 32.1 percent were male and 67.9 percent were female. Most of them were aged 32 years old and above (39.4%), followed by the age category of 24 to 27 years (21.6%), 28 to 31 years (17.9%), 20 to 23 years (17.5) and lastly from 16 to 19 years old (3.6%). The majority of respondents were Malay (85.3%) followed by Indians (7.8%), Chinese (6.5%) and others (0.5%) respectively.

It is found that respondent's perceived leadership style of the leaders were moderate agreement, with overall mean was above average (mean=3.29, sd=0.43) and most of respondents agreed with statements in this variable. Table 1.4 shows the descriptive score on the level of transactional leadership style.

**Table 1.4**

Variable/Dimension	Mean	sd	Level
Transactional Leadership Style	3.29	0.43	Moderate
Contingent rewards	3.42	0.62	Moderate
Passive management	2.94	0.62	Moderate
Active management	3.51	0.58	Moderate

Whereas the overall perceptions on turnover intention were below average (mean=2.90, sd=1.04) and suggested that the respondents are not willing to quit from their current job. Table 1.7 shows that the descriptive score on the perception level on turnover intention.

**Table 1.5**  
*Perception towards Turnover Intention*

Variable/Item	Percentage (%)					Mean	sd	Level
	1	2	3	4	5			
Turnover Intention						2.90	1.04	Moderate
Think to leave the current job	10.2	20.0	39.5	16.6	13.6	3.03	1.15	Moderate

Looking for a new job by next year.	8.7	24.7	33.6	20.6	12.4	3.03	1.14	Moderate
Leaving the organization as soon as possible	16.6	37.5	23.1	11.5	11.3	2.63	1.21	Moderate

Table 1.6  
A Summary of Results of Hypotheses Testing

Hypothesis	Description	Outcome
H2	<b>Transactional leadership style factors significantly correlates turnover intention</b>	<b>Accepted</b>
H1.1	Contingent reward significantly correlates turnover intention	<b>Accepted</b>
H1.2	Active management by exception significantly correlates turnover intention	<b>Accepted</b>
H1.3	Passive management by exception significantly correlates turnover intention	

The dimensions of transactional leadership style that is contingent reward and active management by exception were indicated a significant influence for negative relationships on operator's intention to quit. Contrary, a style of passive management by exception has indicated a positive relationship on turnover intention. Contingent reward is perceived as an important aspect for employee's intention to quit. Operators who are experienced higher level of rewards exchange in form of praise, pay increase, bonuses and acknowledgement produced lower tendency to turnover. Similarly, previous studies by Riley (2006), shown that contingent rewards aspect have significantly influenced with a negative relationship on turnover intention in study salesperson environment.

Similarly, active management by exception have found to influence a negative relationship on operator's intention to quit. An active management of leadership by manager has lead to the high retention for operators in manufacturing industry. It means leaders who take the active role to monitor follower's performance and mistake have successfully reduced turnover intention decisions for this study. The follower's high satisfaction can be gained through the strong implementation of active leadership style (Westlund, 2007) which in turn created lower turnover intention.

The last dimension of transactional leadership is passive management by exception style. Operator's perception towards leader's passive management style has significantly influenced the turnover intention. Factors of low intervene and unconcern from leaders has have negative outcomes for employee's future action. Based on study conducted by Oluokun (2003), leader who's highly applied a passive management in public organization has influenced to the high turnover intention. Hence, current finding is parallel with the previous research. In simple words, manager who has adopted transactional style to take charge of operators has influenced to low turnover intention.

The transactional leadership style factors have slightly more contribution on turnover intention with 16.5 percent of contribution, the dimensions of contingent rewards and passive

management by exception jointly have contributed to turnover intention. From the results, it can be concluded that turnover intention among operators in manufacturing industry is influenced by the combination of all three studied dimensions.

## CONCLUSION

The purpose of this study is to identify variables that may predict operator turnover intention toward their manufacturing companies. The findings have provided perceptiveness to some prediction factors that have significant effects in explaining operator's turnover intention in Malaysian manufacturing context. Findings showed that transactional leadership style has significant correlation with turnover intention. Dimensions of contingent reward, active management by exception and passive management by exception have contributed to turnover intention. In general, the study has provided some information to understand the issue of turnover intention among manufacturing operators. Practically, the findings may contribute in assisting management people and companies leaders in formulating more efficient strategies to minimize turnover number among operators for the benefit and survival of the unions.

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# **DOES OWNERSHIP STRUCTURE MATTER FOR PUBLICLY LISTED COMPANIES PERFORMANCE IN MALAYSIA?**

Rozita Arshad<sup>1</sup>

## **ABSTRACT**

The word of corporate governance has become a very important concept that requires many countries around the world to concentrate on its reformation. Globalisation of markets, open markets competition, and international business has generated awareness about the importance of improving corporate governance practices. Protecting shareholders and other stakeholders are also being attentive agenda and play important roles in corporate governance reformation due to ensure their value creation and their right as the owner of shares. This article attempts to address this issue by examining the relationship between ownership structure and firm performance. The hypothesis is tested by assessing the impact of the structure of ownership on firm performance, using data for 237 Malaysia Public Listed Companies (PLCs). Therefore, this paper will provide an insight into further understanding on the issue of relationship between ownership structure and firm performance

**Keywords:** Corporate governance, ownership structure, shareholders, firm performance

## **INTRODUCTION**

Over the past decade, the term “corporate governance” has become an ordinary term by many levels of people and there are now more governance experts as compared to previous. The reformation of corporate governance has been believed can lead to better supervision and guidance of corporate behaviours (Iyengar, Williams & Zampelli, 2005; Jensen & Meckling, 1976). Better governance results from an improvement of the internal corporate governance mechanisms, carried out by the board of directors, audit committees, internal auditors, control and risk managements and external mechanisms including external auditors and also shareholder protection (Hasnah, 2009). As noted the large number of studies say that corporate governance can be used to improve responsibility, accountability and transparency of the companies that will in turn increase the long term investment and credibility to the companies (Armitage & Marston, 2008; Holder-Webb, Cohen, Nath, & Wood, 2008; Jongsureyapart, 2006; Koh, Laplante, & Tong, 2007; Luo, 2005; Rueda-Sabater, 2000). International flow of investment and business requires that countries must decide if they will be involved in creating governance regulations or be governed in line with international requirements. Thus, corporate governance has become an international agenda item that affects the whole business world in order to develop good governance.

In today's uncertain economic times, shareholders demand more accountability from firm management. Indeed, individuals or investors will not simply invest in a firm without close involvement in ensuring their value creation is protected (Burnett, Xu, Morris and Rodriguez, 2012). Shareholders are becoming increasingly suspicious about directors' ability and

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willingness to protect their interests, especially after various media reports of corporate scandals due to the misuse of corporate funds. Most visibly, shareholder activism usually plays out via the use of resolutions (proposals) presented and acted upon at annual meetings (Burnett, et al., 2012). Most investors cared little about how a company was actually run as they focused more on how the company's stock performed despite the connection between the two (Romanek, 2011). As a result, shareholder activism over governance issues was practiced only by a few brave souls during the 20th century. While most informed investors would define maximizing shareholder value as the primary task of the board of directors and senior management in every public company, this objective receives much less attention by the leadership of private companies (Evan and Bishop, 2002). It is not that they don't care about maximizing the company's value and their wealth. From our experience in working with hundreds of such executives and shareholders, we know that most care passionately.

According to Cadbury (2002) a basic debate on corporate governance arises from the conflict between the ownership of the companies (principal) and management (agent) has been highlighted by Berle and Means (1932) in their book *The Modern Corporation and Private Property*, which documented the existence of a "separation of ownership from control". The book has generated numerous studies that hypothesise the nature of the conflict between owners (shareholders) and managers. The separation of ownership from management had resulted in shareholders being unable to exercise any control over boards of directors, who are theoretically appointed by them to represent their interests.

## **OWNERSHIP STRUCTURE**

The polarisation of ownership structure arises from differences that exist between the cultures and legal systems of countries (Claessens et al., 2000; Guay, 2002). These differences have created two ownership structure systems: the insider-dominated ownership structure (concentrated shareholding); and, the outsider-dominated ownership structure (Anglo-Saxon world competitive)(La Porta et al., 1999; Solomon & Solomon, 2004). Asian countries like Malaysia, the Republic of Korea, Indonesia, Thailand, Hong Kong and Taiwan are characterised by the insider-dominated ownership structure (Claessens, Djankov, & Lang, 2000; Johnson et al., 2000; Nam & Nam, 2004; Thillainathan, 1999). Table 1 summarises the characteristics of each ownership structure and the legal systems.

**Table 1: Characteristic of ownership structure and legal systems**

Insider-dominated ownership structure (concentrated shareholding)	Outsider-dominated ownership structure (dispersed shareholding)
Firms owned predominantly by insider shareholders who also control management	Large firms controlled by managers but owned predominantly by outside shareholders
System characterised by little separation of ownership and control thus, agency problems are rare	System characterised by separation of ownership and control, which engenders significant agency problems
Hostile takeover activity is rare	Frequent hostile takeovers acting as a disciplining practice on company management
Concentration of ownership in a small group of shareholders (founding family members, other firms through pyramidal structures, state ownership)	Dispersed ownership
Excessive control by a small group of “insider” shareholders	Moderate control by a large range of shareholders
Wealth transfer from minority shareholders to majority shareholders	No transfer of wealth from minority shareholders to majority shareholders
Weak investor protection in company law	Strong investor protection in company law
Potential for abuse of power by majority shareholders	Potential for shareholder democracy
Majority shareholders tend to have more “voice” in their investee firms.	Shareholding characterised more by “exit” than by “voice”

(Solomon & Solomon, 2004)

According to Fazilah (2002), the ownership structure determines the nature of the agency problem, whether the dominant conflict is between managers and shareholders, or between controlling and minority shareholders. In the Malaysian PLCs scenario, the level of ownership concentration is high, which gives strength to the dominant shareholders (Thillainathan, 1999). The dominant shareholders may act in their own interest by utilising the minority wealth (funds). The protection for minority shareholders against expropriation by dominant shareholders is very low which can increase agency problems (Claessens et al., 1999; Fazilah, 2002; Shleifer&Vishny, 1997). Therefore, it is expected that the concentrated ownership structure tends to increase agency problem.

According to Larcker, Richardson and Tuna (2004), the definition of ownership relies on the fraction of outstanding shares held by an individual or group. The MCCG 2000 defines ownership (shareholder) based on an effective communication policy in the firms which allows shareholders to be involved in decision-making through voting rights and AGMs. Shareholding in Malaysian Publicly Listed Companies (PLCs) is concentrated and dominated by the family (Thillainathan, 1999). The next important categories of dominant shareholders by rank are the state, corporations and financial institutions. However, the empirical survey by Nam and Nam

(2004) indicates that the majority of Malaysian companies belong to private business groups or corporations. Both studies indicate the change of ownership trend from concentrated dominated by family to business groups in Malaysian Publicly Listed Companies between 1999 and 2004.

Zuaini (2004, pp. 45-48) divided ownership structure into two categories, based on the control or voting rights and the cash flow rights (ownership): 1) control rights are equal to cash flow rights (referred to as large ownership); and, 2) control rights are above cash flow rights (referred to as ultimate ownership). Basically, individual shareholders in companies/corporations that have widely dispersed ownership do not have sufficient incentives to monitor the behaviour of the manager. They rely on managers to run the business or to control the cash flow (Shleifer&Vishny, 1997). According to Zuaini (2004, p. 45), greater concentrations of ownership will lead to effective alignment of management and shareholders' interests and result in higher performance. However, too concentrated ownership has been argued to reduce monitoring and let the dominant ownership exercise control for their benefit (Shleifer&Vishny, 1997). This transfers the agency problem away from the conflict between managers and shareholders, to the conflict between controlling shareholders (large shareholder and manager) and minority shareholders (Fan & Wong, 2002). This situation can create a serious loss of efficiency and expropriation of minority shareholders who do not participate in management and who are not a controlling shareholder.

## **OWNERSHIP STRUCTURE AND FIRM PERFORMANCE**

Numerous studies have analysed the link between ownership structure and firm performance. An empirical study by Demsetz and Lehn (1985) found no significant correlation between ownership concentration and profit rates for 511 large corporations. There is also a study which shows that higher ownership concentration leads to detrimental effects for corporations as large block holders and managers can collude to extract rents from small shareholders (Lehman &Weigand, 2000). Morck, Shleifer and Vishny (1988) discovered a non-monotonic relation between Tobin's Q and insider ownership. Increasing insider ownership between 0% and 5% has positive impact on Tobin's Q. The effect is reversed for insider control over 5% to 25% of the voting rights, and it is again positively related to Q if management holds more than 25% of the equity. It seems that at low levels of insider ownership, the agency costs decrease. While with rising insider ownership and higher levels of insider control, agency costs increase but the management can maximise shareholder value.

Joh (2003) analysed ownership structures and conflicts of interest among shareholders under a poor corporate governance system in Korea affected firm performance before the financial crisis (1993-1997). They found that firms with low ownership concentration show low firm profitability, controlling for firm and industry characteristics, and firms with a high disparity between control rights and ownership rights showed low profitability. Kapopoulos, and Lazaretou, (2007) in their study among 175 Greek listed firms found that ownership structure (managerial shareholdings and important shareholdings) is positively influence Tobin's Q. The results suggest that the greater the degree to which shares are concentrated in the hands of outside or inside shareholders, the more effectively management behaviour is monitored and disciplined, thus resulting in better performance.

Ming, Gee and Lee (2006) examined the impact of ownership structure on the corporate performance of Malaysian public-listed companies from 2002 to 2004. They found that the presence of insider and institutional equity shareholdings do not provide an association with corporate performance. The results suggest that institutional shareholders failed in their

monitoring role and the introduction of the corporate governance standards (MCCG 2000) had also failed to influence shareholder value creation. Roszaini and Hudaid(2006) investigated the relationship between the corporate governance structure and performance in 347 Malaysia public listed companies in between 1996 and 2000. They found board size and top five substantial shareholdings to be significantly associated with both market and accounting performance measures. Tam and Tan added (2007, p. 208) that the protection of shareholders' rights is a main issue in Malaysia because the large shareholders will dominantly control via ownership concentration and representation on company board and management. Based on data of Malaysia's top 150 publicly listed firms, Tam and Tan (2007) found that governance practices such as adopting concentrated ownership and CEO–Chairman duality have affected firm performance. From the above discussion and prior literature, therefore the following hypotheses are stated as follows:

$$H1 = \text{Changes in shareholder structure are positively associated with changes in firm performance.}$$

## METHODOLOGY

This study focuses on the ownership structure and firm performance of the publicly listed companies on the Main and Second Board of Bursa Malaysia (KLSE) in 1996 to 2008. A Pearson correlation analysis and multivariate regression analysis are conducted to empirically test the formulated hypothesis. The population of the research involves all the 'Main Board' and the 'Second Board' of the Publicly Listed Companies (PLCs)<sup>2</sup> in the Bursa Malaysia (formerly known as the Kuala Lumpur Stock Exchange), with the exception of the companies listed in the MESDAQ Market. Non-probability convenience sampling was employed in this research because the nature of the study requires only the companies that available with information about each director of the companies. A total of 237 companies were identified to meet with the criteria.

For accounting based measures, earning per share (denoted as EPS), return on assets (denoted as ROA) and return on equity (denoted as ROE) are used alternatively. EPS is calculated as earnings based on average common shares for the 12 months ended the last financial year, which is generated from DataStream. ROA and ROE are purely accounting based measures (profit ratios) and were computed from company financial statement data. The

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<sup>2</sup>Companies been listed in the Bursa Malaysia are either listed on 1) Bursa Malaysia Securities Main Board for larger capitalised companies, 2) the Second Board for the medium sized companies, or 3) the MESDAQ Market for high growth and technology companies.

ROA is a useful measurement to indicate the profit of the company relative to total assets (Jong 2003). ROA rationally indicates management's/company's effectiveness in utilising the assets entrusted to them and does not depend on the alternative uses of debt versus equity to fund such assets (Robinson, 1998). Similar to ROA, ROE indicates management's effectiveness in generating a return on the funds invested by the common shareholders, to whom management is ultimately responsible and accountable. For this study, the ROA and ROE were generated from DataStream data. The ROA and ROE are calculated based on the following formula:

$$\text{ROA} = \frac{\text{(After tax profit)}_t}{\text{(Total assets)}_{t-1}}$$

$$\text{ROE} = \frac{\text{(Net income before preferred dividends)}_t - \text{(Preferred dividend requirement)}_t}{\text{(Common equity)}_{t-1}}$$

Where,

Preferred dividend requirement = Actual cash dividend payment on preferred stock or the provision for preferred dividends, if in arrears. It also includes accretion on preferred stock.

Ownership structure is measured based on eight variables as follows: 1) number of family member owning shares in the company (SHFAMSZ); 2) number of director owning shares in the company (SHDIRSZ); 3) number of private institutions or companies owning shares in the company (SHINTSZ); 4) number of activist institutions owning shares in the company (SHACTSZ); 5) disclosure of effective communication with shareholders through company proxies (SHCOMM); and 6) disclosure of annual general meeting held (SHAGM).

### Multivariate regression models:

Where,

$$\Delta FP_i = \beta_0 + \beta_1 \Delta SHAGM_i + \beta_2 \Delta SHCOMM_i + \beta_3 \Delta SHFAMSZ_i + \beta_4 \Delta SHDIRSZ_i + \beta_5 \Delta SHINSSZ_i + \beta_6 \Delta SHACTSZ_i + \beta_7 \Delta LOGTS + \beta_8 \Delta LOGTS + \varepsilon_i$$

$\Delta FP_i$  = The change in firm performance (EPS, ROE, ROA, RET and RETadj)

$\Delta SHFAMSZ$  = Change in the mean number of family members holding shares in the PLCs.

$\Delta SHDIRSZ$  = Change in the mean number of director owned shares in the PLCs.

$\Delta SHINSSZ$  = Change in the mean number of institution (private companies) owned shares in the PLCs.

$\Delta SHACTSZ$  = Change in the mean number of activist institution owned shares in the

PLCs.

$\Delta\text{SHCOMM}$  = Change in the mean of disclosure about the PLCs has communication with shareholders.

$\Delta\text{SHAGM}$  = Change in the mean of disclosure about the PLCs has held an AGM.

\* $\Delta\text{LOGTA}$  = Change in the mean of total assets

\* $\Delta\text{LOGTS}$  = Change in the mean of net sales

Notes: \* Control variables

## RESULTS

The Pearson correlation coefficients in Panel A, Table 2 show that among all the variables, only  $\Delta\text{LOGTS}$  and  $\Delta\text{EPS}$  is significantly positively correlated ( $r=0.188$ ) at the 0.01 level. This positive correlation provides limited evidence that an increase in the firm size is associated with an increase in this particular measure of firm performance.

Table 2: Correlation coefficients and regression estimates for changes in shareholders structure variables and changes in firm performance for 237 PLCs.

	$\Delta\text{EPS}$	$\Delta\text{ROE}$	$\Delta\text{ROA}$	$\Delta\text{RET}$	$\Delta\text{RETAadj}$
<b>Panel A - Pearson correlations</b>					
$\Delta\text{SHCOMM}$	-0.073 (0.262)	0.040 (0.544)	0.019 (0.771)	-0.038 (0.557)	-0.055 (0.399)
$\Delta\text{SHAGM}$	0.006 (0.932)	0.011 (0.871)	-0.004 (0.951)	-0.092 (0.156)	-0.094 (0.151)
$\Delta\text{SHFAMS}$ Z	-0.030 (0.645)	0.042 (0.519)	0.062 (0.339)	0.033 (0.610)	0.044 (0.500)
$\Delta\text{SHDIRSZ}$	0.011 (0.861)	0.055 (0.402)	0.013 (0.846)	-0.012 (0.859)	-0.033 (0.615)
$\Delta\text{SHINSSZ}$	0.026 (0.691)	-0.091 (0.165)	-0.068 (0.296)	0.056 (0.394)	0.026 (0.696)
$\Delta\text{SHACTS}$ Z	0.073 (0.260)	-0.020 (0.758)	0.022 (0.742)	-0.028 (0.668)	-0.063 (0.336)
$\Delta\text{LOGTS}$	0.188** (0.004)	0.022 (0.733)	0.097 (0.136)	0.079 (0.228)	0.081 (0.212)
$\Delta\text{LOGTA}$	0.044 (0.496)	0.012 (0.858)	0.023 (0.730)	-0.031 (0.632)	-0.039 (0.548)
<b>Panel B – Spearman correlations</b>					
$\Delta\text{SHCOMM}$	0.047 (0.467)	0.041 (0.530)	0.051 (0.438)	-0.094 (0.148)	-0.105 (0.108)
$\Delta\text{SHAGM}$	0.024 (0.714)	0.065 (0.321)	0.015 (0.822)	-0.126 (0.052)	-0.127 (0.050)
$\Delta\text{SHFAMS}$ Z	-0.013 (0.847)	0.062 (0.343)	0.060 (0.357)	0.052 (0.425)	0.059 (0.367)
$\Delta\text{SHDIRSZ}$	0.095	0.055	0.033	0.002	-0.007

	(0.146)	(0.402)	(0.614)	(0.970)	(0.911)
ΔSHINSSZ	0.100	0.008	0.012	0.054	0.038
	(0.125)	(0.903)	(0.854)	(0.411)	(0.564)
ΔSHACTSZ	0.101	-0.007	0.019	-0.015	-0.040
	(0.120)	(0.920)	(0.765)	(0.817)	(0.540)
ΔLOGTS	0.324**	0.089	0.150*	0.189**	0.197**
	(0.000)	(0.174)	(0.020)	(0.003)	(0.002)
ΔLOGTA	0.210**	-0.031	0.028	0.117	0.132*
	(0.001)	(0.640)	0.671	(0.073)	(0.042)

**Panel C- Ordinary Least Square Regressions**

	Model a		Model b		Model c		Model d		Model e	
	$\beta$	t-value								
(Constant)	-0.379	(0.705)	-0.828	(0.408)	3.032	(0.003)	7.540	(0.000)	9.833	(0.000)
ΔSHCOMM	-1.482	(0.140)	0.461	(0.645)	0.124	(0.902)	-0.153	(0.878)	0.460	(0.646)
ΔSHAGM	0.698	(0.486)	0.017	(0.986)	-0.034	(0.973)	-1.290	(0.198)	1.223	(0.223)
ΔSHFAMSZ	-0.469	(0.640)	0.665	(0.507)	0.930	(0.353)	0.576	(0.565)	0.710	(0.479)
ΔSHDIRSZ	-0.018	(0.985)	0.948	(0.344)	0.257	(0.797)	-0.079	(0.937)	0.334	(0.739)
ΔSHINSSZ	0.257	(0.797)	-1.419	(0.157)	-1.033	(0.302)	0.734	(0.463)	0.174	(0.862)
ΔSHACTSZ	1.125	(0.262)	-0.625	(0.533)	0.052	(0.958)	-0.374	(0.709)	-0.969	(0.333)
ΔLOGTS	2.897	(0.004)	0.390	(0.697)	1.496	(0.136)	1.246	(0.214)	1.390	(0.112)
ΔLOGTA	0.090	(0.928)	-0.001	(0.999)	0.015	(0.988)	-0.679	(0.498)	0.767	(0.444)
Adjusted R	0.017		-0.018		-0.016		-0.013		-0.008	
F statistic	1.523		0.482		0.546		0.625		0.773	

\* Significant at the 0.05 level, \*\* Significant at the 0.01 level

ΔSHCOMM = Change in the mean extent of disclosure that the PLCs have communication with shareholders.

$\Delta$ SHAGM	= Change in the mean extent of disclosure that the PLCs have held an AGM.
$\Delta$ SHFAMSZ	= Change in the mean extent of disclosure about the number of family members holding shares in the PLCs.
$\Delta$ SHDIRSZ	= Change in the mean extent of disclosure about the number of director owned shares in the PLCs.
$\Delta$ SHINSSZ	= Change in the mean extent of disclosure about the number of institution (private companies) owned shares in the PLCs.
$\Delta$ SHACTSZ	= Change in the mean extent of disclosure about the number of activist institution owned shares in the PLCs.
$\Delta$ LOGTS	= Change in the mean total sales.
$\Delta$ LOGTA	= Change in the mean total assets.

Panel B shows the Spearman correlation coefficients. Among all the variables, six significant correlations exist as follows: 1)  $\Delta$ LOGTS and  $\Delta$ EPS ( $r=0.324$ ); 2)  $\Delta$ LOGTS and  $\Delta$ ROA ( $r=0.150$ ); 3)  $\Delta$ LOGTS and  $\Delta$ RET ( $r=0.189$ ); 4)  $\Delta$ LOGTS and  $\Delta$ RETadj ( $r=0.197$ ); 5)  $\Delta$ LOGTA and  $\Delta$ EPS ( $r=0.210$ ); and 6)  $\Delta$ LOGTA and  $\Delta$ RETadj ( $r=0.132$ ). All variables are significantly positively correlated at the 0.01 and 0.05 levels. This positive correlations provide evidence that an increase in firm size (LOGTS and LOGTA) is associated with the increase in the both accounting based measures (EPS, ROE and ROA) and market based measures (RET and RETadj). Therefore, bigger firm size has better firm performance.

Panel C shows the results obtained from regressing changes in firm performance on the changes in shareholders structure variables. The results indicate that none of the models (a, b, c, d or e) are significant. However, only  $\Delta$ LOGTS ( $t=2.897$ ) is positively and significantly associated with  $\Delta$ EPS at the 0.01 level. This result provides some additional support for a positive relationship between changes in EPS and the firm size.

Overall, the correlation and regression results do not provide strong support for hypothesis H1. Most changes in shareholders structure that increase compliance with the MCGC 2000 are not significantly associated with changes in firm performance. However, consistent support was found for a significant positive relationship between changes in the firm size (LOGTS) and the changes in one accounting based measure of firm performance, EPS. Due to the positive relation between firm size and firm performance, this suggests that larger PLCs have higher firm performance.

## DISCUSSION AND CONCLUSIONS

This study has analysed the relationship of ownership structure and firm performance. Hypothesis 1 was tested by regressing changes in firm performance variables due to changes in shareholder structure variables. Similarly, the regression results provide that none of the models are significant. Only very limited evidence on the significant relationship between changes in firm size ( $\Delta$ LOGTS) and changes in firm performance, EPS are found. This result suggests that larger PLCs have higher firm performance. This result provides very limited support for the hypothesis. Therefore, the results indicate that hypothesis 1 is not supported.

This finding is in line with several prior studies, which also found that some shareholder structures were not significantly associated with firm performance. Demsetz and Lehn (1985) found no evidence for a relationship between the profit rate and the ownership concentration. Chang and Shin (2006) found no relationship between controlling family ownership and firm

performance. Zeitun and Tian (2007) found that ownership concentration measured by HERF index (the sum of squared percentage of shares controlled by each top five shareholders) is not significant with firm performance.

However, there are some inconsistencies between the results of this study and several earlier studies. The following ownership (shareholder) structure has been found to be significantly associated with measures of firm performance: ownership concentration (Céspedes, González, & Molina, 2010; Joh, 2003; Margaritis&Psillaki, 2010; Zeitun& Tian, 2007), insider/managerial ownership (Agrawal &Knoeber, 1996; Bauguess et al., 2009; McConnell &Servaes, 1990, 1995), block ownership (Patro, 2008), outsider ownership (Bauguess et al., 2009), voting power (Attig et al., 2008), and large or controlling shareholder (Attig et al., 2008; Volpin, 2002). These inconsistent results are probably caused by the different scopes and methods used. Therefore, there are inconclusive and mixed results in the literature between the shareholder structure and firm performance.

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# **PEMBAHARUAN PENTADBIRAN: PERLAKSANAAN PENGURUSAN AWAM BARU DI PIHK BERKUASA TEMPATAN (PBT)**

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## **ABSTRAK**

Pelbagai pembaharuan yang dilaksanakan dalam sistem pentadbiran awam Malaysia adalah sejajar dengan perubahan zaman serta kemajuan sains dan teknologi dalam era globalisasi. Sebarang perubahan dalam teknologi, proses serta prosedur, undang-undang dan persekitaran mahupun pengenalan program-program baru menuntut semua jentera pentadbiran kerajaan bersedia dan memberikan sepenuh komitmen untuk menjayakannya. Agensi awam perlu responsif dan bersedia untuk berubah demi merealisasikan aspirasi kerajaan dan seterusnya rakyat. Pembaharuan pentadbiran di Malaysia didominasi oleh gerakan Pengurusan Awam Baru (*New Public Management-NPM*) yang berteraskan idea bahawa teknik pengurusan sektor swasta dan mekanisme pasaran dapat meningkatkan kecekapan sektor awam. Reformasi pengurusan awam baru ini (*NPM*) dikatakan satu revolusi saintifik yang berlaku dalam abad ke 20 berkaitan dengan tadbir urus bertujuan meningkatkan kecekapan perkhidmatan awam. Oleh itu kertas kerja ini akan membincangkan aspek reformasi pentadbiran yang berlaku dalam sektor awam Malaysia khususnya dalam konteks pengurusan awam baru (*NPM*). Oleh kerana matlamat *NPM* adalah meningkatkan kecekapan penyampaian perkhidmatan, maka kajian ini menjurus kepada Pihak Berkuasa Tempatan (PBT) di Malaysia memandangkan majoriti rakyat berurusan dengan kerajaan peringkat ketiga ini (PBT).

**Keywords:** reformasi pentadbiran, Pengurusan Awam Baru, penyampaian perkhidmatan

## **PENGENALAN**

Sektor awam di Malaysia telah mengharungi pelbagai reformasi dan melakukan banyak inisiatif pembaharuan. Antaranya ialah inisiatif pengecilan saiz melalui polisi penswastaan; perubahan struktur organisasi, sistem dan prosedur; usaha-usaha peningkatan produktiviti dan penyampaian perkhidmatan; program-program peningkatan kualiti seperti Pengurusan Kualiti Menyeluruh (TQM) dan Pensijilan MS ISO 9001; Piagam Pelanggan; penubuhan Pusat Setempat; e-PBT; serta perlaksanaan Piawaian Penyampaian Perkhidmatan melalui pengukuran Petunjuk Utama Prestasi (KPI). Sebenarnya kesemua perubahan yang berlaku tersebut merupakan kesinambungan daripada satu reformasi radikal yang telah melanda dunia amnya dan arena perkhidmatan awam khasnya iaitu Pengurusan Awam Baru (*New Public Management-NPM*) (Siddiquee, 2006; Forbes dan Lynn, 2005; Hughes, 2003; Rouban, 1999).

Sektor awam di Malaysia turut tidak ketinggalan dalam arus reformasi tersebut (Samaratunge, Alam dan Teicher, 2008; Phang, 2008; Siddiquee, 2006; Ho, 2006; Cheung dan Scott, 2003; Turner, 2002). Phang (2008) menyebut bahawa Malaysia komited melaksanakan NPM dan secara jelas cuba menghapuskan prosedur birokratik yang kompleks di mana ini merupakan

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antara objektif penting falsafah NPM. Petikan berikut turut menjadi bukti komitmen Malaysia terhadap NPM.

*Most of the reform in the public sector can be traced to the influence of NPM, transferred as they were through the Malaysian civil service's participation in the Commonwealth Public Management network.*

(Cheung & Scott, 2003)

Reformasi dan inovasi dalam sistem pentadbiran adalah penting untuk mewujudkan sebuah perkhidmatan awam yang cekap dan berkesan. Sejauh mana cekap dan berkesannya sesebuah kerajaan dan pentadbirannya akan bergantung kepada penilaian dan persepsi masyarakat terhadap mutu penyampaian perkhidmatan agensi-agensi kerajaan. Pihak Berkuasa Tempatan (PBT) adalah antara agensi kerajaan yang memainkan peranan penting dalam aspek penyampaian perkhidmatan. Ini kerana majoriti rakyat berurus dengan PBT, sama ada Majlis Perbandaran, Dewan Bandaraya ataupun Majlis Daerah (Azman dan Johardy, 2008). Malahan PBT dianggap sebagai kerajaan ketiga dalam pemerintahan negara (Fatimahwati dan Mohd. Zaini, 2004; Jayum, 2003; Ahmad Atory, 2001). Walaupun kerajaan tempatan adalah kecil dan paling kurang autoriti berbanding dua kerajaan di atasnya, namun ia memainkan peranan penting dalam masyarakat demokratik (Jayum, 2003). Ia juga dilihat sebagai satu institusi yang wujud berunsurkan politik bertujuan untuk mendapatkan sokongan rakyat dan meningkatkan penglibatan rakyat dalam pentadbiran (Ahmad Atory, 2001). Untuk mendapatkan sokongan tersebut PBT mestilah berusaha untuk menjadi sebuah agensi kerajaan yang bertanggungjawab, telus dan responsif kepada segala kehendak dan keperluan rakyat. Dengan kata lain segala polisi yang digubal dan proses penyampaian perkhidmatan (service delivery) kepada masyarakat perlulah dilaksanakan secara efektif dan efisyen agar rakyat berpuas hati.

Walau bagaimana pun pelbagai kepincangan telah didedahkan oleh pelbagai pihak berkaitan dengan pentadbiran dan pengurusan PBT di seluruh negara (Phang, 2008; Fauziah Arof, 2007; Siti Mariam, 2005; Fatimahwati dan Mohd. Zaini, 2004). Masalah ini perlu ditangani dengan sebaik mungkin dan PBT juga perlu melakukan pembaharuan serta menguruskan perubahan tersebut agar kredibiliti mereka tidak terus dipersoalkan. Sejakar dengan reformasi terhadap sektor awam Malaysia yang dikatakan bermula seawal tahun 1980an cetusan NPM (Swee & Kevasapany, 2006; Siddiquee, 2006), PBT turut terlibat dalam arus perubahan tersebut. Beberapa elemen dan pembaharuan yang didasari oleh NPM telah dilakukan oleh kerajaan tempatan di Malaysia dalam usaha meningkatkan kualiti perkhidmatan yang ditawarkan. Oleh itu kertas kerja ini akan membincangkan dengan lebih lanjut akan reformasi pentadbiran di Malaysia amnya dan di PBT khususnya.

## **REFORMASI PENTADBIRAN DI MALAYSIA**

Pembaharuan dan perubahan dalam pentadbiran yang juga dikenali sebagai reformasi pentadbiran sebenarnya bermula sejak zaman kolonial lagi sebagai satu respon terhadap perubahan politik Malaya. Apabila kemerdekaan dicapai pada tahun 1957, negara kita masih mewarisi pentadbiran yang diasaskan oleh pihak British. Struktur ini dirasakan tidak selari dengan aspirasi negara, menyebabkan kerajaan mengambil tindakan segera untuk mengorganisasikan semula jentera pentadbiran kerajaan (Ahmad Atory, 1995). Menjelang akhir tahun 1960an wujud desakan terhadap perkhidmatan awam agar meningkatkan prestasi dan memainkan peranan yang lebih dalam pembangunan negara. Oleh itu pada tahun 1965

kerajaan pakatan yang telah memenangi pilihan raya umum pada tahun 1964 mendapatkan khidmat konsultan iaitu Ford Foundation untuk mengkaji sistem pentadbiran negara dan cadangan-cadangan dibuat ke arah pembaharuan dan inovasi dalam pentadbiran. Hasil daripada kajian tersebut terdapat tiga perkara penting yang memerlukan perhatian dan tindakan iaitu pertama, penubuhan Unit Pembangunan Pentadbiran (DAU) di bawah jabatan Perdana Menteri; kedua, penambahbaikan dalam pendidikan dan program latihan kepada semua peringkat staf dalam perkhidmatan awam dan ketiga, memperkemaskan kecekapan profesional perkhidmatan awam agar dapat menyediakan kepimpinan yang diperlukan oleh sebuah negara yang sedang pesat membangun (Abdullah Sanusi, 1997).

Lim (2009) menyebut bahawa Malaysia memberikan perhatian yang berterusan ke arah menambahbaik prestasi pentadbiran sejak mencapai kemerdekaan pada tahun 1957. Beliau menambah bahawa reformasi yang dilakukan tertumpu kepada latihan kakitangan, perubahan sistem belanjawan, peningkatan proses-proses dan prosedur pentadbiran, dan penggunaan teknologi baru. Menurut beliau lagi menjelang tahun 1990an, sebahagian daripada reformasi tersebut yang kemudiannya dikenali sebagai NPM turut mengambil tempat. Reformasi baru tersebut memberikan perhatian yang lebih kepada kehendak dan motivasi para birokrat termasuklah sistem merit, piagam pelanggan dan penswastaan. Pembaharuan pentadbiran di Malaysia bersifat *top down* kerana adanya permintaan untuk mengurangkan birokrasi dan membetulkan saiz (*right size*) sektor awam. Namun ia sukar dilakukan kerana objektif DEB memerlukan peranan sektor awam secara signifikan. Oleh itu NPM di Malaysia muncul bertujuan untuk meningkatkan kapasiti perkhidmatan awam berhubung dengan pembangunan ekonomi dan kualiti perhubungan dengan sektor swasta. Ia terpancar di dalam Dasar Persyarikatan Malaysia yang diwujudkan pada tahun 1980an dan Wawasan 2020 pada tahun 1990an di mana ini telah mengubah peranan sektor awam selaras dengan era globalisasi.

Pembaharuan pentadbiran di Malaysia dikatakan muncul akibat desakan untuk kerajaan menglegitimasi kedudukannya di kalangan komuniti perniagaan dan para pengundi. Dasar Persyarikatan Malaysia pada tahun 1983 memberikan ‘asas yang sah’ kepada kerajaan untuk melaksanakan pembaharuan pentadbiran. Walaupun polisi tersebut merupakan satu tindakbalas terhadap cabaran ekonomi global, namun ia membantu mengekalkan sokongan terhadap usaha-usaha pembangunan oleh kerajaan. Menjelang tahun 1990an matlamat utama kerajaan ialah pencapaian pembangunan sepenuhnya pada tahun 2020 (Wawasan 2020). Walaupun Malaysia mendapat kemerdekaan daripada Britain, namun pembaharuan pentadbiran di Malaysia dikatakan dipengaruhi oleh model Anglo-Amerika. Di sebalik polisi Pandang ke Timur yang disarankan oleh kerajaan, inspirasi ke arah penswastaan sebenarnya datang dari Britain dan Amerika Syarikat. Kemelesetan ekonomi global pada awal tahun 1980an mendorong kepada pengenalan dasar penswastaan pada tahun 1983 dan seterusnya pengecilan saiz sektor awam.

Perkhidmatan awam Malaysia juga menunjukkan minat untuk belajar daripada sektor swasta. Beberapa Ketua Setiausaha Negara (KSN) seperti Ahmad Sarji dan Halim Ali serta Pengarah INTAN, Halim Shafie merujuk kepada cara pengurusan sektor swasta seperti yang diutarakan oleh Peter Drucker, Edward de Bono, David Osborne dan sebagainya lagi. Sektor awam juga berkembang dengan pesatnya dalam tempoh Rancangan Malaysia Kedua dan Rancangan Malaysia Ketiga. Perbelanjaan sektor awam meningkat daripada RM3,468 juta dalam tahun 1971 kepada RM16,998 juta dalam tahun 1980, iaitu kadar pertumbuhan sebanyak 19.3 peratus setahun. Jika dibandingkan saiz sektor awam di Malaysia dengan jiran-jirannya iaitu Singapura dan Thailand, saiz perbelanjaan penggunaan sektor awam Malaysia adalah lebih tinggi. Bilangan pekerja sektor awam telah meningkat secara purata 4.9 peratus setahun

daripada 398,000 orang pada tahun 1970 kepada lebih kurang 836,000 pada tahun 1987. Akibatnya, peruntukan untuk perbelanjaan awam telah meningkat daripada 33 peratus kepada 48 peratus. Pada tahun 1984, nisbah pekerja sektor awam adalah seramai 46 orang per 1000 orang penduduk Malaysia, berbanding 30 di Asia, 29 di negara sedang membangun, 20 di Afrika, 38 di Amerika Latin dan 8 di negara-negara OECD atau Organization for Economic Cooperation and Development (Zuriana, 2007).

Fenomena ini menyebabkan kerajaan terpaksa mencari alternatif untuk memulihkan ekonomi domestik. Falsafah ekonomi baru mula dibentangkan di mana mekanisme pasaran dilihat sebagai satu alternatif yang lebih baik ke arah peningkatan kecekapan dan perkembangan ekonomi. Selaras dengan itu juga usaha-usaha mengkomersilkan dan menswastakan perusahaan awam mula mendapat tempat secara global. Malaysia juga tidak ketinggalan apabila pertumbuhan ekonomi menjadi negatif akibat penurunan permintaan dan eksport. Ini ditambah pula dengan saiz birokrasi yang besar, kos operasi yang tinggi dan peningkatan pengangguran. Oleh itu kerajaan Malaysia telah memutuskan untuk mengurangkan peranan dan penglibatannya dalam ekonomi melalui kajian semula pertengahan tahun Rancangan Malaysia ke Empat (1981-1985). Sebaliknya kerajaan menggalakkan pembangunan dengan memberikan kepercayaan kepada kuasa pasaran (Siddiquee, 2006). Pada tahun 1983, penswastaan mula mengambil tempat lanjutan daripada pengenalan dasar tersebut secara rasmi pada Mac 1983. Ahmad Atory (2001) menyebut bahawa polisi penswastaan dan pengkorporatan membuktikan tahap usaha kerajaan untuk meliberalisasi dan memodenkan sistem pentadbiran negara. Melalui penswastaan kerajaan menyerahkan beberapa perkhidmatan dan pengurusan yang berada di bawah kuasanya kepada sektor swasta bertujuan untuk mengembangkan ekonomi negara, menyediakan perkhidmatan yang lebih baik dan meringankan beban kewangan kerajaan. Ini bererti kuasa pasaran dan kerjasama antara sektor awam dan swasta yang merupakan intipati NPM adalah sangat signifikan.

Semua ini adalah antara faktor-faktor yang membawa pentadbiran negara amnya dan perkhidmatan awam khasnya kepada satu pembaharuan yang akhirnya dikenali sebagai pengurusan awam baru (NPM). Menurut Ho (2006), NPM digunakan untuk melambangkan perubahan paradigma ke arah pengurusan yang lebih baik dan penyampaian perkhidmatan daripada birokrasi kepada rakyat. Kerajaan berharap bentuk baru pengurusan awam ini akan membantu mewujudkan sektor awam yang lebih responsif dan efektif. Kerajaan Malaysia turut terpengaruh dengan fenomena pengurusan global khususnya NPM dengan memperkenalkan pembaharuan-pembaharuan besar dalam pelbagai aspek pengurusan dan birokrasi awam. Di bawah pentadbiran Dr. Mahathir Mohamad usaha-usaha perubahan ini terus diteguhkan apabila pentadbirannya mengambil paradigma NPM. Menurut Ho (2006) objektif dan nilai-nilai NPM tergambar dalam pelbagai inisiatif yang dilaksanakan oleh birokrasi di Malaysia. NPM mempunyai banyak dimensi termasuklah:-

- (i) penggantian autoriti, pemberian fleksibiliti
- (ii) memastikan prestasi, kawal akauntabiliti
- (iii) wujudkan persaingan dan pilihan, mekanisma berdasarkan pasaran
- (iv) perkhidmatan yang responsif, berorientasikan pelanggan
- (v) menambahbaik pengurusan sumber manusia
- (vi) mengoptimakan teknologi maklumat
- (vii) meningkatkan kualiti peraturan
- (viii) gaya pengurusan sektor swasta

Reformasi dalam sektor awam Malaysia dibincangkan oleh pelbagai pihak dalam pelbagai konteks. Antaranya ialah Tharan (2001) yang menyebut bahawa keperluan untuk memperbaharui sektor awam adalah untuk membangunkan negara sejak Dasar Ekonomi Baru (DEB) dilancarkan. Ahmad Atory (1998), membincangkan mengenai usaha-usaha reformasi pentadbiran awam Malaysia dari tahun 1981 hingga tahun 1995. Beliau memfokuskan kepada perkara-perkara yang berkaitan dengan kecekapan, keberkesan dan produktiviti perkhidmatan awam. Menurut beliau pembaharuan pentadbiran di Malaysia merangkumi pendekatan struktur, prosedur dan tingkah laku. Abdullah Sanusi (1997), membahagikan proses reformasi pentadbiran di Malaysia kepada beberapa fasa. Fasa pertama melibatkan peranan yang dimainkan oleh DAU, penubuhan INTAN sebagai konsultan dalam pengurusan perkhidmatan serta penubuhan Unit Penyelaras Perlaksanaan (ICU). Fasa kedua berkisar mengenai penubuhan MAMPU (Unit Pemodenan Tadbiran dan Perancangan Pengurusan Malaysia) yang antara lain dipertanggungjawabkan untuk melaksanakan reformasi pentadbiran. Fasa ketiga yang dibincangkan oleh Abdullah Sanusi (1997) ialah reformasi yang berkaitan dengan kepimpinan politik khususnya pemerintahan Dr. Mahathir Mohamad. Menurut beliau pada masa tersebut banyak inovasi besar yang berlaku termasuklah pengenalan konsep Persyarikatan Malaysia yang melibatkan kerjasama dengan sektor swasta. Ini bermakna unsur NPM telah mula mengambil tempat dalam perkhidmatan awam Malaysia.

Menurut Muhammad Rais (1995), reformasi sektor awam di Malaysia telah menjadi sebahagian daripada agenda kerajaan sejak negara mengecapi kemerdekaan pada tahun 1957. Menjelang tahun 1980an usaha-usaha pembaharuan berkisar kepada keperluan untuk meningkatkan kualiti pengurusan sektor awam dan untuk memindahkan tanggungjawab pembangunan ekonomi kepada sektor swasta. Ini bermakna karakteristik NPM iaitu kualiti pengurusan dan peranan sektor swasta mula menerokai usaha-usaha pembaharuan sektor awam Malaysia.

Siddiquee (2006) mengkategorikan reformasi dalam sektor awam di Malaysia mengikut jenis dan tujuan perubahan serta membincangkannya dalam konteks NPM<sup>2</sup>. Oleh itu, kajian ini menggunakan kategori reformasi pentadbiran yang diklasifikasikan oleh beliau iaitu :-

- (i) Dasar Persyarikatan Malaysia
- (ii) Pengecilan saiz sektor awam
- (iii) Rekayasa(*reengineering*) proses perkhidmatan
- (iv) Pembaharuan dalam pengurusan personel dan kewangan
- (v) Piagam Pelanggan dan akauntabiliti awam
- (vi) Desakan peningkatan kualiti dan produktiviti
- (vii) Budaya teknologi maklumat dan kerajaan elektronik

Dasar Persyarikatan Malaysia yang diperkenalkan pada tahun 1983 merupakan satu pendekatan baru dalam pembangunan nasional dengan mewujudkan hubungan di antara sektor awam dan sektor swasta. Intipati dasar ini ialah, sektor awam dan sektor swasta perlulah bekerjasama dan menyokong satu sama lain demi pembangunan sosio ekonomi yang pantas. Pengecilan saiz sektor awam di Malaysia bertitik tolak daripada kemelesetan yang melanda dunia pada tahun 1980an. Antara kaedah yang diambil untuk mengurangkan saiz perkhidmatan awam ialah mengawal penciptaan jawatan-jawatan baru, penghapusan jawatan kosong untuk bahagian-bahagian yang tidak kritikal, pertimbangan semula jawatan-jawatan dalam perundangan, penggabungan perkhidmatan awam negeri ke dalam perkhidmatan awam

<sup>2</sup>Beliau adalah antara penulis yang aktif membincangkan tentang reformasi NPM di Malaysia. Sila rujuk Siddiquee (2006; 2007; 2010).

Persekutuan, penstrukturkan semula agensi-agensi awam, dan penswastaan perusahaan kerajaan (Ahmad Sarji, 1996). Dalam menjuruterakan semula (rekyasa) proses perkhidmatan seiring dengan era globalisasi, proses berkenaan pemerintahan mestilah difikirkan dan direkabentuk semula untuk menambahbaik aspek penyampaian perkhidmatan. Agensi-agensi awam telah diminta untuk menilai semula cara mereka bekerja dalam usaha untuk mengurangkan kerenah birokrasi dan seterusnya mempercepatkan penyampaian perkhidmatan.

Pembaharuan keempat yang dibincangkan oleh Siddiquee (2006) di bawah reformasi NPM di Malaysia ialah berkaitan dengan pengurusan kewangan dan personel. Perubahan terpenting yang dilaksanakan ialah sistem baru penilaian prestasi serta memastikan akauntabiliti awam yang lebih baik dalam pengurusan kewangan. Pembaharuan seterusnya yang dibawa oleh NPM ialah Piagam Pelanggan dan akauntabiliti awam. Kerajaan telah menjadikan Piagam Pelanggan sebagai satu dasar dan semua agensi kerajaan di setiap peringkat perlu menggubal dan melaksanakan Piagam Pelanggan tersebut. Selain itu, kerajaan turut mengambil beberapa inisiatif lain untuk meningkatkan akauntabiliti dalam pentadbiran seperti mengadakan kempen, penubuhan panel integriti di peringkat pusat, negeri dan daerah, memperuntukkan undang-undang anti rasuah, pengukuhan sistem pengaduan awam dan lain-lain.

Pembaharuan keenam yang dibawa oleh NPM ialah program-program penambahbaikan kualiti dan produktiviti seperti Pengurusan Kualiti Menyeluruh (TQM), Kumpulan Kawalan Kualiti (QCC), Unit Jaminan Kualiti, perancangan strategik, penanda aras dan sebagainya. Reformasi terakhir dalam pentadbiran awam Malaysia yang dibincangkan oleh Siddiquee (2006) berkaitan pembaharuan NPM ialah budaya teknologi maklumat (IT) dan kerajaan elektronik. Kerajaan Malaysia dikatakan berada di depan di kalangan negara-negara membangun lain dalam usaha mengaplikasikan IT dalam pentadbiran. Ini terbukti dengan pengenalan Multimedia Super Corridor (MSC) pada tahun 1996 yang dianggap sebagai satu petanda pembangunan IT dalam semua bidang termasuklah kerajaan. Lanjutan daripada itu kerajaan melancarkan skim kerajaan elektronik (*e-government*) bertujuan untuk meningkatkan prestasi dan kualiti perkhidmatan awam melalui IT dan multi media (Muhammad Rais dan Nazariah, 2003).

Pembaharuan-pembaharuan tersebut telah membawa angin perubahan kepada perkhidmatan awam Malaysia. Seperti yang telah dibincangkan, pelbagai bentuk reformasi yang bertitik tolak daripada NPM telah dimulakan dan dilaksanakan dalam sektor awam di Malaysia dengan harapan ia boleh mengubah organisasi awam menjadi lebih efisyen, dinamik dan berorientasikan pasaran. Namun, setelah dilaksanakan selama lebih 20 tahun, impak NPM terhadap sektor awam di Malaysia masih mengundang pelbagai pertanyaan dan perbincangan. Kajian perbandingan mengenai reformasi NPM di Asia (Samaratunge, Quamrul Alam dan Teicher, 2008) melaporkan bahawa Singapura dan Malaysia dikatakan lebih berjaya dalam mengadaptasikan model NPM dan mendapat faedah-faedah daripada reformasi tersebut berbanding Sri Lanka dan Bangladesh. Faktor-faktor kontekstual iaitu sejarah, politik, parti politik, pertimbangan makroekonomi, tradisi kerajaan, peranan agensi pembangunan antarabangsa dan sebagainya mempengaruhi perjalanan dan hasil usaha NPM. Faktor-faktor tersebut yang unik, khusus mengikut negara masing-masing memainkan peranan dalam menentukan kejayaan pembaharuan pengurusan awam. Ocampo (1998) menyebut bahawa negara-negara memberikan penekanan yang berbeza terhadap NPM. Siddiquee (2006), menyebut bahawa Malaysia hanya melaksanakan sebahagian sahaja daripada model NPM tersebut. Turner (2002) mendapati bahawa negara-negara Asia Tenggara termasuk Malaysia tidak begitu terbuka terhadap semua karakteristik NPM. Oleh itu kajian ini akan menyelidiki sejauh mana kerajaan Malaysia telah melaksanakan pembaharuan-pembaharuan bercirikan

NPM dalam pentadbirannya dengan menjadikan PBT sebagai sampel kajian. Rasional pemilihan PBT adalah kerana kerajaan peringkat ketiga ini adalah kerajaan yang paling hampir dengan rakyat dan kebanyakan rakyat berurusan dengan mereka (Azman & Johardy, 2008).

### **REFORMASI PENGURUSAN AWAM BARU (NPM) DI PBT**

Kajian ini melibatkan pengenalpastian elemen reformasi pengurusan awam baru (NPM) yang telah dilaksanakan di beberapa PBT terpilih di negeri Perak, Selangor dan Pulau Pinang. Data dikutip melalui instrumen senarai semak yang menyenaraikan pembaharuan-pembaharuan pentadbiran dalam sektor awam Malaysia. Instrumen tersebut diedarkan kepada 11 PBT bertaraf Majlis Perbandaran di tiga negeri iaitu Perak, Pulau Pinang dan Selangor. Senarai semak tersebut dikelaskan mengikut jenis pembaharuan pentadbiran yang dibincangkan oleh Siddiquee (2006) yang boleh dibahagikan kepada tujuh jenis iaitu Dasar Persyarikatan Malaysia, Pengecilan saiz sektor awam, Rekayasa proses perkhidmatan, Pembaharuan pengurusan personel dan kewangan, Piagam Pelanggan dan akauntabiliti awam, Desakan peningkatan kualiti dan produktiviti serta Budaya teknologi maklumat dan kerajaan elektronik.

Pihak pengurusan PBT diminta menandakan reformasi-reformasi yang telah dilaksanakan oleh mereka. Jadual 1 berikut memaparkan dapatan daripada senarai semak tersebut iaitu bentuk-bentuk pembaharuan pentadbiran berteraskan NPM yang dilaksanakan oleh 11 PBT di negeri Perak, Selangor dan Pulau Pinang bermula dari tahun 1998.

**Jadual 1: Reformasi NPM di PBT**

PBT Reformasi NPM	P. Pinang PBT1 PBT2	Selangor PBT3 PBT7 PBT4 PBT8 PBT5 PBT6	Perak PBT9 PBT10 PBT11
<b>Hubungan dengan sektor swasta</b>	/	/ / / / / / / / /	/ / / / / / / / /
<b>Pengecilan saiz sektor awam</b>			
- kawal penciptaan jawatan baru - hapus jawatan kosong tidak kritikal - penstruktur semula organisasi - penswastaan/pengkontrakkan keluar	/ / / / / / / / /	/ / / / / / / / /	/ / / / / / / / /
<b>Rekayasa proses perkhidmatan</b>			
- rekabentuk semula kerja - permudahkan prosedur/sistem - tingkatkan khidmat kaunter	/ / / / / / / / /	/ / / / / / / / /	/ / / / / / / / /
<b>Pembaharuan dalam pengurusan personel dan kewangan</b>			
- hubungan prestasi dan ganjaran - ada sistem pengurusan kewangan - berlaku peningkatan output/kualiti - berlaku pengurangan kos program	/ / / / / / / / /	/ / / / / / / / /	/ / / / / / / / /

<b>Piagam Pelanggan dan Akauntabiliti Awam</b>	/	/	/	/	/	/	/	/	/	/	/
	/	/	/	/	/	/	/	/	/	/	/
	/	/	/	/	/	/	/	/	/	/	/
<b>Desakan peningkatan kualiti dan Produktiviti</b>	/	/	/	/	/	/	/	/	/	/	/
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<b>Budaya IT &amp; kerajaan elektronik</b>	/	/	/	/	/	/	/	/	/	/	/
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	/	/	/	/	/	/	/	/	/	/	/
<b>Jumlah Pembaharuan</b>	<b>23</b>	<b>22</b>	<b>14</b>	<b>8</b>	<b>19</b>	<b>13</b>	<b>23</b>	<b>24</b>	<b>5</b>	<b>16</b>	<b>25</b>

### PERBINCANGAN DAPATAN KAJIAN

Berdasarkan jadual 1, didapati bahawa terdapat perbezaan di antara PBT yang terlibat dalam mempraktikkan elemen-elemen NPM yang dikaji meskipun di dalam negeri yang sama. Terdapat PBT yang sangat aktif menyahut reformasi NPM dan terdapat juga PBT yang jauh ketinggalan walaupun kesemua 11 PBT yang terlibat dalam kajian ini adalah setaraf iaitu berstatus Majlis Perbandaran.

Di Selangor misalnya, PBT7 dan PBT8 begitu proaktif apabila mereka melaksanakan hampir kesemua daripada reformasi NPM yang disenaraikan manakala PBT4 dan PBT6 jauh ketinggalan apabila masing-masing hanya melaksanakan 8 dan 13 daripada pembaharuan pentadbiran yang disenaraikan. Di Pulau Pinang pula, kedua-dua majlis perbandaran yang terlibat juga dilihat cukup proaktif apabila mempraktikkan hampir kesemua daripada elemen NPM yang disenaraikan. Senario ini berbeza dengan PBT9 yang dikaji di Perak walaupun PBT10 dan PBT11 adalah lebih responsif terhadap reformasi tersebut. Ini mungkin kerana kedua-dua PBT yang terdapat di Pulau Pinang telah lama ditubuhkan dan telah mendapat taraf Majlis Perbandaran seawal tahun 1976 berbanding PBT3, PBT4 dan PBT6 di Selangor serta PBT9 dan PBT10 di Perak. Oleh itu mereka mempunyai lebih kemahiran dan pengalaman untuk melaksanakan pembaharuan dalam sistem penyampaian perkhidmatan kepada rakyat.

Selain itu apabila diselidiki dengan lebih lanjut didapati bahawa faktor kewangan iaitu jumlah hasil yang diterima oleh PBT turut mempengaruhi perlaksanaan reformasi pentadbiran. Misalnya PBT8 di Selangor adalah PBT yang baru ditubuhkan berbanding beberapa PBT lain

tetapi telah berjaya melaksanakan hampir kesemua daripada jenis reformasi yang disenaraikan. Malahan PBT8 ini juga adalah antara PBT terbaik di Malaysia (Abdul Khalid, 2007). Senario ini dikaitkan dengan jumlah hasil yang banyak diterima oleh PBT8 di mana ini membolehkan mereka memperuntukkan sumber-sumber yang mencukupi untuk menjayakan pembaharuan dalam pentadbiran.

Dari segi jenis pembaharuan yang dilaksanakan, didapati model pengecilan saiz dalam bentuk pengkontrakkan keluar adalah elemen NPM yang paling popular memandangkan ia dipraktikkan oleh semua PBT yang dikaji. Malahan terdapat di antara PBT terbabit yang telah mengkontrakkan perkhidmatan pungutan sampah mereka sejak tahun 1980an. Pengecilan saiz dengan cara mengawal penciptaan jawatan baru dan penghapusan jawatan kosong yang tidak kritikal hanya diamalkan oleh separuh daripada PBT yang terlibat. Satu lagi elemen yang dilaksanakan oleh semua PBT dalam kajian ini ialah Piagam Pelanggan. Ini semestinya didorong oleh dasar kerajaan yang mewajibkan semua agensi awam memformulasikan piagam pelanggan masing-masing (Muhammad Rais, 1995).

Jika dilihat kepada kategori dan elemen NPM yang disenaraikan, didapati bahawa kerajaan mementingkan aspek peningkatan kualiti dan produktiviti dalam sektor awam. Buktinya, terdapat sebanyak tujuh jenis reformasi di bawah aspek ini berbanding aspek-aspek lain. Malahan kerajaan mewujudkan satu anugerah khas untuk PBT iaitu Anugerah Kualiti Daerah, namun ia kurang mendapat sambutan di kalangan 11 Majlis Perbandaran yang terlibat dalam kajian ini. Dari aspek pengurusan kewangan, pujian harus diberikan kepada PBT yang mengukur peningkatan output dan kualiti serta berusaha mengurangkan kos sesuatu program atau projek. Ini bertepatan dengan salah satu teras NPM iaitu pemulihan kos, penekanan kepada hasil dan persaingan antara agensi.

Walaupun budaya Teknologi Maklumat (IT) dan kerajaan elektronik baru sahaja diperkenalkan namun ia tetap dilihat sebagai salah satu daripada dimensi NPM (Siddiquee, 2006); (Ho, 2006). PBT yang terlibat juga didapati menunjukkan reaksi positif apabila kebanyakan daripadanya menukuhan pusat sehenti (OSC) dan menawarkan perkhidmatan atas talian (online) seperti kedua-dua PBT di Pulau Pinang, PBT7 dan PBT8 di Selangor dan PBT10 dan PBT11 di Perak.

Dapatan kajian ini menunjukkan bahawa pembaharuan pentadbiran berasaskan pengurusan awam baru (NPM) mendapat tempat yang sewajarnya dalam sektor awam di Malaysia. Walaupun kajian ini hanya menumpukan kepada PBT, namun perlaksanaannya di peringkat negeri dan pusat diandaikan lebih baik kerana kedua-dua peringkat kerajaan ini mempunyai kapasiti yang lebih baik untuk menjayakannya. Tambahan pula reformasi ini lebih bersifat *top-down* iaitu diperturunkan daripada kerajaan yang lebih tinggi kepada kerajaan bawahannya. Cuma aspek perlaksanaannya mungkin berbeza inter negeri, daerah dan agensi awam.

## KESIMPULAN

Secara ringkas boleh disimpulkan bahawa amalan NPM yang menunjangi pembaharuan dan perubahan dalam sektor awam Malaysia mendapat tempat yang sewajarnya di majlis-majlis perbandaran negeri Selangor, Perak dan Pulau Pinang. Walaupun tahap perlaksanaannya adalah berbeza antara PBT, namun setiap majlis perbandaran yang terlibat tetap memperkenan komitmen masing-masing untuk meningkatkan aspek penyampaian perkhidmatan melalui reformasi sektor awam. Walaupun Malaysia didapati mempraktikkan sebahagian sahaja daripada prinsip-prinsip yang diutarakan dalam NPM namun kajian

perbandingan mengenai reformasi NPM di Asia (Samaratunge, Quamrul Alam dan Teicher, 2008) melaporkan bahawa Singapura dan Malaysia dikatakan lebih berjaya dalam mengadaptasikan model NPM dan mendapat faedah-faedah daripada reformasi tersebut berbanding sesetengah negara Asia yang lain.

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# IMPLEMENTATION OF MUHAMMADIYAH ORPHANAGE

Fauzik Lendriyono<sup>1</sup>

## ABSTRACT

Muhammadiyah is an Islamic based community organization and one of the biggest religious community organization in Indonesia. As their contribution in community, Muhammadiyah works on three charitable works, which are: Education, Health service, and Orphanage. These three charitable works has been well developed and give a big contribution in Indonesia building. The orphanage management in Muhammadiyah has a unique characteristic. These orphanages are built, managed, and developed by the people of Muhammadiyah voluntarily. The spirit of Orphanage management in Muhammadiyah is based on what has been written inside Surah Al-Maa'uun in the Holy Quran. This spirit that brings out Muhammadiyah as a religious community organization that own the largest numbers of Orphanage in the world. Unfortunately, the numbers of Orphanage in Muhammadiyah is less supported by its management and service quality. Those orphanage have not been yet fully apply a proportional and professional management. The analysis of Muhammadiyah orphanage in Malang Raya in regard to Quinn's typology, could be explained as follow. First, Orphanage with group culture. This group culture features internal support from the manager, the caregivers, and the orphans. It is a dynamic orphanage that focus on the group loyalty and protection. The tendency of the manager, the caregivers, and the orphans is to protect and ask commitment from each sides. Second is the orphanage with a hierarchy or rational developing model. This kind of orphanage might not care too much about love and caring for the orphans, but they pay more attention in creating new things that could develop the orphanage. They tend to obey any instructions from their leader and search for the aims of organization in order to be benefited materially.

**Keywords:** Implementation, Orphanage, Muhammadiyah, Malang Raya

## BRIEF HISTORY OF MUHAMMADIYAH

Muhammadiyah is an Islamic based community organization and one of the biggest religious community organization in Indonesia. Muhammadiyah was established by KH. Ahmad Dahlan at 8 Dzulhijjah 1322 H, or 18<sup>th</sup> Nopember 1912 M in Kampung Kauman, Jogjakarta, Indonesia. AR. Fachruddin, In his book entitled "Mengenal dan Menjadi Muhammadiyah", stated that Muhammadiyah is an Arabic. It is from the word Muhammad then added by the word iyyah. In Arabic (Nahwu), the word iyyah named ya'nisbi, which means to classify. Furthermore, Muhammadiyah could be define as part of the Prophet Muhammad. It could be explained that it is a group of people who have a will to follow the Sunnah of Muhammad SAW as their Prophet. Muhammadiyah means to encourage the Islamic people to follow the manner of Rasulullah Prophet Muhammad SAW in all aspects of life, such as social life and worshipping.

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In 2014, Muhammadiyah is in the age of 102 years old. In that period of time, Muhammadiyah has helped many people in needs. Muhammadiyah has also given much services and empower people. In line with the propagation mission of Muhammadiyah, this religious community organization works on three charitable works that keeps growing, which are: Education, Health care, and Orphanage. Muhammadiyah own 2.604 Elementary School, 1.772 Junior High School, 1.143 Senior High School, and 172 Universities (Quoted from Persyarikatan Data Base, 6<sup>th</sup> September 2014). These three charitable works has grown fast and give a big contribution for the Indonesia building.

Those charitable works based on the spiritual values of Muhammadiyah that refers to the holy Quran and Sunnah of the Prophet Muhammad SAW. Those values have moved the spirit of the people of Muhammadiyah to struggle and devote for Muhammadiyah. Its motto "Hidup Hidupi Muhammadiyah Jangan Mencari Penghidupan di Muhammadiyah", has become a motto to improve Muhammadiyah to be a big and modern Islamic community organization.

One of the charitable works that would be analyze in this paper is the Muhammadiyah Orphanage that located in Malang Raya. Malang Raya is an area, or region, that consists of three jurisdictions, which are District of Malang, City of Malang, and City of Batu. Its landmass is about 3.812,67 km<sup>2</sup> lived by almost 3.278.797 people (Source: Wikipedia in the book of Kode Data Wilayah 2013: Permendagri No. 18-2013). The amount of the members of Muhammadiyah in Malang Raya is the secondly big numbers, after the members of Nahdlatul 'Ulama (NU).

## **MUHAMMADIYAH ORPHANAGE**

In Malang Raya, Muhammadiyah own twelve different name orphanage, but still in Muhammadiyah neighborhood. There are Panti Asuhan Muhammadiyah (PAM), Panti Asuhan Aisyiyah (PAA), Panti Asuhan KH. Mas Mansyur (PAMM), panti Kader Perserikatan Muhammadiyah (PKPM), and etc. In these orphanage, there are staffs, caregivers, and orphans. The total numbers of orphans are about 300 children. These children have various background, some are fatherless, motherless, abandoned children, and some come from poor family in Malang Raya and other regions.

Each orphanage is developed and managed voluntarily by the members of Muhammadiyah and every orphanage has different unique characteristics. The developmental spirit of the Muhammadiyah Orphanage is stated in The Holy Quran, Surah Al-Maa'uun 1-7. This spirit that brings out Muhammadiyah as a religious community organization that own the largest numbers of Orphanage in the world.

Muhammadiyah Orphanage, for certain community, is considered as a "commodity". This commodity is a strategic bargaining position of an orphanage. Many people from different institutions/organizations give charity or fund to the Orphanage in hoping to get blessing from Allah SWT for helping those orphans. They also believe that Allah SWT will grant their wishes. This such belief has been strongly implant in society. Meanwhile, the Orphanage's staffs do not need to do certain effort in gaining the people sympathy.

Unfortunately, the big amount of Muhammadiyah Orphanage is less supported by the quality of its management and services. Muhammadiyah Orphanage still has not fully applied a good management and services as the basic concept. The common problem that often occurred in the Orphanage are related to the understanding between the board of Muhammadiyah; staffs, caregivers, and the orphans itself about the concept of Orphanage as a Human Service Organization.

## **HUMAN SERVICE ORGANIZATION (OPM) IN THE CONCEPT OF ORPHANAGE**

Basically, Human Service Organization (OPM) has a function to protect, to take care, or to improve the individual welfare through the understanding, development, or even the change of personal attribution. This human service organization also has two main characteristics, which are: first, they work with individuals who stand as "basic materials" in a certain parts for the service sustainability. Second, they have a mandate to protect and improve welfare of the people in their services (Hasenfeld, 1983). These functions, that have not been implemented in most Orphanage.

As a Human Service Organization (HSO), Orphanage provides services for the children to have a better living and raise up from the previous condition. They are taken care properly, receive coaching, and gain good education. The building of Human Services Organization (HSO), such as this Orphanage, could be defined on how the Human Resources of Organization (HRO) are managed and understood as the main base. The dynamic of HSO – Orphanage could be affected by three components, which are: 1) how the organization could build a synergy with the environment; 2) how the organization could be interrelated and interacted with the external powers of organization, and 3) how the organization could build their structure (Burn and Stalker, 1961). Those three components should be implemented in balance to support the sustainability of HSO like the Orphanage.

The synergy between HSO (Orphanage) and the environment's organization should be maintained for the sustainability and continuation of the Orphanage. Environment's of the organization is everything outside the organization that could influence their operational, or in vice versa it is the organization that could influence the environment. Giving contribution for each other (both organization and environment) may strengthen the position of organization in society (Jones and May, 1992). Robbin and Judge (2007) also stated that environment of an organization consists of institutions or the power outside the organization (external) that could affect the working quality and productivity of the organization itself. Those external powers related to government policies, political interests, competition between organizations, public pressure, and etc.

Internal environment of organization is so vary. Montana and Charnov (1993) explained that there are five factors to understand internal environment of an organization, which are related to funding sources, physical sources, human resources, technology, and culture/ethnic. Meanwhile, according to Kettner, the external environment of organization is everything that lay outside the borders of the institution or organization itself. Martin (1980), as quoted in Kettner (2002) specifically explained about Human service Organization that identifies some external elements, which are: 1) funding sources, 2) sources of noncash revenues, 3) clients and client sources, 4) other constituents. The power of internal and external environment of organization in an Orphanage is a strategic asset for the sustainability and continuation of the Orphanage itself.

At the Human Service Organization, the organization's dynamism is an on working condition to keep the balance of the organization. The influence of internal and external environment is an important element in keeping that balance. In a structural perspective, Jones and May (1992) strengthen the importance of a strategy in keeping the organization's balance. Inside that organization's activities, there are structural aspects that should be noticed. Those aspects are roles, rules, relation, and record. Roles is a set of behavior that appaear in a certain occupations. Rules are principles that regulate the organizational process and services. Relation is related to inter-roles relationship that included power, authority and influence, decision making and planning, working division, communication, and social relationship. Meanwhile, record is related to everything that has relation with organizations collective memories or track records. Consistency in implementing these structural aspects become a part in the creation of a balance environment of an organization. This balance could be achieved if the organization and individual interests inside it could be fulfilled (Bernard, 1983).

### **CULTURE IN MUHAMMADIYAH ORPHANAGE**

Edgar Schein (1985) in Kettner (2002) introduced the concept of cultural organization. Schein explained that concept as a basic pattern of assumption which was created, found, or developed by a certain group. They learn to overcome their problem which is both internally and externally integrated. Muhammadiyah orphanage have a different pattern in managing their orphanage. There are two differences that could be defined. First, orphanage that still use the classic pattern. This classic pattern described that the Orphanage's staffs has not fully understand the concept of Orphanage, Orphanage's management, and the development strategy. This kind of Orphanage has a strong feeling of solidarity between the staffs, caregivers, and the orphans. They are so depend on the community's help or donatours to support their programs and activities. Second is the pattern that use semi-modern pattern. This pattern shows that the staff of Orphanage understand the concept of Orphanage, the management also relatively placed in order, and have a better development vision. The relation between staffs, caregivers, and orphans is limited by authority, duty, and responsibility that have been set. There is a division of works, even it is not well implemented. The Orphanage's staffs were impressed to prioritize the Orphanage's development through the works of productive economic, compared to their attention to the children's growth and psycho-social development.

Based on the typological analysis by Quinn, there are two patterns of the Muhammadiyah Orphanage's arrangement that could be explained as follow: first is the Orphanage with cultural group. This cultural group is characterized by the internal power of the staffs, caregivers, and orphans. This kind of Orphanage is dynamic that focus on the group's loyalty and protection. The tendency of the staffs, caregivers, and orphans is to prtect and ask commitment from each parties, especially the one who has already helped the Orphanage's for their operational. Second is Orphanage with a hierarchy or rational development model (inside Quinn's explanation, it is separated between model of development, hierarchy, or rational). In this pattern, Orphanage might not give much care to the orphans, but they care more about create new things that could develop the Orphanage, and obey their leader's saying without consider the consequence, or chase the aim of organization to get a material benefit.

Basically, the building of Muhammadiyah orphanage is supported by two big powers, which comes from the internal and external environment. Each power have a different cultural

influence. Internal power is the organization that shade the Orphanage, which is Muhammadiyah. While the external environment are other parties outside the organization.

The internal power in the building of Muhammadiyah Orphanage is concentrated in the commitment of the people of Muhammadiyah toward the socio-spiritual concept in Muhammadiyah. These values put the solidarity to help the people in need, especially the people who are fatherless, orphans, and poor. This commitment is an important social investment that owned by Muhammadiyah. This power shown by the spirit to sacrifice for Muhammadiyah. The building of Muhammadiyah Orphanage (included two others charitable works), could not be separated with that spirit to sacrifice. All of Muhammadiyah Orphanage come from initiative and the struggle of Muhammadiyah people. Their capital comes from Muhammadiyah people and the community who believe at Muhammadiyah struggle.

Muhammadiyah Orphanage have an advantage in the interactions and inter-relation with the external power. The Orphanage legality that has been officially noted by Government (Social Department) is an indication that Muhammadiyah Orphanage has fulfilled all the administration requirements in building a Human Service Organization (OPM) in the form of Orphanage. The legality's compensation is the fund that is received by the Orphanage for their operational. They also get a permission to gather donations from the community and other third parties. Muhammadiyah Orphanage also have a strong trust from the public. The public trust toward the Orphanage social mission is shown by the amount of donations they give for the Orphanage development.

When we relate to Bernard (1983), Burn and Stalker (1961), Hasenfeld (1983) written in Jones and May (1992), the building of Muhammadiyah Orphanage is actually fitted to the principles of Human service Organization (OPM). Those thought emphasize that one of the main strength of an organization is its structure. Giddens (2003) also explained that structure is an important part of an organization. Structure is a technical operational guidance for an organization. With that structure, organization could be run along with their vision and aims. Structure is the most important aspect in creating the organization's balance.

In relation with structure, Muhammadiyah Orphanage has fulfilled the aspects of structure of a Human Service Organization (OPM). Those aspects are roles, rule, relation, and record (Jones and May, 1992).

Roles aspect in Muhammadiyah Orphanage is shown by the existing of job description or roles. Roles are set in the staffs meeting of Muhammadiyah Branch Leader. This meeting resulted the name of the people who will be the Orphanage staffs. The staffs should be the member of Muhammadiyah. The determination of staffs and roles in an Orphanage are not formally engaged. The commitment of that determination more related to the moral responsibility as a Moslem and as the member of Muhammadiyah. What makes the management of Muhammadiyah Orphanage unique is their staffs commitment to their jobs description, or roles, that has been settled at the staffs meeting of Muhammadiyah Branch Leader. In general, the case that commonly appeared in Muhammadiyah Orphanage in Malang Raya is related to the staffs who are not consistence in doing their job. However, it does not have significant influence to the continuation of the Orphanage itself.

Rule's aspect for the Muhammadiyah Orphanage is an absolute requirement. Rules are not only meant to control the orphans, but it also control the management of the Orphanage. In the process of rules building, all of the staffs, caregivers, and orphans are getting involved. This also applies to Muhammadiyah as the organization that in charge of the Orphanage. Related to the orphans, the rules in the Orphanage have been set up the requirements on the children who could stay in the Orphanage. It also contain the rules on how to live in the orphanage, rules about the activities and the coaching program, sanctions and punishment, and also other aspects that are related to the parenting and coaching. Rules on staffs and management of the Orphanage control the system and administration, activities' report, financial report, jobs description, and other supporting aspects. In some cases, not all the rules could be implemented. There are many inconsistency on those rules. For example, in the matter of management, job description, and administration. Unfortunately, it happens in almost all Muhammadiyah Orphanage, and there is no sanctions about that. Even so, the management activities, parenting, coaching, and staffing in the Orphanage still able to run well.

Talking about relation, Muhammadiyah Orphanage apply collective colleague working relationship. In the matter of management, Muhammadiyah Orphanage are supported by human resources (SDM) who spare their time to take care of the Orphanage. In the other hand, take care of the Orphanage could be seen as a part of worshipping. This is one of the reason to take care the Orphanage. Most of the Muhammadiyah Orphanage's staffs are the employees of government and private institutions. The staffs' time schedule is so flexible. It could be happened since the orphanage not only have staffs, but also caregivers who are working for 24 hours in the Orphanage. The caregivers have different jobs with the staffs. Caregivers jobs are related to the parenting, service, and coaching the orphans. While the staffs's jobs are related to the management, planning, evaluating, and policy in the Orphanage. Muhammadiyah Orphanage have an intensively relative relation, communication, and social relationship with the community. The intensity of this relationship has an influence to the level of community trust to be the donatours, or to give charity to the Orphanage. All of Muhammadiyah Orphanage have a funding network that could support their daily activities.

The last aspects that discussed by Jones and May (1992) is about record. Record is all the things related to collective memories, or the organization's track record. At this aspect, Muhammadiyah Orphanage could be categorized as the Orphanage that have a good trach record among community. The high trust of the community to the Muhammadiyah Orphanage is proven by many more support for the Orphanage's development. Most of Muhammadiyah Orphanage are the result of charity from the community and members of Muhammadiyah. Even so, the development efforts of Muhammadiyah Orphanage, oftenly comes with some conflicts. The conflict that commonly happen is the internal conflict among the Orphanage's staffs related to the pattern of management and parenting. While the other conflict is between the Orphanage's staffs and Muhammadiyah itself in the matter of management and report. However, there is none of all those Orphanage that stop their operation because of those conflict. Instead of that, Muhammadiyah Orphanage could have better management quality and facilities.

The discussion about the concept of environment, organization, culture, and structure in the Human Service Organization have been a part of the establishment of Muhammadiyah Orphanage. The developing dynamic in the history of Muhammadiyah Orphanage establishment has made Muhammadiyah as a religious community organization is success in

planting their vision and mission to their members, the people of Muhammadiyah. Although not all the concepts are fully implemented in the practice of Muhammadiyah Orphanage, but the quantity and quality of the Muhammadiyah Orphanage management are getting better. The social-religion values that have been developed by Muhammadiyah have become the spirit for their members to give charity for the sake of social welfare.

## **CONCLUSION**

Not all Muhammadiyah Orphanage could give services, coaching, and management qualities as what have been set up in the concept. Even so, the numbers of Muhammadiyah Orphanage are increasing with a better service quality and management. Muhammadiyah has become an Islamic community organization that has the biggest numbers of Orphanage in the world.

There are two cultural pattern in the establishment of Muhammadiyah Orphanage. First is the Orphanage with group culture. This culture is characterized by the internal power of the staffs, caregivers, and orphans. It is dynamic with their focus on the group loyalty and protection. The intention of the staffs, caregivers, and orphans is to protect and ask the commitment from each parties that have been hepled the Orphanage's activities. Second is Orphanage with a developmental, hierarchy, or rational program. This kind of Orphanage might not care much about caring the orphans, but they are more concentrated in creating new things that could develop the Orphanage. They tend to obey their leaders without considering the consequences, or chasing the aims of the organization for collecting materials benefit.

Muhammadiyah Orphanage have two big powers that support the improvement and development of the Orphanage. Those powers are the influence of internal and external environment of Muhammadiyah. It shown by the loyalty of Muhammadiyah's members to the social-religious values that have been developed in Muhammadiyah. Meanwhile, the influence of external environment is shown by the high level of trust and support from the community to the Orphanage's social mission.

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# ANTI-MONEY LAUNDERING LAW: A NEW LEGAL REGIME TO COMBAT FINANCIAL CRIME IN MALAYSIA?

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## ABSTRACT

Before the enactment of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA), the fight against financial crime can be found in several statutes such as the Penal Code, Anti- Corruption Act 1997 and Companies Act 1965. It is generally accepted that by freezing and forfeiting the proceeds of crime, it would give significant impact on the fight against financial crime. However, under these legislations there were few shortcomings of the procedures on how the proceeds of crime could be seized and forfeited. As such, the enactment of AMLATFA is considered timely to overcome these problems. AMLATFA provides innovative tools for the law enforcement officials to follow the money trail which will eventually lead to those who committed the financial crime. It also provides authorities with more powerful seizure and forfeiture measures. This is seen as a new law enforcement strategy to combat financial crime. It is believed that this approach is more effective than the traditional approach which only punished the individual criminal but failed to diminish the criminal operations. This paper aims to examine how the anti-money laundering law could be utilized to combat financial crime in Malaysia. To achieve this aim, this paper will focus on the provisions relating to measures for freezing, seizure and forfeiture of proceeds of crime under AMLATFA.

## INTRODUCTION

Financial crime may be defined as a variety of crimes against property, involving the unlawful conversion of property belonging to another to one own personal use and benefit.<sup>3</sup> Normally, it involves fraud, corruption, money laundering, insider trading and the like. Financial crime is profit-driven crime to gain access to and control over property that belonged to someone else.<sup>4</sup> Pickett and Pickett define financial crime as the use of deception for illegal gain, normally involving breach of trust and some concealment of the true nature of the activities.<sup>5</sup>

According to Interpol, financial crime can affect all levels of society and it often involves money laundering, intellectual property crime and fraud.<sup>6</sup> In Malaysia, reported cases related to

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<sup>6</sup> Interpol, 'Financial and High-Tech Crimes.' (2009)  
available at <http://Interpol.int/Public/FinancialCrime/Default.asp> (accessed 7 January 2013).

financial crime are increasing.<sup>7</sup> There has been a growing concern of financial crime in Malaysia particularly when involving banks and financial institutions.

Anti-money laundering law consists of two important legal devices, namely the criminalization of money laundering and the forfeiture of the proceeds of crime.<sup>8</sup> Therefore, the underlying rationale behind anti-money laundering law is that prosecution would distance criminals from the criminal activities. This is because the law intends to recover proceeds obtained from the criminal activities. Likewise forfeiture of the proceeds of crime would reduce the motivation for criminals to reinvest the profits in future criminal activities.<sup>9</sup> As such, the anti-money laundering regime can be considered as a new tool in combating criminal activities including financial crime.

Before the enactment of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA), the fight against financial crime in Malaysia has been incorporated into several statutes such as the Penal Code, Anti- Corruption Act 1997, Companies Act 1965 and Securities Industry Act 1983. However, under these legislations there was a lack of a universal procedure on how the properties were to be seized and forfeited. The mechanisms confined to property which is considered as the subject matter of the offence, or property that is used in the commission of the offence. Furthermore, there is no mechanism to effect seizure of immovable property, business, or property in financial institutions. Obviously, AMLATFA provides the law enforcement officials with more effective tools than before for confiscating criminal proceeds from any serious crimes in Malaysia.

Therefore, the enactment of AMLATFA is timely and provides an improvement of previous legislations as it is more comprehensive in the type of property that can be seized and forfeited. This paper aims to examine how the anti-money laundering law could be utilized to combat financial crime in Malaysia. To achieve this aim, this paper will focus on the provisions relating to measures for freezing, seizure and forfeiture of proceeds of crime under AMLATFA.

### **ANTI-MONEY LAUNDERING AND ANTI-TERRORISM FINANCING ACT 2001 (AMLATFA)**

AMLATFA was enacted with the aims to criminalize money laundering as well as to remove the profits out of crimes through forfeiture regime. It is implemented by multi-law enforcement agencies led by Bank Negara Malaysia (BNM).<sup>10</sup> AMLATFA has given investigation powers not just to BNM but also to other law enforcement agencies, such as the Royal Malaysia Police (RMP) and Malaysian Anti-Corruption Commission (MACC). In practice, money laundering related to drug offences for instance, may be investigated by RMP whereas money laundering related to corruption may be investigated by MACC. On the other hand, BNM may investigate money laundering offences relating to the banks and financial institutions.

The Second Schedule of AMLATFA deals with predicate offences that is, the criminal offence which generated the proceeds of crime. The list of predicate offences under AMLATFA has also been expanded to include a broader range of offences. These include corruption, fraud, criminal breach of trust, illegal gambling, credit card fraud, currency counterfeiting, robbery, forgery,

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<sup>7</sup> Joyce Goh, 'Corporate: Financial Crime on the Rise in the Country' (2012) The Edge Malaysia.

<sup>8</sup> Guy Stessens, *Money Laundering: A New International Law Enforcement Model* (2000).

<sup>9</sup> Aspalella A. Rahman, 'Anti-Money Laundering Laws: Enhancing the Agility of the Enforcement Authority in Malaysia' (proceeding of the 6<sup>th</sup> National HRM Conference, Melaka, 5-6 December 2012).

<sup>10</sup> The Central Bank of Malaysia

human trafficking, extortion, smuggling and drug-related crimes. The list of predicate offences may be expanded by the authorities from time to time as deemed necessary.<sup>11</sup>

AMLATFA also introduces more powerful and innovative measures that can facilitate the recovery of illegal proceeds from money laundering and any other serious crimes. By using AMLATFA as a strategic approach, the law enforcement agencies can more easily detect and confiscate the proceeds of crimes. This view has been proven correct when it was reported that the Anti-Corruption Agency had seized assets procured through bribery worth RM25 million and forfeited another RM206, 000 in assets that were acquired through corruption.<sup>12</sup> Recently, the Court of Appeal has granted forfeiture order against cash worth RM8.3 million obtained from Ponzi scheme.<sup>13</sup> As at June 2013, a total of 13126 money laundering cases are in various stages of investigation and prosecution involving the seizure of proceeds of crime amounting to RM13.1 billion.<sup>14</sup>

### **FREEZING, SEIZURE AND FORFEITURE OF PROPERTY**

Part VI of AMLATFA provides for standardized mechanisms applicable to all law enforcement agencies for freezing, seizure and forfeiture of property suspected to be involved in money laundering activities. One of the most powerful provisions of AMLATFA is the avenue to freeze property by the law enforcement agencies for the purpose of investigation before affecting a seizure. Section 44 provides that the freezing order is valid for 90 days and it will expire unless the person is charged.<sup>15</sup> It has the effect of making it impossible for a person to deal with his property except for the reasons in sub section (3) (b).<sup>16</sup> The person can also be banned from leaving Malaysia.<sup>17</sup>

It must be noted that the freezing order under section 44 is not reviewable by the court. In *Khor Peng Chai & Ors v Bank Negara Malaysia & Anor* [2011] 1 LNS 216, Mohd Zawawi Salleh J noted that the purpose of section 44 is to assist in investigation where there are reasonable grounds to suspect that a money laundering offence has been or is being or is about to be committed. As such, the court will not interfere with the enforcement authority as it could jeopardize the investigation process.

The procedure for seizure is provided under sections 45 to 54 of AMLATFA. The procedure of seizure varies depending on whether the property is movable or immovable or whether it is in a financial institution or not. Section 45 covers the seizure of movable property. This section, however, is not applicable to any movable property in a financial institution.<sup>18</sup> Section 46 sets out the manner in which the seizure of movable property is to be effected. As a rule, it will be affected by removing the movable property from the possession of the person from whom it is

<sup>11</sup> Bank Negara Malaysia, Financial Stability and Payment Systems Report 2012

<sup>12</sup> 'ACA seals assets worth RM25 million' *New Straits Times* 24 January 2007.

<sup>13</sup> 'Court forfeits cash worth RM8.3m' *New Straits Times* 4 October 2013.

<sup>14</sup> Berita Harian, Kes Penggubahan Wang Haram RM13.1 Bilion, 19 Jun 2014.

<sup>15</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 44(5).

<sup>16</sup> Disposal of property for the purpose of-

- (i) determining any disputes as to the ownership of the property;
- (ii) its proper administration during the period of the order;
- (iii) the payment of debts due to creditors prior to the order;
- (iv) the payment of money to the person or his family;
- (v) the payment of the costs in criminal proceedings.

<sup>17</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 44(4).

<sup>18</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 45(4).

seized and placing it in the custody of such person and at such place as the investigating officer determines.<sup>19</sup> However, if it is not practicable, the property may be left at the premises in which it is seized under the custody of such person.<sup>20</sup>

The power of seizure of movable property in a financial institution is conferred specifically under section 50. This can be considered another innovative tool introduced by AMLATFA. The order is to secure the evidence for the purpose of money laundering prosecution. The seizure order can only be issued by the public prosecutor if it is satisfied that movable property including monetary instruments is the subject matter of money laundering offence. However, the public prosecutor must consult with the relevant supervisory body, such as BNM or Securities Commission. Non-compliance with the order is an offence and subject to the penalty prescribed by AMLATFA.<sup>21</sup> Section 50(2) gives the business entities, its employees and agent's immunity against any criminal or civil proceedings as a result of complying with the seizure order.

It is important to note that the seizure order under section 50(1) is also not reviewable by the court. In *City Growth Sdn Bhd & Anor v. The Government of Malaysia* [2005] 7 CLJ 422, the applicants applied an order to quash the order made by the Deputy Public Prosecutor against their bank accounts. The order made in pursuant to section 50(1) of AMLATFA. The issue here is whether such order is reviewable by way of judicial review. The court refused the application and held that the deputy public prosecutor was performing his duty under section 50(1) of the Act and therefore could not be accountable by way of judicial review.

Raus Sharif J, at p.424 noted:

Looking at the order of the Deputy Public Prosecutor as well as the provision of s.50(1) of AMLA, I am of the view that the order of the Deputy Public Prosecutor is not reviewable under O.53 of the [Rules of High Court]. To me, s.50 (1) of AMLA is part and parcel of the investigation process into an offence under s.4 (1) of AMLA. It appears that in order to facilitate the investigation into the offence of money laundering, the law has provided with the Public Prosecutor the power to assist the investigating officer. Clearly, s.50(1) of AMLA was enacted to enable the Public Prosecutor or his Deputy to make an order of seizure of movable properties in the possession of the financial institutions by ordering the financial institutions not to part, deal in, or otherwise dispose of such property or any part of it until the order is revoked or varied. Thus, by issuing the said orders the Deputy Public Prosecutor was merely exercising a function under AMLA.

The seizure of immovable property is provided under section 51. In this matter, the provisions of the land law are also applicable. Section 52 specifically deals with seizure of a business related to the person against whom prosecution for an offence under the AMLATFA is intended to be commenced, or a business in which a relative or an associate of such person is involved. It must be noted that the enforcement agency is empowered to seize the business as well as to make certain orders in relation to the activities carried on by the business, its accounts, its profits, directors, officers and employees of the business.<sup>22</sup>

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<sup>19</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 46(1).

<sup>20</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 46(2).

<sup>21</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 50(3).

<sup>22</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 52(1).

Section 52, for instance, was used by the police to seize the finance of Invent Qjaya Sdn Bhd in February 2005. The order was issued following reports of fraud involving RM50 million. The administrator was appointed to supervise, direct and control the company's business. However, in December 2005, the seizure order has been revoked and the company's business had been handed over to its directors and executive officers.<sup>23</sup> It appears that this provision may place significant burden on the business subjected to the order. The business for instance, may be directed to receivership and therefore could suffer tremendous damage as the result of the order. However, no action can be taken against the enforcement agency because section 77 of AMLATFA gives them immunity. In addition to this, section 57 does not allow the validity of the freeze or seizure order to be challenged.

Sections 55 and 56 of AMLATFA deal with forfeiture of property. Section 55 states that forfeiture order can only be issued against property that are proved to be the subject matter or have been used in the commission of money laundering offence. The court will issue a forfeiture order if the offence is proved against the accused or if the offence is not proved against the accused, the court must satisfied that the accused is not the true or lawful owner of such property and that no other person is entitled to the property as a purchaser in good faith for valuable consideration.<sup>24</sup> According to Dato' Jagjit Singh SJ the forfeiture provision under AMLATFA was drafted to combat among the most popular financial crime in Malaysia.<sup>25</sup>

It is interesting to note that in determining whether the property is the subject matter of money laundering offence, or whether the property has been used in the commission of such offence, section 55(3) allows the court to apply the civil standard of 'balance of probabilities'.<sup>26</sup> This is because the normal criminal standard of proof which is beyond reasonable doubt is extremely difficult to be met in proving the criminal proceeds. However, standard of proof beyond reasonable doubt must be applied in the conviction of money laundering offence.

Section 56 allows the forfeiture of property if within twelve months of the seizure, there is no prosecution or conviction has been made and the court is satisfied that such property has been obtained as a result of money laundering offence.<sup>27</sup> It appears that this measure demonstrates the shift from a pure conviction based approach to a civil recovery approach which is achieved through proceeding against the property itself and is independent of any criminal charges against the owner of the property.<sup>28</sup> It is submitted that this approach has the potential to be extremely effective particularly in the following circumstances where:<sup>29</sup>

- (i) the property owner may have died;
- (ii) there has been an acquittal in criminal proceedings;
- (iii) there has been a criminal conviction but the confiscation hearing has failed;
- (iv) the defendant is not within the jurisdiction;
- (v) the name of the property owner is unknown; or

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<sup>23</sup> M Mageswari 'Police revoke seizure order issued against InventQjaya' *The Star* January 10, 2006.

<sup>24</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 55(1).

<sup>25</sup> Dato' Jagjit Singh Bant Singh, 'Consideration of Non-Conviction Based Asset Forfeiture and the Rights of Bona Fide Third Parties in Asset Recovery' (paper presented at the Seminar on Money Laundering, Kuala Lumpur, 5-6 September 2012)

<sup>26</sup> See also Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 70.

<sup>27</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 56(1).

<sup>28</sup> John L Evans, 'International Money Laundering: Enforcement Challenges and Opportunities' (1996) 3(1) *Southwestern Journal of Law and Trade in the Americas*, 1, 3.

<sup>29</sup> Anthony Kennedy, 'An Evaluation of the Recovery of Criminal Proceeds in the United Kingdom' (2007) 10(1) *Journal of Money Laundering Control*, 33, 37.

(vi) there is insufficient evidence to prosecute for a criminal offence.

Therefore, this measure is welcome because it can be utilized by the law enforcement authorities to recover the criminal proceeds even though the criminals cannot be prosecuted for money laundering offence because such offence is difficult to prove. Again, in determining whether or not the property has been obtained as a result of or in connection with money laundering offence, the court may apply the civil standard of balance of probabilities.<sup>30</sup>

Furthermore, it appears that AMLATFA allows the application under section 56 to be made even it was outside the stipulated twelve months from the date of seizure of the proceeds of crime. This issue was raised in *Public Prosecutor v Dragcom Sdn Bhd & Ors and other applications* [2013] 5 MLJ 594. In this case, the respondents were investigated for a smuggling offence under section 135 of the Customs Act 1967. The issue that was raised to the court was whether the court had jurisdiction to entertain an application under s 56 (1) of AMLATFA if it was filed twelve months or more after the seizure or freezing order. The court held that the word 'may' in s 56(1) of the AMLATFA was used in the sense that it was up to the public prosecutor to apply for forfeiture order. In other words, the use of the word 'may' referred to the general discretionary power of the public prosecutor to proceed with forfeiture proceedings or to return the property.<sup>31</sup> It is submitted that this interpretation will greatly assist the prosecution to confiscate the proceeds of crime effectively because the twelve months' time limit may not be too long due to the complex nature of financial crimes investigation process.

Furthermore, it is important to note that both forfeiture provisions under sections 55 and 56 are subject to notice being given to the third parties so that bona fide third parties that have an interest in the property can make their claim in court under section 61. However, the onus is on the claimant to prove that:<sup>32</sup>

- (a) The claimant has a legitimate interest in the property;
- (b) No participation, collusion or involvement with respect to the money laundering can be imputed to the claimant;
- (c) The claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he had knowledge, did not freely consent to its illegal use;
- (d) The claimant did not acquire any right in the property from the suspect; and
- (e) The claimant did all that could reasonably be expected to prevent the illegal use of the property.

However, it appears that such claim by the bona fide third parties is not easy to be materialized. This can be seen in *Public Prosecutor v. Raja Noor Asma bt Raja Harun* [2013] 9 MLJ 181, where the respondent was charged and pleaded guilty to the money laundering offence and the properties valued at more than RM8 millions which was part of a RM100 million Ponzi scheme organized by Fx Capital Company belonging to the respondent were seized and to be forfeited by the Government of Malaysia. About 700 third parties who were the investors in the company were present in the Sessions Court to claim the properties which were seized. The Sessions Court Judge (SCJ) decided that the investors were bona fide third party claimants and ordered that all the properties be returned to them. Not satisfied with the SCJ's decision, the prosecution filed this appeal but the appeal was dismissed by the High Court. The prosecution appeal and the Court of Appeal allow the prosecution's appeal to forfeit the money because the

<sup>30</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 56(4).

<sup>31</sup> See also *Public Prosecutor v Liew Teng Shuan* [2012] 10 MLJ 167

<sup>32</sup> Anti-Money Laundering and Anti-Terrorism Financing Act 2001, s 61(4).

respondents (investors) had failed to discharge the burden under the requirement of section 61(4) of AMLATFA.

Besides, for the recovery of proceeds of crime which have been disposed of or cannot be traced, section 59 of AMLATFA empowers the law enforcement agency to apply pecuniary order where the court, upon conviction, can order the accused to pay as penalty, an equal amount to the value of the gross benefits derived from the proceeds of crime.

## **CONCLUSION**

It is submitted that AMLATFA provides innovative tools for the law enforcement officials to follow the money trail which will eventually lead to those who committed the criminal activities including financial crime. It is believed that by attacking the financial structures of criminal organizations, it would be possible to prevent criminals from enjoying their illegal profits and more importantly to prevent them from building capital for future crimes. This is seen as a new law enforcement strategy to combat financial crime. It is believed that this approach is more effective than the traditional approach which only punished the individual criminal but failed to diminish the criminal operations. The powerful forfeiture regime under AMLATFA which allows the proceeds of crime to be forfeited with or without conviction will ensure that the wrongful proprietary gains do not remain in the hands of a wrongdoer. The forfeited money will be channeled to the Treasury and will be administered by the government. However, it is vitally important to ensure that the effectiveness of the regime must not jeopardize the innocent third parties who could lose their money or any other proprietary interest due to the invocation of the forfeiture order.

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# PRAKTIK KORUPSI PADA PILKADA LANGSUNG DALAM PERSPEKTIF POLITIK MACHIAVELLI

Hanafi Afandi<sup>1</sup>

## ABSTRAK

Seringkali orang mengatakan politik itu kejam, tak mengindahkan siapa kawan siapa lawan, semua cara dan tujuan dihalalkan. Praktek semacam ini pada dasarnya memiliki kecenderungan dengan pemikiran politik Machiavelli. Dalam hal ini, diyakini bahwa politik, tidak ada gunanya mengikuti peraturan moral. Atas dasar pandangan seperti ini, Machiavelli telah membenarkan penggunaan sarana dan alat apapun, untuk meraih kekuasaan.

Sedangkan dalam misi besar reformasi di Indonesia tahun 1998 untuk menghadirkan pemerintahan yang bersih, bebas dari korupsi, kolusi dan nepotisme masih jauh dari harapan. Praktik korupsi melanda seluruh lembaga dan instansi kenegaraan, serta merembes ke segala lapisan dari pusat hingga daerah. Euforia reformasi menjadi sangat rentan dengan fenomena perilaku money politics (politik uang) yang semakin merajalela dan menghalalkan segala cara untuk menggapai sebuah kekuasaan, terutama pada pelaksanaan pilkada langsung di Indonesia. Praktik semacam ini pada dasarnya memiliki kecenderungan identik dengan pemikiran politik Machiavelli. Oleh sebab itu, fokus penelitian ini adalah bagaimana praktik korupsi pada pilkada langsung di Indonesia dalam perspektif politik Machiavelli.

Tulisan ini menggunakan kajian literatur dan melalui pengamatan terhadap praktik korupsi pada pilkada langsung di Indonesia. Teori Politik Machiavellian tentang politik kebijakan menjadi pisau analis utama dalam mendiskusikan persoalan yang dikaji.

**KATA KUNCI :** Korupsi, Pilkada Langsung, Politik Machiavelli.

## A. PENDAHULUAN

Problem korupsi<sup>2</sup> adalah suatu masalah yang masih menjadi agenda utama di Republik Indonesia ini, karena Negara ini telah mengklaim sebagai Negara besar keempat yang

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<sup>2</sup> Menurut Baharuddin Lopa<sup>2</sup>, pengertian umum tentang tindak pidana korupsi adalah suatu tindak pidana yang berhubungan dengan perbuatan penyuapan dan manipulasi serta perbuatan-perbuatan lain yang merugikan atau dapat merugikan keuangan atau perekonomian negara, merugikan kesejahteraan dan kepentingan rakyat. Undang-undang pemberantasan tindak pidana korupsi (UU 31/1999), memberi pengertian tentang tindak pidana korupsi adalah “perbuatan memperkaya diri sendiri atau orang lain dengan melawan hukum yang dapat merugikan keuangan negara atau perekonomian negara” atau “perbuatan menyalahgunakan kewenangan, kesempatan atau sarana yang ada padanya karena jabatan atau kedudukan dengan tujuan menguntungkan diri sendiri atau orang lain serta dapat merugikan keuangan negara atau perekonomian negara”. Termasuk dalam pengertian tindak korupsi adalah suap terhadap pejabat atau pegawai negeri. Salah satu definisi tentang korupsi secara umum dikemukakan oleh Leslie Palmier<sup>2</sup>, korupsi secara umum merupakan penggunaan fasilitas pemerintah (*public office*) untuk memperoleh keuntungan pribadi. Untuk mengkaji lebih jauh, kita merujuk pada apa yang dimaksud korupsi dalam undang-undang mengenai pemberantasan tindak pidana korupsi. Beberapa kata kunci yang merupakan unsur tindak pidana yang

demokratis, namun di lain pihak telah menjadi salah satu Negara yang paling korup di Asia. Catatan negatif mengenai praktik korupsi dapat menghambat proses pembangunan politik di Indonesia.

Pada masa Orde Baru yaitu selama 1967-1998, praktik korupsi ini mendapat dukungan dan kesempatan luas pada masa itu yaitu dengan memberikan dukungan kepada pengusaha-pengusaha besar dan membangun konglomerat-konglomerat baru dan memberikan kemudahan-kemudahan dan fasilitas, bahkan memberikan kesempatan kepada para pengusaha dan kconi Presiden untuk mempengaruhi politisi dan birokrat.

Sejak lepasnya pemerintahan Orde Baru, masalah pemberantasan korupsi belum juga tertangani dengan baik. Niat untuk memberantas korupsi cukup kuat. Berbagai peraturan dan reformasi perundang-undangan tentang korupsi dilahirkan, tapi tidak membawa hasil yang memadai. Bahkan banyak korupsi baru yang terungkap justru terjadi setelah masa reformasi dan terjadi dalam pelaksanaan Pilkada Langsung<sup>3</sup> yaitu praktik money politic dan bargaining politic yang sarat dengan KKN (korupsi kolusi dan nepotisme).

Saat ini, di era postmodern ini, bangsa Indonesia adalah bangsa yang memanggul banyak perkara berat. Tidak hanya dari sudut pandangan ekonomi, Indonesia disana-sini mengalami kemerosotan dan Korupsi<sup>4</sup> sebuah pemandangan keterpurukan societas yang nampak dalam wajah bangsa Indonesia. Politik yang mengalirkan secara langsung mentalitas pemujaan kekuasaan secara berlebihan terjadi pada era orde baru dan pada era reformasi setelah tahun 1998 tersebut. Pilihan melakukan pilkada langsung sebagai pilihan menuju kedewasaan demokrasi telah menguatkan politik kekuasaan baru yakni dalam bentuk pelanggengan praktik korupsi di era reformasi.

Ideologi politik kekuasaan merupakan sikap menghalalkan segala cara untuk mencapai kekuasaan adalah sikap yang dibenarkan. Selama bertahun-tahun gagasan politik Machiavelli tentang politik kekuasaan telah menjadi sumber inspirasi yang tak pernah kering bagi banyak penguasa sejak awal dipopulerkannya sampai saat ini. Banyak negarawan dan penguasa dunia yang secara sembunyi atau terus terang mengakui telah menjadikan Machiavelli sebagai bapak kekuasaan. Tak terkecuali penguasa dan politisi di Indonesia, mereka secara sengaja telah mengadopsi dan mengimplementasikan gagasan-gagasan Machiavelli itu dalam kehidupan politik yang ada.

Dalam sistem pemerintahan di negara ini, perilaku politik Indonesia memiliki peranan penting terhadap berlakunya politik kekuasaan Machiavelli. Dalam konteks sejarah di Indonesia, dapat dikatakan bahwa yang termasuk dalam konsep politik kekuasaan Machiavelli, seperti halnya era orde baru. Semua orang tahu apa sebenarnya yang terjadi selama masa pemerintahan tersebut. Pada kondisi itulah politik diperankan dengan cerdik dalam merebut kekuasaan dan membelanya.

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perlu didalami yaitu kata-kata: "perbuatan melawan hukum, memperkaya diri sendiri atau orang lain, merugikan keuangan/perekonomian negara, menyalahgunakan wewenang, kesempatan atau sarana yang ada padanya, menguntungkan diri sendiri atau orang lain.

<sup>3</sup> Pilkada Langsung merupakan mekanisme demokratis dalam rangka rekrutmen pemimpin di daerah, dimana rakyat diberikan hak dan kebebasan sepenuhnya untuk menentukan calon kepala daerah yang dianggap mampu menyuarakan aspirasinya. Pemilihan Kepala Daerah dan Wakil Kepala Daerah Langsung tertuang dalam Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah dan pertama kali diselenggarakan pada bulan Juni 2005 dan penyelenggaraan pemilihan kepala daerah dilaksanakan oleh Komisi Pemilihan Umum Daerah (KPUD).

<sup>4</sup> Armada Riyanto. *Keterpurukan Societas dalam Berfilsafat Politik*. Penerbit Kanisius, Yogyakarta, 2011. Hal 154.

Fokus permasalahan dalam makalah ini adalah bagaimana praktik korupsi pada pilkada langsung dalam perspektif Politik Machiavelli. Diharapkan akan memberikan peningkatan pengetahuan tentang praktik korupsi dalam khasanah ilmu sosial dan ilmu politik.

## POLITIK MACHIAVELLIAN

Machiavelli politikus kontroversial, ia lahir di kota Firenze, 3 Mei 1469 dan meninggal 22 Juni 1527. Ayahnya seorang pengacara, tidak kaya tetapi juga tidak miskin. Ayahnya bernama Bernando yang berasal dari sebuah keluarga ningrat<sup>5</sup>. Machiavelli memperoleh pendidikan cukup bagus, dengan khas pendidikan Italia yang mengembangkan nilai-nilai humanisme. Kemampuan dan kecakapannya dalam berdiplomasi mejadikannya diangkat sebagai konselir pemerintahan Firenze pada umur 25 tahun. Latar belakang kehidupan pribadi Machiavelli sangat sedikit diketahui. Pada tahun 1502 menikahi Marietta Corsini yang kelak melahirkan enam anak baginya. Kehidupan keluarga Machiavelli kurang bahagia, yang mungkin disebabkan kesibukan politik. Menurut Fransisco Vettori, sahabat Machiavelli, menceritakan penampilan Machiavelli dimasa muda merupakan seorang yang bertubuh langsing, mata berkilat-kilat, rambut hitam, hidung mancung, mulut selalu terkatup rapat. Kesemua itu mengesankan sosok Machiavelli sebagai pengamat dan pemikir yang tajam.

Sosok amoral politik yang ada dalam II Principle adalah wujud dari kegundahan Machiavelli melihat kondisi Itali di zamannya. Kondisi Italia menjadi sangat labil karena masing-masing negara bagian saling ingin merebut dominasi atas negara bagian yang lainnya<sup>6</sup>. Kondisi ini diperparah lagi dengan adanya campur tangan negara-negara besar di sekitar Italia, seperti Perancis, Jerman, dan Spanyol. Kondisi yang kacau balau ini menggugah Machiavelli sebagai orang yang lahir dan mantan negarawan di Italia menyusun sebuah anjuran cara berpolitik yang ditujukan kepada Medici, sang penguasa Italia.

Machiavelli sebagai putra pencerahan yang terkenal, menolak tradisi politik abad pertengahan secara keseluruhan. Dia banyak terinspirasi dari tokoh politik Marsilius yang menyajikan sisasisa dari ide-ide politik abad pertengahan dan benih-benih pemikiran modern<sup>7</sup>. Marsilius banyak mengikuti ide-ide Aristoteles tentang negara dan masyarakat. Yang menarik dari pemikirannya adalah anggapan antara keyakinan dan akal merupakan dua wilayah kebenaran yang sepenuhnya terpisah.

Machiavelli menegaskan bahwa politik mempunyai sistem nilainya sendiri, berbeda dari sistem etika perseorangan, dan kekuasaan hanyalah cara untuk mencapai tujuan yang ditentukan watak dasar manusia. Konsep politik ini merupakan hal yang baru dalam sejarah politik yang ada. Bahkan Machiavelli seringkali disebut sebagai bapak politik kekuasaan.

Dengan latar belakang yang penuh dengan intrik dan kekerasan inilah Machiavelli membangun filsafat politik yang menurut dia cocok pada saat itu. Perhatian utama para pemikir politik, dari zaman Yunani hingga zaman pencerahan berkisar pada norma dan tujuan politik itu dilakukan. Mereka tertarik untuk membangun negara ideal atau mengeluarkan produk pemikiran sebagai

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<sup>5</sup> Russel, Bartrand, Sejarah Filsafat Barat, hal 663.

<sup>6</sup> Sularto ST, *Niccolo Machiavelli Penguasa Arsitek*, hal 13.

<sup>7</sup> Schmandt, Henry J. *Filsafat Politik*, hal 224.

pedoman moral bagi seorang penguasa<sup>8</sup>. Dalam bidang pemikiran politik, mereka lebih cenderung mengikuti metode spekulatif Plato dari pada pendekatan empirisnya Aristoteles.

Sejak zaman Yunani, kandungan moral dalam politik menjadi satu, akan tetapi, ilmu politik saat itu belum melahirkan satu formulasi teori yang menekankan pentingnya cara-cara dalam politik. Dengan kemunculan Machiavelli, dikenallah metodologi baru dalam ilmu politik. Metode ini merupakan satu upaya untuk menghapuskan konteks etika secara total dari realitas politik sebenarnya. Bukan untuk merubah orientasi prilaku politik waktu itu, karena pada abad sebelumnya Aristoteles telah memformulasikan prasyarat politik.

Machiavelli mengabaikan tujuan etis dalam hal arah dan tujuan negara, ia mempelajari proses politik semata demi tujuan menentukan kelayakan dari praktek-praktek politik yang stabil. Tidak peduli dengan moralitas dan imoralitas politik yang menyimpang dari moral manusia. Machiavelli melihat politik sebagai kegiatan mencari dan mempertahankan kekuasaan dalam masyarakat<sup>9</sup>. Dalam politik, kekuasaan merupakan suatu interaksi antar pihak yang mempengaruhi dan dipengaruhi. Seorang raja harus cerdik untuk mempengaruhi rakyat jika ingin kekuasaannya stabil. Ia menekankan cara-cara politik yang seharusnya dikaji secara ilmiah tanpa memasukkan unsur kebaikan atau keburukan tujuan politik tersebut. Dia tidak menaruh perhatian pada orientasi abad Yunani-Pertengahan yang menekankan hal-hal apa yang seharusnya ada dalam tatanan politik.

Metode politik Machiavelli agak paradoik, di satu sisi berusaha memisahkan etika dari politik, dan pada saat yang sama melakukan penilaian etis dalam tatanan politik. Pandangannya terbingkai dalam kerangka pragmatis, akan tetapi mencakup urgensitas moral tertentu, dan bahkan keharusan etis. Sebagaimana tawaran Machiavelli, metode yang terbukti paling berhasil untuk mencapai dan mempertahankan kekuasaan politik. Metode ini seharusnya dikaji dalam kerangka ilmu pengetahuan murni secara cermat, kemudian menjadi buku panduan seorang penguasa untuk mensejahterakan rakyat.

Metode yang digunakan Machiavelli adalah metode komparatif dalam studi politik. Di samping itu, tetap menggunakan metode spekulatif (Plato), juga metode sejarah sebagai data empiris untuk menganalisa politik tertentu. Ia membandingkan Russell, Joseph Losco dan Leonard Willia (2005: 561) menguraikan, Machiavelli masa lalu dan arus besar modernitas dengan apa yang dia pahami, serta memikirkan kearah yang lebih baik dari kejadian tersebut. Penekanannya bukan pada riset murni, akan tetapi pada penemuan hukum universal. Tujuannya adalah menciptakan ilmu politik yang baru. Seperangkat peraturan yang bisa diikuti dan dilaksanakan oleh pemerintah secara penuh. Jadi, baginya ilmu politik merupakan suatu ilmu keahlian praktis bagi negarawan. Sejalan dengan itu, ia turut perhatian pada metodologi yang bisa diterapkan untuk menemukan rangkaian sebab dominan politik dan perilaku sosial.

Dalam konsep kebaikan dalam berpolitik, ia menggunakan istilah virtu<sup>10</sup> hampir sepenuhnya mengacu pada cara-cara yang digunakan penguasa untuk mencapai tujuan politik. Dengan demikian, raja yang bijak adalah penguasa yang berhasil, efisien dan mumpuni. Apakah ia mencapai tujuannya dengan korup, licik, atau bahkan berkhianat tidak menjadi persoalan, sepanjang tindakannya demi kebaikan umum.

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<sup>8</sup> Schmandt, Henry J. *Filsafat Politik*, hal 250.

<sup>9</sup> Surbakti, Ramlan, *Memahami Ilmu Politik*, hal 5.

<sup>10</sup> Virtu adalah keutamaan. Atrinya, penilaian (baik dan buruk) yang bersumber dari sifat watak yang dimiliki manusia. Secara historis -filosofis, 'virtu' merupakan suatu konsep etika yang tertua.

Obsesi Machiavelli selanjutnya, bahwa tujuan politik adalah untuk memperkuat dan memperluas kekuasaan. Segala usaha untuk menyukseskan tujuan itu dapat dibenarkan. Legitimasi kekuasaan membenarkan segala teknis pemanipulasi dukungan masyarakat terhadap kekuasaan yang ada dan pemisahan antara prinsip, moral, dan etika. Prinsip-prinsip ketatanegaraan didasarkan pada adanya perbedaan antara moral dan tata susila merupakan suatu kemungkinan yang diharapkan, sedangkan ketatanegaraan adalah suatu yang dihadapi sehari-hari. Jadi, bagi Machiavelli, untuk mencapai tujuannya, seorang politikus boleh menggunakan segala cara tanpa menghiraukan nilai dan moral.

## **ANALISIS PRAKTIK KORUPSI PADA PILKADA LANGSUNG DI INDONESIA DALAM PERSPEKTIF POLITIK MACHIAVELLI**

Reformasi Politik di Indonesia yang penting dalam era post-otoriterisme Soeharto adalah sistem pemilihan umum dengan model Pilkada Langsung. Tujuan pertama adalah untuk menyelenggarakan pemilihan yang jujur dan adil dimana semua partai memiliki kesempatan yang sama untuk berpartisipasi di dalamnya, sementara para pemilih dapat menggunakan hak mereka sesuai dengan hati nurani mereka tanpa ketakutan dari teror dan paksaan. Tujuan kedua adalah untuk menghasilkan wakil-wakil rakyat yang dapat dipercaya dan bertanggung jawab yang akan melayani kepentingan konstituen mereka.

Pembicaraan hangat di kalangan politik, bahwa setelah jatuhnya rezim otoritarian Soeharto, Indonesia telah memasuki era dimana kebanyakan masyarakat Indonesia mempunyai tendensi untuk membangun sistem dan tata kehidupan yang demokratis. Wacana demokrasi di Indonesia pada saat itu seakan membangun mimpi masyarakat Indonesia akan kehidupan yang berpihak kepada kepentingan rakyat untuk menuju kesejahteraan dalam tatanan sosial dan budaya yang harmoni. Terbayang nilai-nilai yang indah dan luhur seperti yang terkandung dalam filsafat jawa “Memayu Hayuning Buwono”, yang memiliki makna menjaga atau mengelola atau mengabdi demi keindahan tata dunia<sup>11</sup>.

Dalam kenyataannya, membangun sistem kehidupan yang demokratis bukanlah suatu hal yang sederhana dan gampang yang bahkan dan jelas telah menimbulkan konflik-konflik yang pada hakekatnya berkaitan dengan tawar-menawar kekuasaan (bargaining power) atau untuk membagi “kue” kekuasaan di antara para “political competitors”<sup>12</sup>.

Praktik semacam ini pada dasarnya memiliki kecenderungan identik dengan pemikiran politik Machiavelli<sup>13</sup>, bahwa politik tidak ada gunanya mengikuti peraturan moral. Atas dasar pandangan seperti ini, Machiavelli telah membenarkan pengunaan sarana dan alat apapun

<sup>11</sup> Armada Riyanto. *Memayu Hayuning Buwono. Eco-Etika dalam Kebijaksanaan Jawa*. Dalam *Minum Dari Sumber Sendiri, Dari Alam Menuju Tuhan*. Penerbit STFT Widya Sasana Malang, 2011:.... Hal.119.

<sup>12</sup> Pius S Prasetyo. *Desentralisasi dan Demokrasi Lokal Indonesia: Kasus Pemerintahan Desa di Jawa Barat*. Dalam *Demokrasi di Indonesia, Teori dan Praktik*. Yogyakarta, Graha Ilmu, 2010: 173.

<sup>13</sup> Adapun isi dari teori Machiavelli tersebut: **a.** Untuk melakukannya seorang penguasa yang bijak hendaknya mengikuti jalur yang dikedepankan berdasarkan kebutuhan, kejayaan, dan kebaikan negara. Hanya dengan memadukan machismo – semangat kepajuritan, dan pertimbangan politik, seseorang penguasa barulah dapat memenuhi kewajibannya kepada negara dan mencapai keabadian sejarah. **b.** Penguasa bijak hendaknya memiliki hal-hal: (1). Sebuah kemampuan untuk menjadi baik sekaligus buruk, baik dicintai maupun ditakuti; (2). Watak-watak seperti ketegasan, kekejaman, kemandirian, disiplin, dan kontrol diri; (3). Sebuah reputasi menyangkut kemurahan hati, pengampunan, dapat dipercaya, dan tulus. **c.** Seorang pangeran harus berani untuk melakukan apapun yang diperlukan, betapapun tampak tercela karena rakyat pada akhirnya hanya peduli dengan hasilnya – yaitu dengan kebaikan negara. Sumber: Machiavelli, Noccolo, (1984) *The Prince*, diterjemahkan, diberi kata pengantar oleh Leo Paul S de Alvarez, Irving, Tx.: University of Dallas Press, Buku XV.

untuk meraihkan kekuasaan. Ideologi politik ini merupakan sikap menghalalkan segala cara untuk mencapai kekuasaan adalah sikap yang dibenarkan menurutnya. Gagasan politik Machiavelli ini telah menjadi sumber inspirasi Selama bertahun-tahun yang tak pernah kering bagi banyak penguasa sejak awal dipopulerkannya sampai saat ini.

Pilihan Pilkada langsung merupakan praktik politik yang dianggap dapat menurunkan praktik politik uang. Namun dalam kenyataannya, biaya kandidat pemimpin daerah yang sangat besar dikarenakan biaya kampanye dan kondisi masyarakat yang masih dapat dimasuki praktik politik uang menjadikan praktik politik uang makin menjadi. Hal ini dapat dilihat dengan banyaknya kandidat pemimpin daerah yang berlatang belakang pengusaha atau yang didukung pengusaha.

Padahal tujuan pilkada langsung diadakan untuk menghasilkan kepala daerah yang lebih baik, lebih berkualitas dan memiliki aspekabilitas (kemampuan untuk menyelesaikan sendiri) politik yang tinggi serta derajat legitimasi yang kuat, karena kepala daerah terpilih mendapat mandat langsung dari rakyat. Penerimaan yang cukup luas dari masyarakat terhadap kepala daerah terpilih sesuai dengan prinsip mayoritas perlu agar kontroversi yang terjadi dalam pemilihan dapat dihindari. Pada gilirannya, pemilihan kepala daerah secara langsung akan menghasilkan Pemerintahan Daerah yang lebih efektif dan efisien, karena legitimasi eksekutif menjadi cukup kuat, dan tidak gampang digoyang oleh legislatif.

Selain itu, pemilihan kepala daerah secara langsung diharapkan dapat menghindarkan politik praktis daerah dari aroma money politics. Tidak mungkin bagi calon kepala daerah, baik itu calon Gubernur, Bupati atau Walikota, untuk menuap seluruh rakyat daerah tersebut yang berjumlah jutaan orang. Sedangkan jika tetap memakai sistem perwakilan, money politics adalah sangat mungkin karena jumlah wakil rakyat daerah relatif sedikit. Bertambah luasnya ruang bagi partisipasi aktif rakyat daerah berarti semakin mendekatkan praksis politik di daerah dengan demokrasi ideal. Dengan pemilihan langsung, kepala daerah memiliki legitimasi demokrasi yang kuat. Di sisi lain, rakyat akan merasa lebih bertanggung jawab terhadap pilihannya. Rakyat tentunya tidak akan gegabah menentukan pemimpinnya karena pilihan tersebut akan menentukan masa depan daerahnya dan akan berimbang pada masa depan dirinya sendiri sebagai individu. Akuntabilitas kepala daerah benar-benar tertuju kepada rakyat, begitu pula sebaliknya. Relasi langsung ini akan lebih mendekatkan pemerintah dengan yang diperintah. Dengan kedekatan rasional ini, diharapkan penyaluran aspirasi rakyat akan semakin lancar dan setiap kebijakan pemerintah akan semakin mudah di kontrol. Pada akhirnya, konsep kedaulatan yang ada di tangan rakyat diharapkan bisa sepenuhnya teraktualisasi dalam politik praktis daerah.

Namun dalam kenyataannya, pilkada langsung menghasilkan pemimpin yang kurang berkemampuan baik ilmu dan pengalaman dalam ilmu pemerintahan maupun manajemen pemerintahan. Harapan dari tujuan pilkada langsung yang dapat memuaskan dan memenuhi hak politik semua warga negara menjadi pemimpin daerah disalahgunakan oleh para pengusaha dan orang-orang yang memiliki modal besar untuk menguasai seluruh aset daerah. Praktik kampanye dengan modus kegiatan sosial yang dilakukan para kandidat pemimpin daerah yang pada umumnya berhasil menarik perhatian masyarakat untuk memilihnya merupakan bentuk praktik politik kebaikan yang terlihat pro rakyat tapi sebenarnya bertujuan untuk menghabiskan uang rakyat. Politik kebaikan atau sering disebut sebagai politik santun tersebut telah memperdaya masyarakat sehingga salah mentukan pilihan. Dan saat ini hampir 70 % pemimpin daerah di Indonesia terlibat kasus korupsi. Analisa mudahnya adalah darimana kandidat pemimpin daerah memenuhi kebutuhan biaya kampanye yang sangat besar jika tidak

bergabung dengan pemilik modal besar dan disana ada komitmen untuk bagi hasil karena pasti pemilik modal besar tersebut tidak akan memberi modal dengan percuma.

Pada tingkat pemilihan kepala desa saja sudah menghabiskan biaya kampanye sekitar 100 juta, bagaimana dengan biaya kampanye kandidat bupati atau walikota, juga kandidat gubernur bahkan presiden. Tujuan mulia pilkada langsung untuk menghapus politik uang dan menghapus korupsi telah menjadi bumerang tujuan itu sendiri bahkan menyuburkan praktik korupsi di tingkat daerah. Pemimpin-pemimpin daerah saat ini seolah menjadi raja-raja di daerahnya masing-masing yang bebas menggunakan aset negara dan mengekplorasi kekayaan daerahnya. Apabila ada pembangunan di daerahnya hanya untuk sesuatu yang tidak berdampak langsung kepada masyarakat ataupun jika berdampak hanya bersifat sementara yang berakibat kerugian besar negara yang akan datang.

Dari paparan perilaku politik para kandidat pemimpin daerah diatas, maka dapat diteropong melalui teori kebaikan Machievelli. Untuk memahami pemikiran Machiavelli tentang kebaikan tidak perlu memakai terminologi tradisional, karena akan menyulitkan dalam pemaknaannya. Akan tetapi, istilah-istilah yang digunakan Machiavelli yang sudah menjadi istilah umum dalam sejarah pemikiran politik dapat dimaknai lebih jelas. Dalam konsep Yunani kuno tentang kebaikan umum, terdapat dua unsur pokok; kebaikan haruslah untuk semua orang, bukan bagi keuntungan penguasa tertentu. Dan apa yang baik bagi masyarakat adalah apa yang berakar dalam hukum alam, bukan atas dasar kehendak sewenang-wenang manusia.

Machiavelli menerima pendapat pertama dan menolak yang kedua. Kebaikan yang dipahami oleh Machiavelli adalah kebaikan yang memiliki nilai keutamaan dan orientasi yang lebih fokus pada manusia itu sendiri<sup>14</sup>. Standar etika demikian ini tidak menyoroti tindakan yang sesuai dengan norma moral. Selanjutnya, ia mengatakan, pemimpin politik tidak boleh bertindak untuk keuntungannya sendiri, tetapi untuk kebaikan semua orang.

Machiavelli menyatakan, jika penguasa bertindak karena cinta pada tanah airnya, maka upaya ini merupakan kebaikan umum. Bahkan yang lebih ekstrim lagi, dia mengatakan, "seorang penguasa dalam memerintah rakyat, hukuman lebih berharga daripada kebaikan"<sup>15</sup>. Berbeda dengan kaum tradisionalis, bahwa penguasa yang bertindak demi rakyat, tidak berarti tindakannya baik pula. Sebaliknya, yang bisa dikatakan baik, apabila tindakan tersebut memenuhi unsur publik. Istilah kebijakan yang digunakan Machievelli menimbulkan pemaknaan yang sulit. Bila ditelusuri genealogi istilah ini, nampak jelas bahwa, Machiavelli menggunakan term ini dalam makna politik murni yang tidak mempunyai signifikansi etis.

Ia menggunakan istilah hampir sepenuhnya mengacu pada cara-cara yang digunakan penguasa untuk mencapai tujuan politik. Dengan demikian, raja yang bijak adalah penguasa yang berhasil, efesien dan mumpuni. Apakah ia mencapai tujuannya dengan korup, licik, atau bahkan berkhianat tidak menjadi persoalan, sepanjang tindakannya demi kebaikan umum.

Dari sini dapat dinilai bahwa, kebaikan umum yang diungkapkan Machiavelli masih berkaitan erat dengan tujuan politik. Sebagaimana manusia biasa, yang memiliki kelebihan dan kekurangan, bila digali lebih dalam lagi, Machiavelli merupakan pencari nilai-nilai yang berarti dan baik. Yaitu nilai yang senantiasa bermakna kebaikan umum, dan standar-standar etis lainnya. Secara psikis, ia juga tidak melupakan aspek kejujuran, yang secara substansial adalah kebijakan itu sendiri. Nilai kejujuran dalam hal ini merupakan sebagai dasar nilai politik.

<sup>14</sup> Bertens, K, *Etika*, hal 212.

<sup>15</sup> Machiavelli, Niccolo, *Diskursus*, hal 379.

Yang lebih sederhana, kebaikan ataupun kejujuran seseorang merupakan kepalsuan dari manusia politik untuk menggapai kekuasaan.

Sedangkan kerangka pikir yang kedua, berbicara tentang etika politik kekuasaan, untuk memenuhi kepentingan dan pengelolaan kekuasaan sang penguasa. Penguasa yang baik adalah orang yang tujuannya bukan untuk kepentingan pribadi dan golongan. Akan tetapi demi tanah air yang menjadi milik semua rakyat. Pandangan yang dikedepankan untuk mencapai tujuan sosial dan politik tidak bisa dikesampingkan terhadap pandangannya tentang kebaikan umum. Demi tujuan yang baik, semua cara yang diperlukan bisa dilakukan untuk mencapai tujuan tersebut. Seorang penguasa tidak wajib mempertanyakan etis dan tidaknya tindakan politik. Satu-satunya pembatas adalah keharusan menggunakan untuk tujuan yang benar (Common Good). Pandangan Machiavelli tentang tujuan dan cara bertolak belakang dengan tradisi kuno. Ia sendiri mengakui inovasi radikal dalam pendekatannya:

“ saya sendiri melepaskan diri dari prinsip-prinsip yang dibangun oleh pendahulu saya, tetapi tujuan saya adalah menuliskan sesuatu yang bisa dipakai oleh mereka yang mau memahami”<sup>16</sup>.

Machiavelli berusaha menghindar dari kesulitan logis, yang terdapat dalam masalah tujuan dan cara, serta melepas hukum-hukum politik dari regulasi moralitas. Ia acuh terhadap nilai agama, bahkan mengecam praktik etika politik pada zamannya. Akan tetapi, ia memperkenalkan sekaligus membenarkan dua nilai moral, yang satu dikenakan bagi penguasa, dan yang lain untuk individu. Nilai moral yang pertama membenarkan segala tindakan penguasa dalam rangka memelihara dan memperbesar kekuasaan. Sedangkan nilai moral yang kedua, menyangkut tindakan penguasa secara perseorangan dalam kelompok sosial<sup>17</sup>.

Karakter dari filsafat sosial yang radikal ini menolak regulasi politik yang merujuk pada norma moral transendental. Dia melihat kekuasaan politik sebagai kekuatan independen yang diatur oleh hukum secara fungsional. Terlepas dari semua prinsip moral yang bisa diterapkan pada tindakan pribadi manusia. Filsafat politik Machiavelli membuka pintu bagi kekuasaan Negara menjadi tidak terbatas. Untuk doktrin menghalalkan segala cara, Machiavelli tidak konsisten terhadap politik yang sejatinya berhubungan dengan eksistensi hukum alam. Sebagaimana politik, alam memiliki kesamaan dengan tingkah laku dan keinginan manusia. Machiavelli tidak memahami lebih jauh naluri politik yang dimiliki manusia secara antropologi politik. Ia hanya mengasumsikan bahwa hasrat kuasa manusia tidak jauh berbeda dengan binatang.

Obsesi Machiavelli selanjutnya, bahwa tujuan politik adalah untuk memperkuat dan memperluas kekuasaan. Segala usaha untuk menyukseskan tujuan itu dapat dibenarkan. Legitimasi kekuasaan membenarkan segala teknis pemanipulasi dukungan masyarakat terhadap kekuasaan yang ada dan pemisahan antara prinsip, moral, dan etika. Prinsip-prinsip ketatanegaraan didasarkan pada adanya perbedaan antara moral dan tata susila merupakan suatu kemungkinan yang diharapkan, sedangkan ketatanegaraan adalah suatu yang dihadapi sehari-hari. Tata nilai yang ada dalam agama (Kristen) banyak membicarakan sikap dan perilaku hidup yang tidak realistik. Oleh karenanya, politik tidak perlu memperhatikan bidang moral. Politik mengharuskan konsep yang baik, yakni kemerdekaan sosial, keamanan, dan konstitusi yang memiliki hak hukum secara adil dihadapan raja dan rakyat. Bila mana konsep-konsep tersebut aplikatif dan solutif, maka politik yang digunakan juga baik. Agar tujuan politik tersebut berjalan dengan mulus dan tepat sasaran, dibutuhkan seribu cara. Akan sia-sia

<sup>16</sup> Machiavelli, Niccolo, *Il Principle*, hal 56.

<sup>17</sup> Sularto ST, *Niccolo Machiavelli Penguasa Arsitek*, hal 35.

memperjuangkan sebuah tujuan politik dengan metode-metode yang tidak menjamin keberhasilan.

Jika ingin mencapai tujuan harus memilih cara yang tepat, berdasarkan konteks penerapan politik yang ada. Sebagaimana Machiavelli, persoalan cara bisa dikaji secara ilmiah, tanpa mempertimbangkan kebaikan ataupun keburukan tujuannya. Meraih tujuan politik memang merupakan suatu kebutuhan. Untuk itu, harus mengakui pendapat Machiavelli bahwa cara dalam politik merupakan faktor penting dalam meraih dan mempertahankan kekuasaan.

Bagi Machiavelli, penguasa bijak hendaknya memiliki hal-hal diantaranya: (1) sebuah kemampuan untuk menjadi baik sekaligus buruk, baik dicintai maupun ditakuti; (2) watak-watak seperti ketegasan, kekejaman, kemandirian, disiplin dan kontrol diri; (3) sebuah reputasi yang menyangkut kemurahan hati, pengampun, dan dapat dipercaya, dan tulus. Atas dasar konsepnya ini, Machiavelli memberikan nasihat-nasihat kepada siapapun yang ingin menjadi penguasa dan mempertahankan kekuasaan. Untuk kepentingan tulisan ini, penulis fokus pada nasihat (sekarang teori) yang ketiga tentang reputasi kemurahan hati seorang penguasa terhadap rakyat yang dipimpin. Reputasi kemurahan hati, yaitu penguasa harus berbuat baik kepada rakyat dengan membagi-bagikan uang secara menyolok dan royal kepada rakyat. Machiavelli juga menegaskan, dengan reputasi kemurahan hati itu penguasa dapat jatuh dari kekuasaannya.

Dalam bersikap kemurahan hati, sang penguasa akan berlebihan saat menggunakan seluruh sumber dayanya; dan seandainya ia ingin terus menerus dianggap murah hati, pada akhirnya ia terpaksa menjadi serakah, menarik pajak dari rakyat yang sangat membebani, dan mengumpulkan uang lewat berbagai cara yang mungkin. Jadi, ia akan mulai dibenci oleh subjek-subjeknya dan, karena jatuh miskin, ia hanya dapat mendapatkan sedikit penghormatan karena kemurahan hatinya telah merugikan banyak orang dan hanya menguntungkan beberapa, ia akan merasakan akibat-akibat ketidakpuasan, dan ancaman nyata pertama terhadap kekuasaanya akan menyeretkan kedalam kesulitan-kesulitan menyedihkan. Ketika menyadari hal ini, dan mengubah cara-caranya, ia segera akan menerima reputasi buruk karena bersikap kikir<sup>18</sup>.

Melalui konsep di atas tulisan ini menguraikan bagaimana kemurahan hati para kandidat pemimpin daerah pada saat pilkada langsung terhadap rakyat dengan mengeluarkan berbagai macam janji tentang kebijakan populis (pro rakyat) dan imbasnya pada pertahanan kekuasaan (apakah dicintai atau dibenci).

## KESIMPULAN

Filsafat politik Machiavelli membuka pintu bagi kekuasaan Negara menjadi tidak terbatas. Untuk doktrin menghalalkan segala cara, Machiavelli tidak konsisten terhadap politik yang sejatinya berhubungan dengan eksistensi hukum alam. Sebagaimana politik, alam memiliki kesamaan dengan tingkah laku dan keinginan manusia. Machiavelli tidak memahami lebih jauh naluri politik yang dimiliki manusia secara antropologi politik. Ia hanya mengasumsikan bahwa hasrat kuasa manusia tidak jauh berbeda dengan binatang.

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<sup>18</sup> Niccolo Macheavelli dalam The Prince ..... hal 566.

seperti ketegasan, kekejaman, kemandirian, disiplin dan kontrol diri; (3) sebuah reputasi yang menyangkut kemurahan hati, pengampun, dan dapat dipercaya, dan tulus. Atas dasar konsepnya ini, Machiavelli memberikan nasihat-nasihat kepada siapapun yang ingin menjadi penguasa dan mempertahankan kekuasaan

## **REKOMENDASI**

Penulis membaca dan mencermati tulisan Machiavelli dan mampu menciptakan seorang machiavelian-machiavelian yang bisa berkuasa di berbagai belahan penjuru dunia dengan menggunakan cara-cara dan pemikiran Machiavelli. Ajaran Machiavelli memberikan inspirasi buruk terhadap perkembangan politik terutama di Indonesia yang sudah menerapkan model pemilihan dengan sistem Pemilukada secara langsung sampai Pilpres.

Indonesia yang sedang mengalami transisi demokrasi sejak era reformasi 1998, tentu saja sudah bisa disimpulkan dan dirasakan saat ini. Bahwa era reformasi belum bisa memberikan hasil yang baik terhadap kondisi politik di Indonesia. Berdasarkan data, 70% kepala daerah di Indonesia terlibat kasus korupsi.

Penulis dalam hal ini sudah bisa menyimpulkan, bahwa kondisi yang terjadi saat ini adalah adanya kesalahan dalam sistem proses pemilihan dalam sistem pemilihan umum di Indonesia. Baik kesalahan dalam pemilihan legislatif dan pemilihan eksekutif atau lebih dikenal dengan Pemulikada dan Pilpres yang dilakukan secara langsung.

Penulis tertarik untuk mengkaji dan melakukan sebuah penelitian dalam rangka untuk membuat suatu desain tentang system pemilihan umum di Indonesia yang bebas korupsi dan tidak akan memicu dampak secara tidak langsung dikemudian hari pada saat kontestan terpilih sebagai legislatif, kepala daerah dan Presiden sekalipun.

Karena dalam istilah masyarakat yang sudah menjadi rahasia umum, ada istilah “mbalekno bondo”. Yang artinya mengembalikan modal yang sudah dikeluarkan pada saat prosesi pemilukada dsb.

Tentunya, hanya satu hal yang bisa mengatasi semua permasalahan yang ada dan menimbulkan terjadinya korupsi politik di Indonesia, yakni sistem pemilihan umum yang jujur, akuntabel, konstitusional dan didukung mental SDM yang mumpuni serta Berketuhanan Yang Maha Esa menghindari ajaran-ajaran dan prinsip Machiavelli.

## **CATATAN DAN REFERENSI**

Menurut Baharuddin Lopa<sup>1</sup>, pengertian umum tentang tindak pidana korupsi adalah suatu tindak pidana yang berhubungan dengan perbuatan penyuapan dan manipulasi serta perbuatan-perbuatan lain yang merugikan atau dapat merugikan keuangan atau perekonomian negara, merugikan kesejahteraan dan kepentingan rakyat. Undang-undang pemberantasan tindak pidana korupsi (UU 31/1999), memberi pengertian tentang tindak pidana korupsi adalah “perbuatan memperkaya diri sendiri atau orang lain dengan melawan hukum yang dapat merugikan keuangan negara atau perekonomian negara” atau “perbuatan menyalahgunakan kewenangan, kesempatan atau sarana yang ada padanya karena jabatan atau kedudukan dengan tujuan menguntungkan diri sendiri atau orang lain serta dapat merugikan keuangan negara atau perekonomian negara”. Termasuk dalam pengertian tindak korupsi adalah suap

terhadap pejabat atau pegawai negeri. Salah satu definisi tentang korupsi secara umum dikemukakan oleh Leslie Palmier<sup>1</sup>, korupsi secara umum merupakan penggunaan fasilitas pemerintah (*public office*) untuk memperoleh keuntungan pribadi. Untuk mengkaji lebih jauh, kita merujuk pada apa yang dimaksud korupsi dalam undang-undang mengenai pemberantasan tindak pidan korupsi. Beberapa kata kunci yang merupakan unsur tindak pidana yang perlu didalami yaitu kata-kata: “perbuatan melawan hukum, memperkaya diri sendiri atau orang lain, merugikan keuangan/perekonomian negara, menyalahgunakan wewenang, kesempatan atau sarana yang ada padanya, menguntungkan diri sendiri atau orang lain.

<sup>3</sup> Pilkada Langsung merupakan mekanisme demokratis dalam rangka rekrutmen pemimpin di daerah, dimana rakyat diberikan hak dan kebebasan sepenuhnya untuk menentukan calon kepala daerah yang dianggap mampu menyuarakan aspirasinya. Pemilihan Kepala Daerah dan Wakil Kepala Daerah Langsung tertuang dalam Undang-Undang Nomor 32 Tahun 2004 tentang Pemerintahan Daerah dan pertama kali diselenggarakan pada bulan Juni 2005 dan penyelenggaraan pemilihan kepala daerah dilaksanakan oleh Komisi Pemilihan Umum Daerah (KPUD).

<sup>4</sup> Armada Riyanto. *Keterpurukan Societas* dalam *Berfilsafat Politik*. Penerbit Kanisius, Yogyakarta, 2011. Hal 154.

<sup>10</sup> Virtu adalah keutamaan. Atrinya, penilaian (baik dan buruk) yang bersumber dari sifat watak yang dimiliki manusia. Secara historis -filosofis, ‘virtu’ merupakan suatu konsep etika yang tertua.

<sup>11</sup> Armada Riyanto. *Memayu Hayuning Buwono. Eco-Etika dalam Kebijaksanaan Jawa*. Dalam *Minum Dari Sumber Sendiri, Dari Alam Menuju Tuhan*. Penerbit STFT Widya Sasana Malang, 2011:119.

<sup>12</sup> Pius S Prasetyo. *Desentralisasi dan Demokrasi Lokal Indonesia: Kasus Pemerintahan Desa di Jawa Barat*. Dalam *Demokrasi di Indonesia, Teori dan Praktik*. Yogyakarta, Graha Ilmu, 2010: 173.

<sup>13</sup> Adapun isi dari teori Machiavelli tersebut: **a.** Untuk melakukannya seorang penguasa yang bijak hendaknya mengikuti jalur yang dikedepankan berdasarkan kebutuhan, kejayaan, dan kebaikan negara. Hanya dengan memadukan machismo – semangat kepajuritan, dan pertimbangan politik, seseorang penguasa barulah dapat memenuhi kewajibannya kepada negara dan mencapai keabadian sejarah. **b.** Penguasa bijak hendaknya memiliki hal-hal: (1). Sebuah kemampuan untuk menjadi baik sekaligus buruk, baik dicintai maupun ditakuti; (2). Watak-watak seperti ketegasan, kekejaman, kemandirian, disiplin, dan kontrol diri; (3). Sebuah reputasi menyangkut kemurahan hati, pengampunan, dapat dipercaya, dan tulus. **c.** Seorang pangeran harus berani untuk melakukan apapun yang diperlukan, betapapun tampak tercela karena rakyat pada akhirnya hanya peduli dengan hasilnya – yaitu dengan kebaikan negara. Sumber: Machiavelli, Noccolo, (1984) *The Prince*, diterjemahkan, diberi kata pengantar oleh Leo Paul S de Alvarez, Irving, Tx.: University of Dallas Press, Buku X

# **COMPARISON OF E-GOVERNMENT PORTALS TO VARIOUS COUNTRIES AROUND THE WORLD TO IDENTIFY THE BASIC REQUIREMENTS IN THE DESIGN OF THEE-GOVERNMENT PORTAL: A LITERATURE REVIEW**

Hayder

## **ABSTRACT**

Electronic Government (e-Government) is a simple-identified phenomenon in globally. E-Government (front office) is the application of information technology through average person field companies to obtain to its people in the current and effective technique (Al-Taie, M. Z. and S. Kadry). The citizens now seeking to interact with government online and the government is seeking to share resources and information security and the possibility of using the portal continues to grow, the portal focusing on content and may help to provide real work for the government to make the portal provide electronic services by the government through the internet easy to use as much as possible (Thomas & Streib, 2003). "Government Information Portal (GIP)", which is the origination of e-government. The definition, GIP is the core of e-government and is interaction channel an important between the government and people, normally, the architecture of GIP is complex, in which its goal is to provide integrative government information sharing with a variety of services (chen,2010). The purpose of this study is to make comparison between the different types of e-government portals for different countries in the world, based on previous studies. This comparison will help to identify the main requirements in the design of any e-government portal, where the portal is easy to use for different users who have different levels in the use of IT technologies. The study provides an overview of the literature related to the topic conducted by move on to explain the model of the front office in detail. This will be rigorous studies of web portal for the base of this research about how to develop the interface easy to use and secure.

## **INTRODUCTION**

The phrase e-government is used to explain the use of ICT in assisting government procedures, enhance people, and supply government services. The provision of the web for public application increases the use of e-government (Durickovic&Kovacevic, 2011). Certainly, the Internet is the most persistent technological development that can be leveraged by every establishment. Iraq's government and its people are the same (Marini &Ramasamy, 2013). With the many beneficial effects of ICT in business, it is difficult to assume a modern stage business working without the use of ICT. ICT spreads throughout every factor of the 21<sup>st</sup> century companies.

The citizens are the most important factors for the government therefore to increase social welfare to improve the situation of the individual within the government to modernize public services and to meet the requirements of the citizen (İdikat&Tuğba, 2004).

## TECHNOLOGY FOR E-GOVERNMENT

Even though e-government is usually defined as online government or Internet-based government, several non-internet based e-government technologies could be called on this context, including phone, fax, short message service, multimedia messaging service (MMS), generation technology (3G), general packet radio service (GPRS), WiFi, (WiMAX), and Bluetooth (Ansah, Kwansah, Blankson&Kontoh, 2012). In addition, there are several other techniques such as CCTV and tracking systems and radio frequency identification systems and traffic management on public roads and smart cards and emails, online chats and other applications (Khan, Miankhel&Nawaz, 2012).

The help of wireless infrastructure, and services all around the world, the opportunity for governments to exploit and enhance e-government is very potential. With Them-government, the access will be exponential (Lallana, 2004). That takes place, the services will be very ubiquitous, in which the term ubiquitous government (u-government) could be referred to (Hae, 2006).

## THE CURRENT STATE OF E-GOVERNMENT

The current state of e-Government was analyzed based upon the existing infrastructure, e-Government state, front office and back office (National IT Industry Promotion Agency, Philippines, 2012). In e-government front office, computer systems are used to make services and share information within and through, and e-government front office remains at enhanced comfort of homes and personal locations. Among the benefits of e-government include self-payments; also it could be seen in e-payment, which saves time and reduces queuing at the front offices (Ansah, Kwansah, Blankson&Kontoh, 2012). The concept is presented illustratively in Figure 2.1.

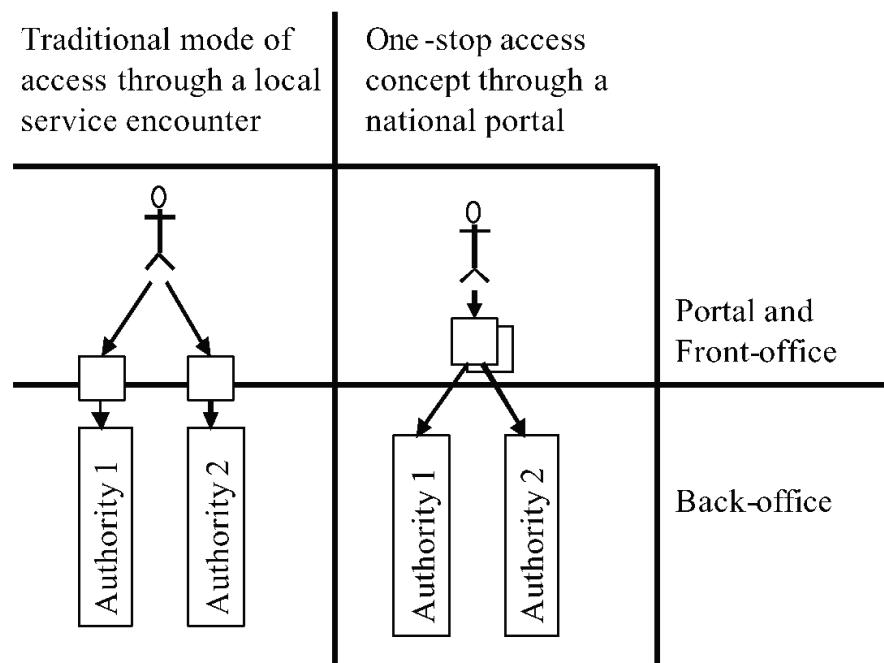


Figure 2.1: One-stop center e-government to access all kinds of public services(Ansah, Kwansah, Blankson&Kontoh, 2012)

## Front Office System

In the United Kingdom (UK), (Shareef, Hamid & Dastbaz, 2012) discovered that a front office of e-government portal evolved from the ability to provide information (basic site) to electronic publishing (e-publishing). Later, the interactivity became more intense, with various utilities provided in the portal, which eventually transactions were made available in the portal including also finance flow. Finally, the portal became holistic, including being able to support user needs at any time anywhere. The evolution is depicted in Figure 2.2.

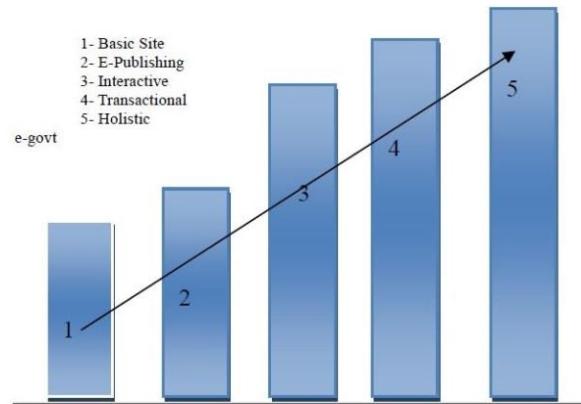


Figure 2.2: The UK e-government evolution model (Shareef, Hamid, and Dastbaz, 2012)

The model in the UK Figure 2.2 is very commonly seen in other countries as well. Generally, they are the evolution of Web technology, from informational to transactional, and eventually into a portal that locates all utilities in.

Besides the model in the UK, Moon (2002) earlier described a 5-stage e-government model at various levels of interaction by its users and the degree of technical sophistication. The model emphasizes that there are various stages of e-government, which reflect the degree of technical sophistication and interaction with users:

- i. Simple information dissemination (one-way communication).
- ii. Two-way communication (request and response).
- iii. Service and financial transactions.
- iv. Integration (horizontal and vertical integration).
- v. Political participation .

Each stage is described further in the following list:

**Stage 1:** The first stage is the government's basic electronic and static data are used in order to view the articles in the website online

**Stage 2:** At this stage is the interaction between the two represents the mode of interaction between citizens and government at this stage is for the government special applications can interact with the citizens of these applications, then process and responds to service requests.

**Stage 3:** At this stage, the government allows for financial transactions through the financial services provided by the government, such as paying taxes and fines and pay the bills of water and electricity in addition to financial aid

**Stage 4:** At this stage the government integrates services and the participation of all the data in order to enhance efficiency and ease of use and effectiveness of e-government Zeya and this stage will be difficult for the government because it will take a long time and many resources to merge services

**Stage 5:** At this stage is to promote and develop political participation through the internet, such as electronic voting and opinion polls, where broader and direct interaction with the citizens. At this stage, highlights the political activities online by citizens

### Front Office Architecture

Figure 2.3 shows a schematic view of how the front office architecture can be implemented (Chen, 2010). Serving a page request starts with a request for content data. Based on either a request parameter or on the type of content requested, the extraction process queries the content map to retrieve the appropriate data and create the page template. This gives a skeleton page, with many of the navigation links now resolved to content in the content map. The result then goes to the content aggregation process, which is driven by the data retrieved from the content map and populates parts of the page with data from the content management system. Finally, a rendition process converts the content to the presentation form required. Page layout in the front office architecture depends primarily on an interaction between the extraction and the rendition components. The extraction component will determine what page elements are present by the data that it extracts from the content map. Meanwhile, the rendition component will then organize those page elements on the final rendered page.

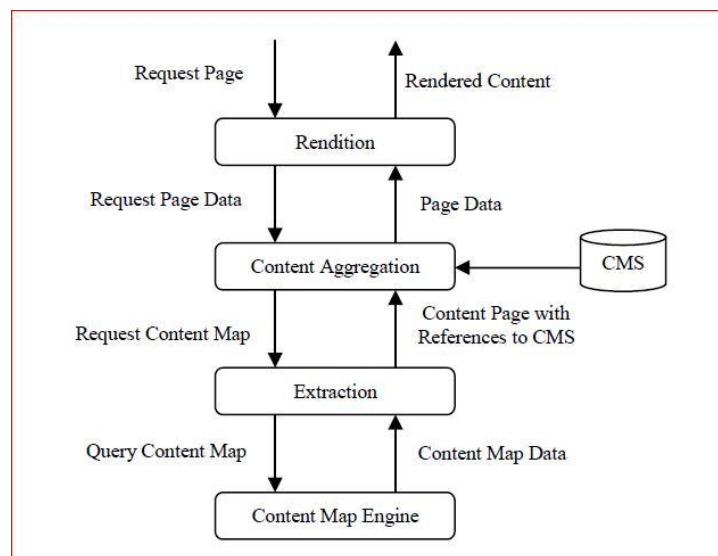


Figure 2.3: The Architecture of the Front Office (Qing Chen, 2010)

## E-GOVERNMENT PORTAL

The e-government portal provides several services which can be classified using the service areas that have the highest effect and are of the greatest benefit to the customers. These services vary in accordance with end users' requirements and ICT capability, which variety has provided increase to the development of various applications of e-government. Generally, these services could be organized into three, as illustrated in Figure 2.4. (Halal, 2010)

- I. Government-to-Citizen (G2C) - identifies the interactions between governments and their particular people in an electronic form
- II. Government-to-Business (G2B) - identifies government and business in which a government sells or supply to businesses several services, or businesses that sell products and/or services to government.
- III. Government-to-Government (G2G) - This identifies a large database for useful and efficient on the internet assistance and interaction between units of the government. Government-to-Government (G2G), consists of the connection between the government and public staff and Government-to-Staff (G2E) organizes the connection between the government and its staff the e-Government system, so that you can improve the employee's power in working with their work and in dealing with citizens.

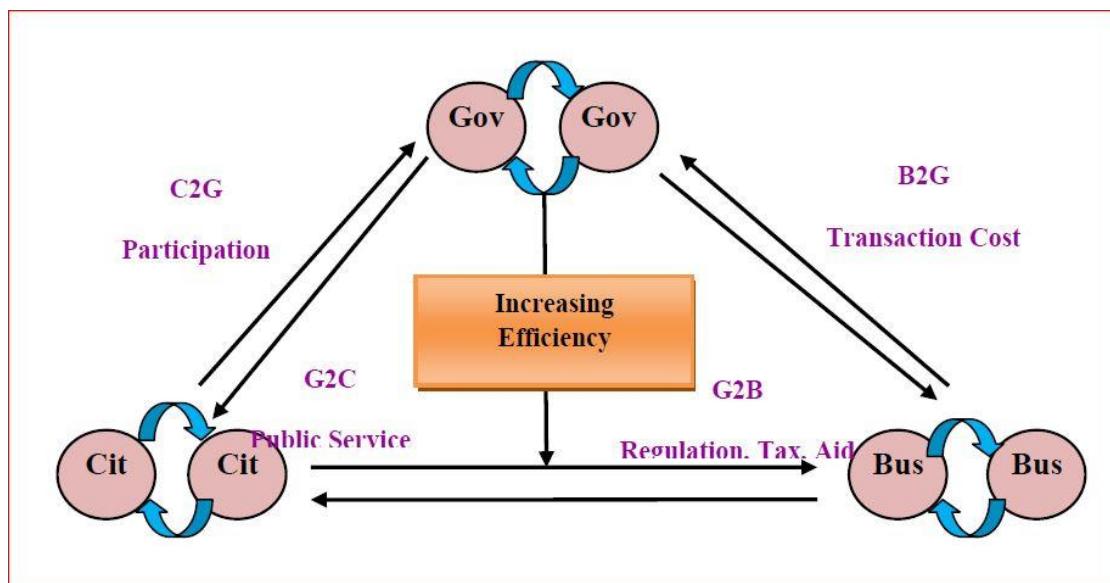


Figure 2.4: Relationship among Citizen, Business and Government (Halal, 2010)

The citizens believed the biggest benefits of e-government portal include increased government accountability to citizens and more access to information for citizens and the most effective in terms of cost and efficiency of the government (Alfawwaz, 2011), in addition to that there are some benefits:

- I. Avoid personal interaction: the provision of public services without any interaction with the staff of government
- II. Control: e-government exercises more control over the delivery of the service than through another method.

- III. Convenience: access to public services at any time, any place and in any way it wants citizen.
- IV. Cost: e-government portal provides opportunities to overcome the barriers of time and distance in the delivery of public services and citizens can choose the time and place to deal with the services provided by the government in order to save money as well.
- V. Personalization: Allocation of services to citizens through the use of modern technology (ICT).
- VI. To increase government efficiency and cost-effectiveness and ease of access to public information.

### **MALAYSIA EG PORTAL**

The Malaysia e- government Portal Guideline which has been provided by "Malaysian Administrative Modernization and Management Planning Unit (MAMPU)" The design of the portal for the Malaysian government should focus on the outline of the design and interface portal, and must provide basic interface design through the layout of the site and the use of colours and dealing with error messages (Mahmud, Hussin , Othman, &Dahlan ,2010). Based on this observation, the usability problems are:

- I. Assist and software documentation :the portal does not supply assist and software documentation for end user
- II. Visibility of system status:users cannot identify whether the link has been visited or not. The link should modify its colour when the user has visited it.
- III. Error avoidance :means an easy task to identify, and clear navigation
- IV. Use chunking:The content of the portal is scattered and contain a lot of irrelevant informationrecognition rather than recall: This portal supplies advertisement for the company that relate to tourism like travel agency and hotels. Advertisement will interrupt users during the navigation
- V. Match between system and the real world: this portal should use metaphor such as icon map for map link and icon compass for travel guide. Design with metaphor will be more natural

In this Figure 2.5 shows the functions in e-government portal in Malaysia by stages: enter, exploration (explore) and transaction (transact).The functionality of each design features must be emphasized to ensure the users need and requirements are addressed(Mahmud,Hussin, Othman & Dahlan,201

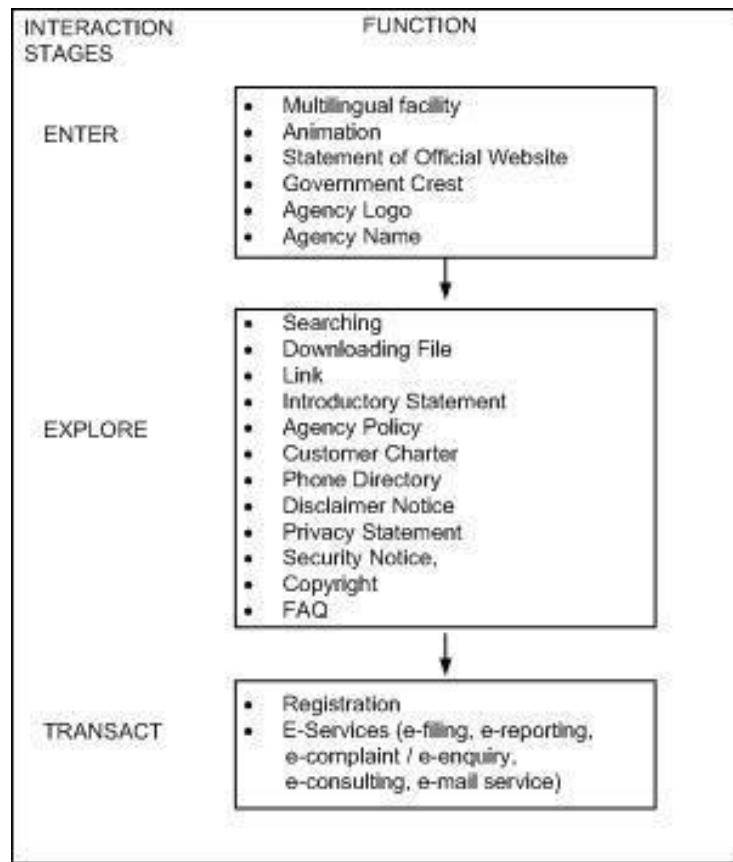


Figure 2.5: functions in e-government portal in Malaysia (Mahmud, Hussin , Othman &Dahlan ,2010)

The implementation of e-government in Malaysia has led to the following suggestions (Haidar&Bakar, 2012) to make e-government portal more efficient and effective, so that it could attract the citizens to access the portal:

- I. Provide ways for citizens to express their reactions, inquiries, and complaints.
- II. Find out the opinions of citizens, including the latest technologies.
- III. Meet the security requirements until they are sure that the citizens' deal with e-government services are secured and kept confidential.
- IV. Transparency is essential to win the trust of citizens.

### **PUNJAB AND PORTAL OF E-GOVERNMENT (SUWIDHA)**

Single user friendly window disposal and helpline for applicants (SUWIDHA) from Punjab (Chander& Kush, 2012). Many services are provided by SUWIDHA centers in Punjab and some of the services provided by SUWIDHA portal:

- I. Certificate birthday
- II. Issuance of a certificate of death
- III. The issuance of a certificate of nationality
- IV. Issuance of a certificate to the victims of terrorism

- V. Issuance of a certificate of fighters
- VI. Issuance and renewal of cards fighters
- VII. Children and the disabled protesters

Retirement for the elderly and widowsIn SUWIDHA portal in Punjab have been analysed in detail on the basis of the relevance of the services. Various metrics chosen for the purpose are shown here in table 2.1 below

Table 2.1 : The main element to evaluate the web portal(Chander& Kush,2012)

Home page	Availability of Pull down menu and other options	Running news or text on the portal	Pictures and service sufficiency	Font size and accessibility
Contact us	Accuracy and reliability of information	Clarity and efficiency	User convenience	Timeliness and relevance

### **THE E-GOVERNMENT DUBAI PORTAL**

The e-government portal ([www.dubai.ae](http://www.dubai.ae)), Government launched in Dubai in 2001 electronic portal, which is the entrance to the electronic services provided by the government of Dubai local was built and implemented portal at the direction of the commission of all government departments in the United Arab Emirates have been implemented site by a group of professionals and specialists in government electronic line with the requirements of laid by World Wide Consortium (W3C). Electronic portal at Dubai government provides more than 2,300 service where it is organized into four sections— citizens, residents, guests, and businesses (Sethi&Sethi, 2008). Links to numerous government departments, latest happenings, how-to section, and most used products and services, and general information services are available on the home page. As a first step in the direction of usage of e-Services, the “How-To” section provides a step-by-step guideline for government procedures and dealings that are conducted manually or electronically. By February 2008, the adoption rate had arrived at 91% of the more than 2,300 services available through the portal (Dubai e-government Website, 2008).

Additional, four contact channels – AskDubai, mobile channels, SMS— for public interaction with government departments were shown on the portal homepage. An opinion poll section that tackled key questions about e-Services offered on the portal was also added (e4all, 2005)(Sethi&Sethi, 2008). The portal obtained record hits during 2005 with the user traffic growing by 167%.

Based on the survey, which was conducted by the government of Dubai e-government portal in 2005 has been re-designed interfaces and to add many features to it to make it more user-friendly. The bilingual portal was separated into six groups – citizens, residents, guests, local businesses, international organizations and investing in Dubai – and appropriate e-Services were listed under each group. According (Evans & Yen, 2006) Dubai was the important in the area to release an e-government portal. This has the support of the government and the United Arab Emirates Defence Minister, Sheikh Mohammed al Maktoum, who pushed those in his nation to develop an e-life-style.

The new portal consists of four main sections: online services, living in Dubai, going to Dubai and doing work in Dubai. This project is expected to be met with great success as Intelprojects in that there'll be eight million Internet users in the Arab world.



Figure 2.6: e-Government Portal of Dubai (Al-Zuabi& Mahmud,2011)

## PORTAL IN MYANMAR

In 1996, a working group was formed from several government ministries in Myanmar, including the Ministry of Communications, Ministry of Science and Technology and the Ministry of Education make every effort in the implementation and development of information technology projects in Myanmar(Oo, Lwin, Oo, Aung& Ohn,2012). In 2003, some ministries began firing the website offers its own responsibilities and many services offered to citizens, even in 2008, the number of ministries that ticked the website is 28 government ministry; most staff and employees in those government ministries did not have much knowledge, skills and expertise to develop and release e-government portals and so they must be determined by external ICT professionals and technicians to develop and implement those portals. The turn of 2011 saw the new development of e-government environment in Myanmar to evaluation factor for Myanmar portal:

- I. Ease of Navigation
- II. Content Relevancy and Usefulness (CRU)
- III. Security Protection (SP)
- IV. Interactive Communications (IC)

- V. Ease of Online Transaction (EOT)
- VI. User Friendly Interface (UFI) 7- Comprehensive Content Coverage (3C)
- VII. Loading and Processing Speed (LPS)
- VIII. Up-to-Date Content (UDC)
- IX. Proper Multimedia (PM)"

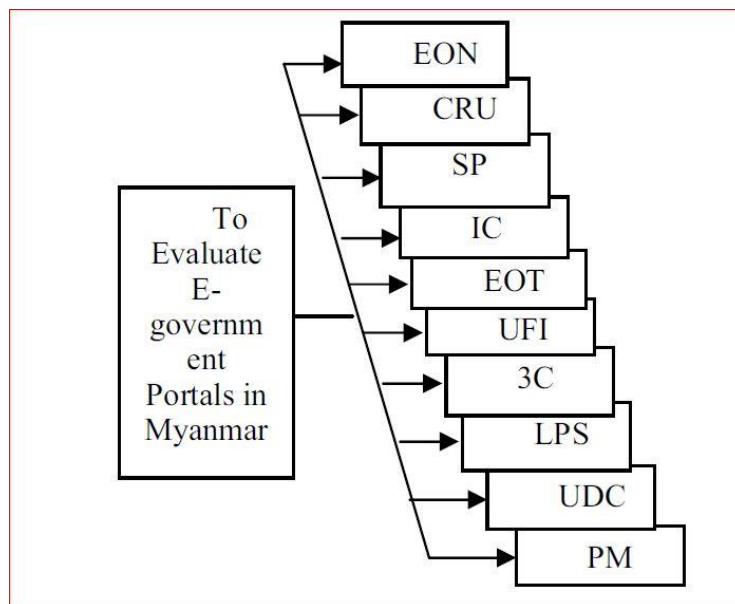


Figure 2.7:Evaluation factor for Myanmar portal(Oo, Lwin, Oo, Aung&Ohn, 2012)

### **HARYANA PORTAL (IN INDIA )**

Haryana is one of the smaller states of Indian Union with only 1.37% area (44212) Kmand 2.09 % population (around 253 lacs) of India Haryana is one of the states of India, one of the states in advanced information technology in India, the citizen in this state is providing his services through a central electronic services are delivered either by traditional mail or electronic delivery (Chander& Kush,2012) . Through the electronic the portal Haryana portal got on the second place for best electronic project by the community computer in India; advantages of this portal is to eliminate corruption and middlemen in the traditional processes(Chander& Kush,2012). The citizen can use this service anywhere, anytime without the need to visit many offices, and the aim of this portal to improve the relationship between the citizen through electronic transactions. Many services are provided by these centres at district level and some of the services provided by e-DISHA centres in Haryana are here as follows:

- I. Bills (Water, Telephone, Mobile Phone, Electricity Bills),
- II. Results &provisional certificates
- III. Kinds & methods
- IV. Acceptation of applications for all transactional services
- V. Human action writing through standard human action templates
- VI. E-mail interaction &internet browsing
- VII. Costs of farming & important goods

- VIII. Information on government work, tenders
- IX. Government recommendations
- X. Panchayats development works
- XI. Discharge of money
- XII. Agriculture inputs accessibility
- XIII. Ration cards and PDS information
- XIV. Public grievances
- XV. Blood bank information

## **THE PROPOSED ARCHITECTURE FOR JORDAN E-GOVERNMENT PORTAL**

The Jordanian government has a long-term vision for the E-Government through the creation of a society deals with electronic services effectively(Al-Omari,2006),it is through the provision of electronic services and strengthen the infrastructure and skills development and modernization of the laws in order to get on the e-government effective and easy to use through the portal of e-government, where there is the structure of a proposed electronic services through the portal of e-government of Jordan will be the hierarchy as follows:

- I. Communication services
- II. Economic services
- III. Education and training services
- IV. Health services
- V. Transportation services
- VI. Industry services
- VII. Labor services
- VIII. Natural resources and environment
- IX. project land, book a land for population/services projects

The actual process of implementation of the above services on three levels. The first level: linking a specific system with the centers for databases and the second level is the middle class (business logic) and third levels is responsible for the electronic payment, and are implementing these levels through the support infrastructure for e-government through the portal, including contributing to the provision of economic services great to Jordan



Figure 2.8: e-Government Portal of Jordan (Al-Zuabi& Mahmud,2011)

### **RELATED WORK WITH THIS STUDY**

In this chapter is to review a number of models for the e-government portal, which is approaching from my study directly and indirectly. The earlier models of the web portal was to determine what are the basic elements in assessing web portal current e-government of Iraq through identifying the elements of strengths and weaknesses in the design of e-government portal and in addition to determine what type of electronic services that must be added to the web portal in order to be easily accessible and be the portal page uncomplicated. As show in Table (2.2)

Table (2.2) the strong and weak points in many web portal

<b>Model</b>	<b>Brief description</b>	<b>Brief description</b>
	<b>Strongly point</b>	<b>Limitation</b>
Malaysia EG portal	All services provided by the government exist within a page portal in addition to a secure portal page.	More focused activities to ensure users return to the websites should be the way to deliver the future services. Confidentiality of users, user-friendliness, transparencies and efficiency and continuous promotion of these government websites.
Punjab and portal	In this web portal availability of pull down menu &other options and accuracy and relevancy of information and user convenience	In this web provide only 22 services and this web portal not secure
Dubai portal	The web provide 2,300services available through the portal additional, four contact channels – AskDubai, mobile channels, SMS– for public interaction with government departments .	This web portal not secure and complex and not easy for use
Portal In MYANMAR	This web security protection and provide Interactive and user friendly interface	In this web portal only 12 ministries register in portal.
Jordan e-government portal	The web portal provide all e-services of e-government in Jordan	Web portal analyzer tool implies that using 12 to 20 objects per page, the latency due to object overhead makes up from 75% to 80% of the delay of the average web page.

		The web combining, replacing, and optimizing the graphics within web pages.
Haryana Portal	The design of this web portal pictures & services sufficiency as well as many services in this page .	Haryana portal may not be able to get any important information except certain forms and it is very inconvenient for the users to get login and password for getting details regarding various ,this page is complex and is convenient for users

As explained earlier studies own portal pages, how user satisfaction for this important part in e-government and how to design a web portal more interesting terms of use; the related work will contribute to this study to add the number key factors for in order to contribute to focus on the current portal of Iraqi e-government and re-evaluated. After data analysis will give the statistic about the online services and also statistics from the portal and the extent of benefit from the current portal of Iraqi e-government as well as the Iraqi illustrate the extent to which the commentators of the Iraqi society of this important part of any e-government in the world.

Through the related work ,this study will determine the feature and requirements to design the web portal easy for using as well as secure.

This study will contribute to increase confidence and awareness and knowledge of Iraqi citizens in the use of e- services provided. The design will be applied to the portal e-government for web is very easy to use for the various segments of Iraqi society in order a way to increase use the online services in e-government in Iraq, where is the safety and security information on the important elements in the provision of services via the internet.

## SUMMARY

In this chapter have been talking about the literature of the previous governments in the electronic world as well as the previous studies and models used in the provision of services via the Internet have been referring to the Internet to users in Iraq as well as the infrastructure for e-government in Iraq. As has been noted in the e-government portal different end of the world and how the comparison between the portal e- governments in order to facilitate the process of analyzing information and assess portal current e-government in Iraq.

# RURAL TEACHERS' SOCIAL CONSTRUCTION ON THE TEACHER PROFESSION : A PHENOMENOLOGY STUDY OF UNDERSTANDING THE PROFESSION OF TEACHERS IN RURAL AREAS AT JUNIOR HIGH SCHOOL LEVEL IN LAWANG SUB-DISTRICT, MALANG REGENCY, EAST JAVA, INDONESIA

Khomsiatun<sup>1</sup>

## ABSTRACT

Teachers, besides their professional education, play an important role in building students and determine very wide social roles in rural areas. Their roles become more important amidst the limited facilities and infrastructures as experienced by schools in remote rural areas. Therefore, it is interesting to uncover characteristics of teachers who devote their lives in rural areas and to understand their social construction on their teaching profession through their duties to educate, to teach, and to train students via knowledge they possess. Teaching profession, in teachers who have taught in rural areas, has four titles namely "boss", "ojek", professional "boss" and "nip" (*narima ing pandum*) (accepting the fate, in terms of fortune) teachers. "Boss" are teachers who are very wealthy; "ojek", who are more dependent on their incomes on other business, instead of their salary; professional "boss", who are asked for help to make any administrative works in teaching-learning activities or classroom action research or scientific works used for certification or credit points and for promotion; "nip", who always submit their fates to the condition of their schools, who have no creativity and cannot solve their own problems, and depend on their colleagues in solving them. Such titles form certain characteristics of rural teachers. Characteristics of rural teachers and their social construction are that they are workers (*makarya*), and they are noble (*mulya*). Teachers are servants, where in Javanese philosophy, should be *jejeg, wadreg, madep mantep*, namely teachers should stand alone, and may be able to solve their own problems and be responsible. By understanding their teaching profession, namely in the Javanese philosophy *giri jalma tan kena ing ngina*, teachers who have possessed inner feelings, should not speak in inappropriate or impolite manners and should not insult human beings and hurt other people. Teachers are deserved to be models and they are noble and like to devote their lives for education and they work without any hidden agendas.

**Keywords:** Teaching profession, Social construction, Rural teachers.

## INTRODUCTION

Teachers give a very high contribution to the success of education at schools. Teachers are professions/positions or jobs that need specific competence. Teaching profession cannot be

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done by any persons out of the field of education. The quality of education, of teachers and of social environment in remote rural areas is much more lower than that in suburban areas. Education is the most important element in determining one's success in building one's life. Teachers as the main actors in education are expected to be able to improve the quality of human resources with intellectual, emotional and spiritual intelligence. Historically, a teacher occupies a position as a noble servant. In a tutorial system, teachers as tutors have a motto *Tut Wuri Handayani*.

At present, the status of teacher position has changed. Recently, people respect one's social status from materials s/he possesses. Teachers do not have any pride to their position and tend to be frustrated and to complain. Basically, teachers play their own roles according to and in line with views and social demands for their profession as a social reality. Social construction of teachers depicts their social process through their action and interaction of which the reality they possess and experience are always created. With their teaching profession, teachers serve as students' partners with more dominant position, become sources of values for students. They have a superior position in front of their students, meaning they should be obeyed and imitated. Due to the existence and the operation of Junior High Schools in remote rural areas in Lawang sub-district, Malang regency, East Java province, the modification of the implementation of teachers' activities in terms of teaching profession is an interesting thing.

The writer has tried to furtherly study the social construction of teachers on their teaching profession they have always made every day. In reality, however, teachers are doing their work as side jobs which are merely to fulfill the needs of their families. Their teaching profession is just a second choice. For them, the most important thing is to implement the regulations that have been determined by schools. The write also found that each implementation of the teaching-learning process is not in accordance with the competence as determined by the BSNP (The Board of Education National Standard) and that social-politic power also comes into play. It is interesting to study this process more deeply, since teacher profession demands some perfection in implementing positive teaching-learning activities and there is also another important and positive orientation in the Junior High Schools in rural areas.

This research is intended to reveal teachers who work in rural areas: how is the characteristic of teachers who devote their lives in rural areas and how is the social construction of the rural teachers on teaching profession through their duties in educating, teaching, and training their students through materials using knowledge they posses.

## **RESEARCH METHOD**

### **Paradigm, Approach and Types of Research**

The paradigm of this present research is the social definition one. The paradigm adopted is the one presented by Berger on the social construction, and the approach is qualitative in nature. The qualitative research means a descriptive one, where the researcher was interested in the process, meaning, and understanding of experiences, and full and total subjective comprehension of the participants. The qualitative research is more interested in meaning, namely, the way the participants comprehend the experiences of the profession and the way they express them. The type of the research is phenomenology which is in line with the

title of this research, where it is a delineation of human experiences as something living, seeing human beings as a social reality that is merely based on the involved actors.

### **Data Sources and Research Subject**

Data sources may be categorized into two types namely: primary and secondary. The primary data sources are headmasters, teachers, administrative staffs, formal and non formal community figures, religion figures, school committees, meanwhile the secondary data are a brief description of State Junior High School *Gunung Tumpuk Sidoluhur* in Lawang sub-district, Malang regency, East Java.

### **Data Analysis**

The data analysis in this present research was based on a number of theories that are in line with the objectives of the research. The data analysis was made on the basis of an inductive logic which would move from specific findings found in the fields to general ones which would appear through the data analysis on the basis of the theories employed. A phenomenology tries to look for an understanding using a qualitative method through participant observations, open interviews, and personal documents. The research method covers three stages namely entering field, during in the field and data analysis.

### **The Stage of Entering the Field**

The researcher played her role when she entered the field to make a rapport with the subjects and to exchange information freely and openly. The researcher was passive when doing her duty in the field. When the researcher first entered the location of the Junior High School located in Sidoluhur village, there was a lot of information openly obtained from subjects. She made a good rapport with the subjects' families. The situation the researcher faced was relatively ideal with informants MYK,MKS. YYH, MTR, and STW. The most important aspect in this case is the specific and unique expressions the subjects speak. Some expressions which were usually spoken are such as *sukete wis ijo royo-royo* (the grass has been fully green), *yen rendheng ora biso cewok yen ketigo orang bisa dhodok* (in rainy season we cannot take a bath, in dry season we cannot sit down), *gambarlang* (clear), *tedheng aling-aling* (clear and direct), *klunthang-kluntung* (here and there without any direction, unemployment), *muspro* (useless), *lombok yen bathi bisa nyeweki, lan yen rugi bisa ngudani* (chili may result in great benefit, or on the way around), *ajine diri saka lathi, ajine raga saka busana* (one's self-respect is from the speech, physical respect is from cloth), *ing ngarsa sung tuladha ing madya mangun karsa tut wuri handayani* (in the front, becoming model, in the middle, giving spirits, and in the back, giving a supervision), *jejeg wadreg madep mantep* (having strict and strong will), *makarya* (work), *mulya* (noble), *abdi* (servant), *giri lusi jalma tan kena ing ngina* (cannot be insulted). The tactics the researcher adopted to get difficult information on teachers' professional problems was by eavesdropping, especially when the subjects made telephone calls. This once happened in houses of BS, HS, QHR, AW, SYN, WWD when they were talking about injustice and policies made during leadership of a headmaster. In the phone calls, expressions the subjects uttered were focused on teachers-workers (*makarya*), noble -teachers (*guru mulia*), and servants-teachers.

Using initial codes, they may be categorized into 4 groups and labelled as: "boss", "ojek", professional "boss" and "nip" (*narima ing pandum*) teachers in order to obtain personal documents dealing with the researchers' autobiography through in-depth interviews.

## **RESEARCH RESULTS**

### **The Description of the Research Location and Profiles of the Research Subjects**

Here is a short history of Sidoluhur village located in Lawang sub-district, Malang regency. Malang regency is the second largest area in East Java, after Banyuwangi regency. This village is located in direct boundaries between Lawang sub-district in the north of Malang and Pasuruan regencies and the main gate to Malang. Its width is 960 hectares, divided into 4 (four) *padukuhan* (clusters of hamlets) namely Krajan Sidoluhur, Blendongan, Sumberjo and Gunung Tumpuk. The Gunung Tumpuk area is a rural area remoted from Krajan Sidoluhur.

## **DISCUSSION**

### **Titles of Rural Teachers**

On the basis of the processes of data collection, data selection and data reduction, of which the data were obtained from the teachers as the research subjects, categories of "boss", "ojek", professional "boss" and "nip" (*narima ing pandum*) teachers were resulted in. "Boss" teachers are those with a large amount of wealth and good financial condition and capability to be businessmen. Such a title is given by fellow teachers either in or out of schools, even it is they who admit the title.

"Ojek" teachers are those who always do business in their spare time so that this *ojek* is a field to look for incomes even the teachers themselves said that their motor cycles should be able to earn incomes, it is also the case with the students who were taught to look for money by becoming *ojeks* drivers. All teachers and members of the society call them "ojek" teachers, and it seemed that they were proud of such titles.

"Professional" boss teachers are those who have high capability, competence, responsibility and commitment and may be depended as model teachers. In scientific paper writing competitions, they are very superior, and they also show excellent teaching-learning processes and often make their students become the first rank students. They are really capable of solving any problems, and never inflict any loss to others. They may complete any jobs quickly and accurately, therefore there are many teachers who ask them to make semester programs, annual programs, or other jobs for certification. They do them well and promptly. Teachers, either in or out of schools, call them "professional" boss teachers, and such titles may result in some financial rewards.

"Nip" (*narima ing pandum*) teachers are those who are passive, they merely accept any tasks from their headmasters, do not have any initiatives to make some advancement, and the most important thing for them is to be able to do their teaching tasks and to go home punctually and they do not reduce their duties as educators and their purpose is merely to devote their lives for their schools.

## **INFLUENTIAL PERSONS**

In preparing human resources for the development, education cannot be and has not yet been able to provide them, let alone the education in rural areas. The problems in education are not only focused on the short-term material needs, but also should touch the basis that may give characters in the educational vision and missions, namely a close attention to moral ethics and noble spiritual condition. The community environment, either in families or educational institutions, really influence ones' characters. The influences are from the followings:

### **Parents (Father and Mother)**

Parents really give strong influence to the children's future. No parents expect that their children will not be useful for families and society. Parents try hard morally and materially to make their children be teachers and become models for their younger brothers and sisters. Their sons and daughters and their first child should become useful persons. Parents, especially whose profession is a teacher, try hard to encourage their children to be teachers.

### **Idol Teachers**

Idole teachers, namely teachers who can interest their students and who would be remembered by their students, encourage their students to become teachers. Students always pay attention to anything their favorite teachers do behave, speak and the like during or out of their teaching-learning process. Even the students will always show a better obedience to their teachers than to their parents. Any behaviors they show would be imitated by their students. In short they become then students' idol teachers and that is why the students want to become teachers.

### **Brothers/Sisters**

Brothers/sisters also have a very strong role in determining a decision to become teachers. Such an advice will be always taken into account, since sisters/brothers always protect them when they face problems. Sisters/brothers always, in a full of love and affection, motivate ones to become teachers.

### **Friends**

Real friends are the capital in making a good rapport either in happiness or sorrow. For example, incidentally, one heard from a friend that there is a vacancy in a school as a voluntary teacher in Junior High School State 6. S/he will enroll as the volunteer as long as s/he can apply the knowledge s/he has to young generation specifically, and in order to devote her/himself to the state and nation in general.

### **Idol Figures**

Personage of a hero or someone with characteristic of knight in making a decision cannot be deleted promptly if the personage has been implanted into one's mind. Such a good personage may be taken from scholars of Islam, warriors, artists, and even published books containing the histories of the persons. The philosophy adopted by prominent figures may touch one's heart and may be accepted by his/her common sense, and this may build one's character.

## RURAL TEACHERS' SOCIAL CONSTRUCTION ON TEACHING PROFESSION

In a social construction, continual internalization and externalization last may results in some self-awareness in the research subjects of the teaching profession and the social order. The process of internalization presupposes some awareness in the research subjects on the social reality they faced. It is this awareness that encourages an understanding of the social reality. Awareness and understanding are keywords in a phenomenology. Research subjects as actors are free to interpret/construct social realities. And they have various understandings of rural teachers on their teaching profession.

The selected and reduced data are expected to become information that is really to be believed as the results from a process of meaningful understanding. For the sake of developing information and of data triangulation, school documents were used to balance the information given to the researcher. The researcher made some parts about teachers namely teachers as worker (*makarya*), teachers as noble job (*mulya*), and teachers as servants. Each will be described below:

### Teachers as Workers (*makarya*)

Many community members consider that being a teacher is an easy job to do. But, according to some who know the duties of a teacher, it is not the case since what is faced by a teacher is human beings. If the teacher is wrong in applying the theories of education, it will spoil the education in the future.

Skills a teacher obtained during his/her training would be continued when s/he is in the class. In order to be able to do his/her task well, s/he should have adequate knowledge. Two important competences should be possessed by teachers namely (1) improving the students' achievement in a certain amount of time and (2) achieving capabilities as professional teachers to have high-quality learning.

The quality of teachers may be seen from two aspects: process and results. In terms of process, a teacher is considered to be successful if he is able to involve most students in the learning process actively, either physical, mental or social aspects. Moreover, it may also be seen from his enthusiasm and spirits and self confidence in his teaching activities. And the main duty of a teacher is to educate, so if the job is whole-heartedly done, it is very noble in front of Allah. Meanwhile, viewed from the results, a teacher is considered as successful if his learning process may change most of his students' behaviors that may lead the students to master a better basic competence. An in order to be able to fulfil the needs, various learning competences are needed. It is what is called as learning results. According to lay persons teaching is an easy job to do, but it is not the case, since it is a professional job.

The position of teaching profession also means as a job that may support the continuation of life because this job may be used to earn for living (*makarya*).

### Teachers as Noble Jobs (*Mulya*)

A job that may result in changing and determining one's attitudes and noble characters is a very noble job. Teachers are actors transferring knowledge unknown into known by students and

actors that may change students' bad attitudes into good ones. It is the teachers' very noble devotion. A job that is done sincerely and honestly is a very noble job.

Teachers should also do the duty of humanity to the society and students, that is why they should do their jobs under their responsibility whole-heartedly without any orders from their superior. This awareness is growing from their inner feeling and it is also developing their wills without any hidden agenda. The influence of education from teacher may be directly seen and felt in the development and life of the society, groups of people and the life of each individual. Teachers are media for translating the message of the Constitution, and for building the characters of the students as young generation.

Teachers who empower human beings may recognize and love the environment and be able to preserve and develop natural resources, social quality and the culture that may support the development and well-beings of students and the people around them so that they will not be separated from their social and cultural roots. The teachers' heavy tasks may be done well if the teachers work sincerely and honestly. Hopefully, the noble tasks may result in some satisfaction for the teachers.

### **Teachers as Servants**

With full of sincerity and awareness and without any hidden agenda, teachers devote their lives to a job that may satisfy them. It proves that a job that is sincerely done will result in satisfaction and make others, especially students, and their parents happy, and the results may be useful. Although teachers' salary is not so high, the jobs may raise a specific pride for teachers.

Teachers with high spirits and strong belief will have good piety to. Those having such piety of course will be able to do their task well, since their devotion is on the basis of what has been done well. Teachers who have good insights of the future be able to realize what they wish as stated in the Holy Quran: Allah will raise some degrees of people with good belief and knowledge (QS Al-Mujahadalah, 58: 11). Teachers should become models in gaining knowledge. If teachers can do anything sincerely and honestly as stated in the educational mission, they will become teachers who are *giri lusi jalma tan kena ing ngino* meaning that *giri* is inner feeling, *lusi*, heart, *jalma*, manifest, *tan kena ingin ngina*. As a whole, a tentative conclusion can be made in this present research from the Javanese philosophy: if someone has become a professional teacher and knows anything about professionalism, in his/her deepest inner feeling, a teacher should not speak and behave in a bad manner, let alone insulting someone else or showing improper behaviors to other people.

### **DISCUSSION OF THE THEORIES**

In rural teachers' social construction on teaching profession, it can be explained that teachers' daily lives are to teach, to educate and to train students continually in the process of social construction using externalization of values existing in their environments and ideology on the education they believe in, and objectivation of the educational institution/school and their roles as teachers that are their identity as state/voluntary teachers. Such an internalisation is an

ethical code as teachers that should be well kept in their professional position and values in families. Teachers should become models.

The formation of the characters of teachers may be made in the environments of families, society and of schools. The formation may be influenced by idol figures they are favorite much. This may construct titles for rural teachers as bos, ojek, professional bos and nip teachers. This may in turn result in social construction on teaching profession as workers (*makarya*), noble (*mulya*) and nip teachers.

### **PROPOSITIONS OF RESEARCH FINDINGS**

1. Characteristics of some titles for rural teachers are based on daily habits of teachers in doing their activities.
2. Social construction of teachers who devote their life in rural areas cannot be separated from their daily lives in primary and secondary environments.

### **CONCLUSIONS AND SUGGESTION**

Based on the description above, the following conclusions are made:

1. There are many teachers working in rural who have not fulfill the standard of teacher profession due to the fact that rural school really need educational workers, but a lot of teachers are reluctant to teach in such rural areas, especially for volunteers, besides the long distance to the remote rural areas, but also low salary. If there are some volunteers, they are willing to teach because they have no choice. As a results, the teaching-learning process cannot run smoothly in rural areas.
2. Rural teachers may be divided into 4(four) categories namely: bos, ojek, professional boss, and nip teachers. Boss teachers are those who are wealthy and who have business, besides becoming civil servants with fixed salary from the government. Ojek teachers are teachers who improve their salary by becoming ojeks (drivers of motor cycles used for public transport) every day during and after their school days. Professional bos teachers are teachers whose thinking abstraction, dedication and responsibility are high in doing their task in and out of schools. Even they can help their fellow teachers to solve any problems without any hidden agenda. Then nip teachers are the teachers whose activities are always under the order of their superiors, teachers who are not creative in solving any problems they face, always complain and ask for help to fellow teachers, indifferent and who merely do their jobs and duties punctually as long as they do not inflict on loss for others. They do not show any passion in their teaching-learning process. Forming characters of teachers is much influenced by some environments such as families, friends, idols and the like.

Making a choice as a teacher with such an existing capability is in line with the social construction of rural teachers. Teachers posses very high thoughts through teacher profession with teachers as workers (*makarya*), this career may reach the highest level and this may support the life in the future.

The position as teacher profession has been respected in the community as a noble job (mulya), and it is not easy to get such a respect. Such a profession is very noble, since it is based on devotion that is sincerely and honestly made just for the sake of Allah.

## **RECOMMENDATION**

During the teaching-learning activities, sharing experiences between state teachers and volunteer teachers should be made so that they may be able to develop themselves in the teaching profession. Even they should continue their study by taking for example Acta IV or subjects in line with their field.

Fulfilling any conditions may be very useful for themselves to become civil servants, especially teachers and may improve their knowledge in education and may join the certification program and may pass teacher competence. These may improve their teaching profession.

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# SATU TINJAUAN TENTANG KEPERLUAN PENDEDAHAN MAKLUMAN KONFLIK KEPENTINGAN DALAM PENYELIDIKAN KLINIKAL

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## ABSTRAK

Seringkali syarikat farmaseutikal yang berhasrat menguji ubat baharu memberi bayaran kepada doktor-penyelidik yang pesakitnya direkrut sebagai subjek kajian (pesakit-subjek). Ini adalah kerana merekrut pesakit sebagai subjek kajian adalah masalah yang lazim dihadapi oleh syarikat farmaseutikal. Masalah ini menjadi antara sebab timbulnya konflik kepentingan. Konflik kepentingan mencetuskan kebimbangan kerana bukan sahaja boleh menjadikan kepercayaan masyarakat khasnya pesakit terhadap doktor-penyelidik tetapi juga mendatangkan bahaya kepada keselamatan nyawa pesakit serta mencemarkan kesahihan saintifik data. Persoalannya, adakah doktor-penyelidik perlu mendedahkan maklumat konflik kepentingan kepada pesakit semasa proses mendapatkan keizinan dijalankan. Pendedahan maklumat konflik ini boleh menjadi signifikan sebab pesakit berkemungkinan memutuskan untuk tidak menyertai dalam penyelidikan klinikal sekiranya maklumat ini didedahkan. Sementelah lagi, keizinan daripada pesakit secara keizinan bermaklumat adalah syarat mutlak bagi menjustifikasi penyertaan pesakit. Bagaimanapun, pendedahan maklumat berkaitan konflik kepentingan bukanlah satu kehendak atau tuntutan undang-undang. Maka, satu-satunya cara pesakit-subjek mengetahui sama ada doktor-penyelidik mempunyai konflik kepentingan adalah dengan menyoal doktor-penyelidik. Akan tetapi, hubungan doktor-pesakit yang terjalin memandangkan pesakit-subjek pada asalnya adalah pesakit kepada ‘doktor’ sebelum bertukar peranan sebagai doktor-penyelidik sebaik sahaja menjalankan penyelidikan menghalang pesakit-subjek untuk berbuat demikian. Oleh sebab itu, artikel ini membincangkan tentang keperluan pendedahan maklumat konflik kepentingan oleh doktor-penyelidik kepada pesakit semasa proses keizinan bermaklumat dijalankan dengan memfokuskan kepada hubungan doktor-pesakit.

**Kata kunci:**konflik kepentingan, penyelidikan klinikal, doktor-penyelidik, pesakit-subjek, izin bermaklumat

## PENGENALAN

Konflik kepentingan pada umumnya berlaku apabila seseorang diamanahkan untuk bertindak atau membuat keputusan bagi pihak orang lain. Konflik kepentingan doktor-penyelidik dalam penyelidikan klinikal tidak dapat dielakkan kerana doktor-penyelidik adalah individu yang ‘bertanggungjawab’ menentukan sama ada pesakit patut menyertai penyelidikan atau tidak

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sebagai subjek kajian (Loet al, 2000). Pesakit tidak mempunyai pilihan selain meletak sepenuh kepercayaan kepada doktor-penyelidik untuk membuat keputusan memandangkan manfaat dalam penyelidikan klinikal adalah sesuatu yang tidak pasti selagi penyelidikan belum selesai dijalankan (Kim et al, 2004). Dalam erti kata lain, pesakit percaya dan yakin bahawa doktor-penyelidik akan membuat keputusan secara profesional demi kepentingan pesakit mengatasi kepentingan peribadi. Malah, doktor-penyelidik sendiri percaya bahawa pesakit lazimnya meletak sepenuh kepercayaan bahawa doktor-penyelidik akan melakukan yang terbaik demi kepentingan pesakit (Drazzen & Koski, 2000).

Dalam konteks penyelidikan klinikal, konflik kepentingan boleh timbul dalam pelbagai situasi. Ia boleh berlaku seawal proses merekrut pesakit sekali gus boleh memusnahkan kepercayaan ini. Trendterkini di Amerika Syarikat (AS) dan di peringkat antarabangsa menunjukkan bahawa ramai doktor-penyelidik dan banyak institusi yang menjalankan penyelidikan klinikal mempunyai kepentingan kewangan dalam hasil kajian yang dijalankan (Gatter, 2006). Masalah merekrut pesakit sebagai subjek kajian (pesakit-subjek) yang seringkali dihadapi oleh industri atau syarikat farmaseutikal antarabangsa yang berhasrat menguji ubat baru ‘memaksa’ syarikat farmaseutikal menjadikan doktor-penyelidik sebagai ‘lubuk’ untuk mendapatkan pesakit-subjek (Smith, 2008; Caulfield & Griener, 2002). Sebagai balasan, doktor-penyelidik diberikan bayaran bagi setiap pesakit yang berjaya direkrut (Gatter, 2006). Bayaran yang lazimnya diterima melebihi perbelanjaan pesakit yang sepatutnya ditanggung telah mendorong ‘doktor’ untuk mencadangkan ubat yang dikaji kepada pesakit dengan menyertai dalam penyelidikan klinikal walaupun berkemungkinan pesakit adalah lebih baik dirawat dengan rawatan sedia ada ataupun tanpa rawatan (Shimm & Spece, 1991). Amalan sebegini menimbulkan konflik antara kepentingan kewangan doktor-penyelidik dalam merekrut pesakit dan kepentingan pesakit mereka dalam menerima keputusan doktor yang tidak ‘bias tentang apa yang terbaik terhadap perubatan pesakit. Secara tidak langsung ini memberi pengertian bahawa konflik kepentingan berpotensi mendatangkan bahaya kepada keselamatan nyawa pesakit-subjek, mencemarkan kesihihan atau integriti saintifik datanya menjasakan kepercayaan masyarakat khasnya pesakit terhadap doktor-penyelidik dan penyelidikan klinikal secara amnya.

Ketiadaan polisi-polisi dan garis panduan kebangsaan terhadap keperluan pendedahan maklumat konflik kepentingan oleh doktor-penyelidik memburukkan lagi keadaan. Pendedahan maklumat berkaitan konflik kepentingan oleh doktor-penyelidik kepada pesakit-subjek semasa proses keizinan bermaklumat bukanlah satu kehendak atau tuntutan undang-undang. Ia bukanlah satu tuntutan mandatori yang dikenakan kepada doktor-penyelidik ataupun institusi (Kim et al, 2004). Di Malaysia sendiri, satu-satunya garis panduan yang ada berkaitan penyelidikan klinikal iaitu *Malaysian Guidelines for Good Clinical Practice* (MGCP) juga tidak menggariskan sebarang peruntukan tentang perkara ini. Maka, satu-satunya cara untuk pesakit-subjek mengetahui sama ada doktor-penyelidik mempunyai konflik kepentingan adalah dengan menyoal doktor-penyelidik. Walau bagaimanapun, hubungan doktor-pesakit yang terjalin memandangkan pesakit-subjek pada asalnya adalah pesakit kepada ‘doktor’ sebelum bertukar peranan sebagai doktor-penyelidik sebaik sahaja menjalankan penyelidikan klinikal menghalang pesakit-subjek untuk berbuat demikian (Drazzen & Koski, 2000).

Oleh itu, timbul persoalan sama ada doktor-penyelidik perlu mendedahkan maklumat ini kepada pesakit semasa proses mendapatkan keizinan bermaklumat dijalankan. Ini adalah kerana maklumat berkaitan konflik kepentingan boleh menjadi signifikan sebab pesakit berkemungkinan memutuskan untuk tidak menyertai dalam penyelidikan klinikal sekiranya maklumat ini didedahkan kepadanya (Resnik, 2010). Dalam pada itu, keizinan daripada pesakit secara keizinan bermaklumat adalah syarat mutlak bagi menjustifikasi penyertaan pesakit

dalam penyelidikan klinikal (Vollman & Winau, 1996). Justeru itu, objektif artikel ini ditulis adalah untuk membincangkan tentang keperluan pendedahan maklumat konflik kepentingan oleh doktor-penyalidik kepada pesakit semasa proses mendapatkan keizinan sebagai pesakit-subjek.

## KONFLIK KEPENTINGAN

Masalah konflik kepentingan doktor bukanlah sesuatu yang baru kerana ia dikatakan telah wujud sejak 1980an lagi. Memetik kata-kata Thompson (1993), "*The problem of conflicts of interest began to receive serious attention in the medical literature in the 1980s. ... Among the areas concern are self-referral by physicians, physicians' risk sharing in health maintenance organizations (HMOs) and hospitals, gifts from drug companies to physicians, hospital purchasing and bonding practices, industry sponsored research, and research on patients.*" Seterusnya, beliau turut mentakrifkan konflik kepentingan sebagai situasi-situasi yang menimbulkan konflik apabila sesuatu keputusan dibuat dengan memberi keutamaan kepada kepentingan sekunder misalnya perolehan pendapatan kewangan mengatasi kepentingan primer misalnya kebaikan pesakit. Kesselheim & Maisel (2010)pula menyatakan bahawa kepentingan peribadibukan sahaja dalam bentuk perolehan pendapatan kewangan tetapi pelbagai misalnya mengejar kemajuan profesional dan pengiktirafan hasil daripada daptan atau penemuan kajian yang dijalankan. Sementara itu, dwi identiti atau peranan doktor/doktor-penyalidik dan pengaruh insentif kewangan atau lain-lain bentuk perolehan peribadi dilihat sebagai boleh memkompromi kedua-dua kepentingan ini (Moren et al, 2002).

Hakikatnya, konflik kepentingan dalam penyelidikan klinikal tidak dapat dielakkan. Kemunculan pelbagai penyakit baru pada masa kini misalnya HIV/AIDS dan H1N1 dan termasuklah penyakit lain seperti leukemia dan kanser yang masih belum lagi diketahui puncanya dan pulangan yang lumayan hasil daripada mempatenkan penemuan-penemuan kajian merupakan antara faktor utama yang mendorong kepada penyelidikan klinikal khasnya kajian untuk menguji ubat baru dijalankan. Justeru itu, tidak hairanlah apabila banyak industri atau syarikat farmaseutikal menawarkan diri sebagai penaja untuk menjalankan penyelidikan klinikal. Memetik kata-kata Dr. Anand Tharmaratnam dari Quintiles Asia Pasifik, "*We will identify doctors who are interested in working in clinical trials. We approach hospitals and seek their interest. We then enter into agreement with them*" (Kasmiah Mustapha, 2007).

Di AS misalnya, dianggarkan sebanyak 75 hingga 80 peratus penyelidikan klinikal adalah penyelidikan ubat dan 80 peratus daripada semua penyelidikan ubat ditaja oleh industri farmaseutikal. Manakala 'doktor' pula dijadikan sebagai sasaran untuk mendapatkan pesakit sebagai subjek kajian (Caulfield & Griener, 2002). Pada tahun 1996 misalnya, Janssen Pharmaceutical telah membayar doktor-penyalidik sebanyak \$3,600 bagi setiap pesakit yang berjaya direkrut dalam penyelidikan ubat migrain. Manakala Wyeth-Ayerst pula telah membayar \$4,581 dalam penyelidikan ubat bagi hormon gantian kepada wanita (Brannigan & Boss, 2001). Malah di AS semenjak tahun 1990an lagi, proses merekrut pesakit oleh doktor-penyalidik sendiri telah menjadi satu 'perniagaan' lumayan yang mana pendapatan tertinggi doktor-penyalidik yang diperoleh daripada syarikat farmaseutikal menjangkau sejuta dollar (Shamoo & Resnik, 2003).

Konflik kepentingan dalam bentuk perolehan pendapatan kewangan melalui merekrut pesakit telah mendorong pelbagai salah laku oleh doktor-penyalidik. Terdapat doktor-penyalidik yang melakukan penipuan, memalsukan rekod merekrut semata-mata untuk mengaut pendapatan

yang lebih lagi. Malah, terdapat juga doktor-penyelidik yang tidak ambil peduli tentang kriteria kemasukan dan penyingkiran ditetapkan oleh protokol penyelidikan dengan merekrut pesakit yang tidak mempunyai sebarang kaitan dengan penyakit yang ditanggung sekali gus mengundang bahaya kepada keselamatan nyawa pesakit (Gatter, 2006; Lemmens & Miller, 2003; Caulfield & Griener, 2002).

Manakala kes terbaik untuk konflik kepentingan dalam penyelidikan klinikal adalah *Gelsinger v. Trustees of the University of Pennsylvania* (Phila Cnty Ct of CP filed September 18, 2000), Sherman, Siverstein, Kohl, Rose and Podolsky Law Offices). Dalam kes ini, seorang remaja berusia 18 tahun bernama Jesse Gelsinger adalah subjek dalam penyelidikan klinikal pemindahan gene. Jesse meninggal dunia setelah diberi suntikan vektor iaitu ubat yang dikaji. Dalam kes ini, keluarga Jesse sebagai plantif antaranya mendakwa bahawa pihak defendant telah gagal untuk mendedahkan maklumat berkaitan konflik kepentingan yang wujud daripada ikatan kewangan dengan syarikat yang ubat dikaji semasa proses mendapatkan keizinan dijalankan. Pendek kata, Jesse tidak akan membuat keputusan untuk menyertai dalam penyelidikan tersebut jika mempunyai maklumat lengkap tentang kepentingan kewangan antara penyelidik dan universiti. Bagaimanapun, kes ini telah diselesaikan di luar mahkamah dengan jumlah penyelesaian yang tidak didedahkan kepada umum. Namun begitu, jika kes ini dibicarakan, maklumat berkaitan kewujudan konflik kepentingan yang tidak didedahkan membolehkan plaintif untuk mendakwa bahawa keizinan yang diberikan oleh Jesse bukanlah benar-benar bermaklumat (Shaul et al, 2005).

Di Malaysia pula, syarikat farmaseutikal tidak terkecuali menjadi penaja utama bagi penyelidikan klinikal. Pada tahun 2008, terdapat sebanyak 87 penyelidikan telah dijalankan hasil daripada tajaan industri. Manakala sehingga Julai 2009 pula, terdapat sebanyak 47 penyelidikan. Malah Kementerian Perdagangan Antarabangsa dan Industri pada tahun 2008 juga telah melaporkan bahawa, “*The prospects for the pharmaceutical industry remains positive, due to growing health care needs; an ageing population and the prevalence of various diseases*” (SAsmaliza Ismail, 2009). Secara tidak langsung ini memberi gambaran bahawa doktor-penyelidik di Malaysia juga tidak dapat ‘lari’ daripada konflik kepentingan. Kenyataan ini dapat disokong dengan memetik kata-kata mantan Pengerusi Clinical Research Centre, Dr. Lim Teck Onn (2008) iaitu, “*Conflict of interests is extremely common, in fact conflict of interests is unavoidable*”.

## HUBUNGAN DOKTOR-PESAKIT

Dalam rawatan perubatan, doktor menawarkan penjagaan perubatan semata-mata demi kepentingan atau manfaat pesakit secara individu (Chen et al, 2003). Berbeza dengan penyelidikan klinikal, objektif iadijalankan adalah untuk menawarkan manfaat kepada masyarakat khasnya pesakit masa depan dan bukannya pesakit-subjek (Morrein, 2007; Lenrow, 2006). Dalam erti kata lain, benefisiari sebenar dalam penyelidikan klinikal adalah pesakit masa depan dan bukannya pesakit-subjek. Ini adalah kerana doktor-penyelidik terikat kepada protokol penyelidikan. Oleh sebab itu, doktor-penyelidik tidak boleh meminda protokol semata-mata untuk menyesuaikannya dengan kehendak atau keperluan pesakit-subjek.

Secara tidak langsung ini menunjukkan bahawa doktor dan doktor-penyelidik mempunyai peranan yang berbeza. Walau bagaimanapun, pesakit-subjek pada lazimnya tidak dapat membuat perbezaan kerana pesakit-subjek pada asalnya adalah pesakit kepada ‘doktor’ sebelum bertukar peranan sebagai doktor-penyelidik sebaik sahaja menjalankan penyelidikan

klinikal. Hubungan doktor-pesakit yang erat mendorong pesakit-subjek untuk percaya dan yakin kepada doktor sekali gus menghalang pesakit membezakan antara peranan doktor dan doktor-penyelidik. Memetik kata-kata Annas (1992), “*It is unlikely that patients can ever see the distinction between physician and researcher, because most simply do not believe that their physician would either knowingly do something harm to them, or would knowingly use them simply as a means for their own ends*”. Kedudukan ‘doktor’ sebagai orang yang berkelayakan dan berpengetahuan dalam bidang perubatan turut mendorong pesakit bergantung kepada doktor untuk membuat keputusan. Hal yang demikian ini adalah jelas apabila pesakit-subjek seringkali mempunyai tanggapan yang tidak betul berkaitan dengan manfaat yangbakal diperolehi dengan menganggap pelawaan daripada ‘doktor’ menyertai dalam penyelidikan adalah demi kepentingan pesakit-subjek. Sebagai sokongan, Kantz (2003) pernah menyebut, “*The investigators who appear before patient-subjects as physicians in white coats create confusion. Patients come to hospitals with the trusting expectation that their doctors will care for them. They will view an invitation to participate in research as a professional recommendation that is intended to serve their individual treatment interests.*”

Tidak terkecuali, salah faham terapeutik turut berlaku di kalangan pesakit-subjek di Malaysia. Pesakit-subjek percaya dan yakin bahawa pelawaan untuk menyertai dalam penyelidikan klinikal oleh ‘doktor’ adalah demi kepentingan mereka. Dapatkan kajian menunjukkan bahawa sikap pesakit-subjek yang meletakkan kepercayaan yang tinggi ke atas doktor-penyelidik telah mendorong doktor-penyelidik untuk tidak menyampaikan maklumat berkaitan penyelidikan dengan mempraktikkan prinsip keistimewaan terapeutik (Yuhanif et al, 2014). Malah, sikap begini adalah tinggi terutamanya di kalangan pesakit-subjek yang kronik sebagaimana kata-kata Dr. Goh Pik Pin (2011), “*... when patients have good trustworthy doctors and are in need of new therapies they are more willing to subject themselves to trials.*”

Ketiadaan undang-undang yang menuntut agar doktor-penyelidik mendedahkan maklumat konflik kepentingan kepada pesakit semasa proses mendapatkan keizinan menyertai penyelidikan klinikal memburukkan lagi keadaan. Pendapat ini dapat disokong apabila terdapat Badan Bebas Etika<sup>2</sup> (IRB) yang tidak mewajibkan doktor-penyelidik untuk mendedahkan kepada pesakit maklumat berhubung ‘urusan pembayaran’ semasa proses keizinan bermaklumat dijalankan. Malah ada IRB yang berpendapat bahawa ia merupakan urusan peribadi antara doktor-penyelidik dan penaja (Roizen, 1988). Oleh itu, satu-satunya cara untuk pesakit mengetahui sama ada doktor-penyelidik mempunyai konflik kepentingan adalah dengan menyoal doktor-penyelidik. Bagaimanapun, hubungan doktor-pesakit pasti menjadi sekali lagi menjadi penghalang kepada pesakit untuk berbuat demikian. Walaupun terdapat garis panduan antarabangsa misalnya Deklarasi Helsinki<sup>3</sup> yang mengenakan kewajipan ke atas doktor-penyelidik untuk mendedahkan maklumat konflik kepentingan kepada pesakit-subjek tetapi garis panduan ini tidak mengikat doktor-penyelidik kerana tidak mempunyai status atau kuatkuasa undang-undang. Ini bermakna, ketidakpatuhan kepada garis panduan ini tidak membawa kepada satu kesalahan undang-undang.

<sup>2</sup>Badan Bebas Etika dipertanggungjawabkan untuk membuat semakan saintifik serta etika ke atas cadangan protokol kajian bagi memastikan ia mematuhi standard etika agar aspek perlindungan subjek senantiasa berada pada tahap optimum.

<sup>3</sup>Artikel 26 telah memperuntukkan bahawa: *In medical research involving human subjects capable of giving informed consent, each potential subject must be adequately informed of the aims, methods, sources of funding, any possible conflicts of interest, institutional affiliations of the researcher, the anticipated benefits and potential risks of the study and the discomfort it may entail, post-study provisions and any other relevant aspects of the study.*

Begitupun, terdapat bidang kuasa lain misalnya AS yang mengiktiraf pendedahan maklumat berkaitan konflik kepentingan sebagai satu kehendak atau tuntutan undang-undang. Kes terbaik sebagai ilustrasi adalah *Moore v Regents of University of California*(793 P.2d 479 (Cal. 1990)). Dalam kes ini, Moore adalah pesakit leukemia kepada Dr. Golde. Dr. Golde kemudian bertukar peranan menjadi doktor-penyelidik sebaik sahaja menjalankan penyelidikan klinikal secara rahsia apabila mendapati zuriat sel daripada tisu leukemia Moore berpotensi untuk dikomersilkan. Pada ketika itu, harga pasaran bagi setiap zuriat sel yang dipatenkan adalah melebihi 3 juta dollar. Oleh itu, Dr. Golde meminta Moore untuk terus datang ke klinik agar dapat menjalankan prosedur pengambilan sampel sel-sel tersebut walaupun sebenarnya rawatan ke atas Moore telah punlesai. Mahkamah telah memutuskan bahawa doktor yang memiliki kepentingan penyelidikan ke atas pesakit mempunyai konflik kepentingan yang berpotensi mempengaruhi keputusan doktor. Oleh itu, doktor berkewajipan untuk mendedahkan maklumat konflik tersebut kepada pesakit. Mahkamah berkata, “*a physician must disclosed personal interests unrelated to the patient’s health, whether research or economic, that may effect the physician’s professional judgment ... failure to disclose such interests may give rise to a cause of action for performing medical procedures without informed consent or breach of fiduciary duty.*”

Di Malaysia, satu-satunya garis panduan yang ada berkaitan penyelidikan klinikal iaitu MGCP tidak menggariskan sebarang peruntukan tentang pendedahan maklumat berkaitan konflik kepentingan sebagai satu kehendak atau tuntutan undang-undang. Namun begitu, menurut Pengurus Jawatan Kuasa Etika Penyelidikan Perubatan (JEPP) Kementerian Kesihatan Malaysia, Dato’ Dr. Chang Kiang Meng (2010), doktor-penyelidik dikehendaki untuk menyatakan di dalam perjanjian penyelidikan klinikal yang dimeterai bersama dengan pihak industri selaku penaja sekiranya terdapat konflik kepentingan yang mana Pusat Penyelidikan Klinikal (CRC) telah dipertanggungjawabkan untuk meneliti perjanjian tersebut. Maknanya, terdapat ketelusan berhubung dengan konflik kepentingan memandangkan maklumat ini perlu dinyatakan di dalam perjanjian penyelidikan klinikal. Bagaimanapun, adalah perlu diberi perhatian bahawa ketelusan atau pendedahan maklumat ini hanyalah di antara doktor-penyelidik dan industri yang tidak melibatkan pesakit-subjek. Pesakit-subjek hanya akan tahu ini jika maklumat konflik ini disampaikan kepada dia oleh doktor-penyelidik. Kenyataan ini turut diakui oleh bekas Pengurus JEPP yang juga bekas Pengurus CRC, Dato’ Dr. Zaki Morad Mohamed Zaher (2014). Memetik kata-kata beliau, “Konflik kepentingan memang wujud di kalangan doktor-penyelidik Di Malaysia antaranya adalah melalui bayaran yang diterima daripada pihak industri sebagai balasan merekrut pesakit ... by right doktor-penyelidik kena bagitau pesakit tentang perkara ini tapi banyak orang (doktor-penyelidik) tak bagi tau.”

## KESIMPULAN

Adalah tidak dapat disangkallagi bahawa konflik kepentingan kewangan di kalangan doktor-penyelidik merupakan masalah serius yang perlu ditangani. Pendedahan maklumat konflik kepentingan kewangan oleh doktor-penyelidik kepada pesakit-subjek dilihat sebagai solusiterbaik kepada permasalahan ini. Ini adalah kerana pendedahan maklumat berkaitan konflik ini akan menjadi signifikan jika ia boleh mempengaruhi keputusan pesakit untuk tidak menyertai dalam penyelidikan klinikal sekiranya ia didedahkan. Sementelah lagi, hubungan doktor-pesakit yang terjalin menghalang pesakit untuk menyoal doktor-penyelidik sendiri berhubung perkara ini. Bagaimanapun tuntutan kepada pendedahan maklumat konflik kepentingan oleh doktor-penyelidik kepada pesakit-subjek hanya akan dapat direalisasikan atau

dilaksanakan pematuhannya jika ia dijadikan sebagai satu tuntutan undang-undang. Oleh itu, satu undang-undang yang khusus berkaitan penyelidikan klinikal disarankan oleh penulis.

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# PARTY POLITICS AT THE LOCAL LEVEL: CASE STUDY IN MALANG REGION, INDONESIA

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## ABSTRACT

Electoral conditions after reformation (1999, 2004, and 2009 elections) in Malang region showed instability. Parties that pass the threshold like PDIP, Golkar, PKB, PPP, PAN, and PBB continue to decline. New parties like PKS and Demokrat (2004 election), Hanura and Gerindra (2009 election) gained the seats, making the party system more fragmented. *The purpose of this study seeks to analyze the high electoral volatility in the Malang region, the party system instability, as well as the source of the cause of electoral volatility.* The electoral volatility in Malang region was high, and the party system was not stable. The high electoral volatility in Malang region was caused by a combination of such several factors as electoral system, declining support the bases of traditional groups, the internal party, and voter pragmatism.

**Key Words:** electoral volatility, total volatility, block volatility, party, party system.

## INTRODUCTION

Indonesia's democracy growing along with the ongoing reforms from 1998 to the present has not shown party system stability in both the national and local levels yet. Electoral conditions in the June 1999 elections for the major parties were the Democratic Party of Indonesia Struggle (PDI-P) 33.76%, Golkar Party 22.46%, PPP 12.62%. While other parties gained more than 3% such continuing of the political stream as in the 1955 elections, Nation Awakening Party (PKB) which is identical to NU got 12.62%, the National Mandate Party (PAN) and the Crescent Star Party (PBB) is considered Masyumi representation, for each 7.12 and 1.94%. In the 2004 and 2009 election most of those parties suffered the decline of the electoral performance. It has influenced the stabilization of the party system.

The party system after the Indonesia's New Order is unstable. To analyze how the party system instability occurs, the general standard is based on the volatility index, the difference in percentage change in the accumulation of votes or seats from one election to the next were divided by two, as expressed by Pedersen (1979). In this case Toka (1997) said that the "electoral volatility is a key indicator to see the party system stability". Therefore, the study of electoral volatility in general is always associated with the study of changes in the party system.

The paper focuses on measuring the party system stability and the possible causes of stability or instability. Even though the approach is clearly of a quantitative nature, it is clear that any study of party system development has to rely on qualitative assessments as well. Thus, the objective of this work is not to present a final methodological framework but rather to provide a framework on which to elaborate through further analysis. The index presented in this paper

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should not always be taken at their face value – rather they were indicators of respective levels of stability. Because of the complexity of the local level party systems, measuring certain aspects of them involves making several operational choices that may remain rather debatable, yet imperfect measures were better than none.

In this paper, I would like to compare between the stability of the party system at the national and local levels. Electoral volatility (both in terms of individual parties and the block party) is responsible to the instability of the party system, both nationally and locally. Although political decentralization affects party system and party organization at various levels of government, not many scholars do research in the local levels, in particular the stability of the party system.

### **MEASURING ELECTORAL VOLATILITY**

Volatility index measurement can be done from two sides: the votes and seats. On this article the author will only calculate and use the volatility index of the vote side. The reason why the author only uses the volatility index of the vote side because in reality, volatility occurred in the electoral arena rather than in the legislative arena. One criticism of the volatility index is giving too much to all party's votes. This is clearly not relevant, when calculating the index, whether votes flowing to the different parties into a single block of ideology e.g. flowing the votes from Islamic parties to the Nationalist parties would give a large contribution to the index scale, and vice versa. Bartolini and Mair (1990) were trying to solve this problem by introducing the measurement of volatility-block between the left and right parties. It is indeed very meaningful to study in developed countries, but to study post-New Order Indonesia is somewhat dubious. Discussing Indonesia from block party is a bit dubious because of the weakness of the parties programs. On the other hand, seemly elections in Indonesia, the role has shifted to the role of party to the candidates, especially after the change from the closed list electoral rules to the open list. However, inter-block volatility is still useful to see the consistency of the social roots of the party in society.

A more substantial problem with the volatility index reflecting changes only in volatility over the short term (protest voters), as happened in Britain in the party system. In the Unite Kingdom, the two parties were the Labor Party and the conservative party has experienced victory and held the government when there is high volatility index. At the same time, despite large changes in the volatility index, but the two party systems is more or less unchanged. Problems that occur in post-New Order Indonesia, the changes can not reflect the volatility of long-term and changes in the overall system. It could be more attributable to changes in economic conditions, or due to disappointment in the political parties.

To avoid the problem of short-term index, to calculate an index of more than one vote need to be done. Therefore, countries that have examined the long run democracy will be more relevant. Not the case with democratic elections after the New Order is just three times since the reform. Another problem may be most of the party conducting the merger or division, so would complicate the calculation.

In general, volatility index could measure the stability and instability of a country's party system. In Latin America and other countries which is a post-communist, new nation in terms of democracy shows a high electoral volatility. The higher the level of electoral volatility index, the more the unstable the party system of a state is. However, measuring the stability of the party system based on this amount, does not fully describe a country's party system. A country may experience a change (number) of the party system, but substantially (ideological) was no

change. Sartori (1976) offers an alternative in the party system is not measured solely in terms of the number of parties but also the ideological distance of parties that exist in the system. Therefore assess the volatility, not only in the realm of the party (individual parties) but also the realm of ideology (block party).

Bartolini and Mair (1990), also argues that electoral volatility can not describe the erosion that has been structured cleavages political conflict...a measure of electoral change which is base simply in the exchange of voters between individual party organization [and]...inadequate as a test of cleavages persistence since in many cases, the cleavage line divided blocks of parties rather than individual party organizations. The main reason why the electoral volatility can not describe the erosion of block parties, according to Bartolini and Mair, what is meant by 'freezing of cleavages' which is Rokkan argued that political change is not represented by a particular party, but the changes that occurred between the block .

## **PARTY IDEOLOGICAL POSITION**

Cleavage is the most important subject in the study of parties. It is therefore important to understand the cleavage of both the National and Local, and how cleavage structuring the political parties. Cleavage that develops after the New Order was a continuation of the 1955 elections based on the nationalist and Islamic streams, minus the Communist ideology.

The findings show that political parties were no longer explicitly listed their ideology in the party's platform such as PKB and PAN, although we know that both parties were both historical and ideological ties with the Islamic and Traditional modernists. The absence ideological commitments in the party platform issues have an impact on the models of solution which were relatively uniform and not correlated with the ideological struggle. Further more, program completion based on national problems there was substantially no difference among the parties each other. Logically, when ideology becomes a party system of values, ways of thinking and acting parties in resolving the issue would be characteristic of the political parties (branding) that distinguishes it from other parties. This is because of political ideology consists of a set of ideas and principles that guide how society should work, offering order (order) a specific community, including offering how to manage power and how it should be implemented (Anthony Downs, 1957). Further result of the weakness of the party's ideology is unclear orientation of the party in solving all national problems, including inability to criticize ideas, party ideas and programs of different ideologies.

Following the impact of the low understanding of the ideological, the party recruitment tends to choose the figure. This is characteristic of the phenomenon; Nugent (2003) called a deficit of democracy, as more emphasis on the figure of the candidate's ability to focus on political charges. If this continues, the identification of voters against the party will disintegrate. This condition is described by Harrop (1987) as a process of de-alignment, a weakening of the party identification of the voters to the party, or as "the wakening of party loyalties."

The position of the parties ideology are not clear, whether nationalist or Islam. This condition affects the flat form that are made do not reflect their ideological positions. The party tends to make short-term program that works to get the votes, such as social assistance. Commonly, parties seek to position themselves in the line of moderate ideology, often called as catch all party.

## EROSION VOTES AND THE HIGH OF ELECTORAL VOLATILITY

In 2004 and 2009 elections, the eroding the major parties like PDIP, Golkar, PKB, PPP, PAN, which were responsible for the electoral in the post-New Order Indonesia. Electoral volatility that occur both at the national and Local Malang though were equally, but it may vary. In 2004 and 2009, the total amount of volatility that occurred are, 28.55 and 30.20 (national); 32.27 and 27.17 (Kota Malang), 19.82 and 27.99 (Kabupaten Malang) (Sources: Malang local electoral commission). While the volatility of the block, 2.22, 10.83 (national); 2.89, 10.05 (Kota Malang), 0.51, 15.03 (Kabupaten Malang). This has prompted new party raises a threshold that is able to penetrate the PKS and the Democrat Party (2004), Hanura and Gerindra (2009) (ibid).

Tabel 1. Electoral System, Threshold, Number Party and Party's Seats In 1999, 2004, and 2009 At National and Local Level

Years of Election Pemilu	Pemilu 1999			Pemilu 2004*			Pemilu 2009			
	Electoral System	Proportional Closed List Without BPP**			Proportional Open List (BPP 30%)			Proportional Open List		
		National	Local		National	Local		National	Local	
Level		Kota	Kab.		Kota	Elec.	Parlia	Kota	Kab.	Parlia
Threshold	Elect. 3%	Elect. 2,5%	Elect. 2,5%	Elect. 3%	Elect. 2,5%	2,5%	2,5%	2,5%	2,5%	2,5%
Parties	48	48	48	24	24	24	38	38	38	38
Party's Seats	21	6	5	17	8	6	9	9	9	9
Total Volatility	-	-	-	28,55	32,27	27,17	30,2	19,82	27,99	
Block Volatility	-	-	-	2,22	2,89	0,51	10,83	10,05	15,03	
Efective Number of Party (ENP) Vote	5,06	4,06	3,69	8,55	6,79	5,31	9,59	7,65	7,75	
Efective Number of Party (ENP) Vote	4,72	3,67	2,24	7,0	6,0	4,14	6,13	6,23	6,19	

Data source: Adapted from various sources. Correlate the election result data, data obtained from [www.kpu.go.id](http://www.kpu.go.id) central elections, local elections while the data obtained from the Electoral Commissions of Kota and Kabupaten Malang.

\* In the 2004 elections the participation of 24 political parties, many new things were introduced in addition to the selection of members of the legislature (Parliament / Council), such as the system of direct presidential elections and the election of members of the Regional Representative Council (DPD). In legislative elections Parliament / Council used proportional open list system. Electoral system used to elect members of the DPD is simple majority with the multimember constituency. Volatility Index is calculated based on Pedersen index, the formula for the sum total of all the party's vote percentage change in (i) the year divided by two.

\*\*BPP = Minimum vote gained for the candidates to be nominated.

Where:  $V = \frac{\sum_{i=1}^n |\Delta p_i|}{2}$  Where:  $V$  - volatility index,  $n$  - the number of parties contesting elections;  $\Delta p_i$  - The votes that change from election to election to the  $i$ -th party.

Sources: Lijhart Arend, Electoral System and Party System, A study of Twenty-Seven

Democracies 1945-1990, New York: Oxford University Press, 1994, P. 57-77. National Electoral Commission, [www.kpu.go.id](http://www.kpu.go.id) which has been processed author.

The high electoral volatility in 2004, nationally, influenced by a decline in votes of major parties, especially PDIP, and the party which does not pass the threshold in the 1999 elections. The phenomenon of electoral volatility significantly from the major parties that passed the electoral threshold nationwide can be traced as follows: Indonesia Democratic Party of Struggle (PDI-P) which in the 1999 elections gained about 33.67%, in the 2004 elections has decreased quite dramatically to 19.58%, followed by the United Development Party of 10.72% to 8.32% and the National Mandate Party from 7.12% to 6.47%. ([www.kpu.go.id](http://www.kpu.go.id)) The phenomenon of electoral volatility in the major parties was followed by the emergence of new political parties that pass the threshold as the Democratic Party, the Prosperous Justice Party. In the 2009, not as much in 2004, the major parties were still contributing to the electoral volatility. PDIP votes in the 2004 election decreased from 18.3% to 14.03% in the 2009 election, Golkar from 21.62% to 14.45%, PKB from 11.98% to 4.94%, PAN from 6.47% to 6.01%. (ibid)

Correlate with the emergence of new parties, there were three factors which, according to Mainwaring (2009) can influence the politicians to establish a new party. *The first* situation where conflict within the party that encourages politicians to establish or join a new party. *Second*, following the view of Gunter (2005) and Mainwaring and Zaco (2007), the development of the central role of the party that changed the direction of the central role of actors in the campaign organizers have changed the party's existence to politicians. It also has something to do with the growing medium of television, where the politicians who will compete for executive positions using television as a medium to lure voters and not have to do the development of the party. *Third*, is related to the parties rule, the relatively easy to encourage the establishment of new parties.

Data showed that the high electoral volatility at the national level, the same with at the local level. In 1999 and 2004 elections, the City and the District of Malang into politics to represent a miniature political plot adaptable flow. Contesting parties that passed the threshold of 1999 showed a downward trend from election to election, indicating that the relationship between parties and voters is declining or de-alignment (Mair, 2004), a weakening of the state of voter support for or loyalty to the party (Harrop et al, 1987). The six political parties that passed the threshold of 1999, PDIP is a party that has the highest average erosion of votes in both nationally and locally, 10.27% and 7.94%. Among all parties, the erosion of PDIP was the highest, 15.38% in 2004 in Kota Malang. In the 1999 elections, in Kota Malang PDIP won the highest votes, more than twice the votes Golkar and PKB, which is 41.22%, but must accept the fact his votes fell to 25.84% in 2004 while still remaining a party winning a majority.

The fall in PDIP votes in the 2004 election was followed by the emergence of the Democratic Party as the party of new arrivals with the vote of 14.55%, the difference is only 0.83% lower than the noise reduction PDIP. Due to conditions not conducive to post-reform economy, on the emerging society longing for the emergence of a leader who can give new hope will change for the better. This condition is valuable to the increasing popularity of Susilo Bambang Yudhoyono (SBY) a military background who also has ambitions to become president. Therefore, when SBY create Democratic Party, so that in 2004 many people both individually and collectively to be a Democrat and also became a supporter of the presidential award of SBY.

His populist policies, similar to the concept of Thai's Prime Minister Taksin Sinawatra policies, Democrats vote in the Kota and Kabupaten levels were continuing to increase, in the 2004 election the Democratic votes to reach 14.55% and 7.76%, in the 2009 election increased dramatically to 24.08%, and 17, 42%. This condition indicates the Realignment of new voters into the party, and possibly at certain elections, this situation will return to stable conditions characterized by low volatility of the party vote. While the performance of Golkar in the City and the District of Malang on the election of 1999, 2004, and 2009 respectively 16.04%, 12.35%, 7.23% and 18.32%, 16.68%, 13.55%. When we viewed from the downward trend in votes, Golkar votes in the district were relatively more stable compared with the region, with an average vote was about 11.87% (Kota Malang), 16.23% (Kabupaten) and the average volatility are 2.37% (Kota Malang), 4.41% (Kabupaten). This situation show that Golkar have a strong base in rural areas than urban areas, and the average low volatility also shows that Golkar is relatively stable compared with the PDIP.

Based on the above data, electoral volatility was due to the decline of the party votes from election to the next. In the 2004 election, the parties who get high votes in 1999 election, their votes are decreased like PDIP, Golkar, PAN, PKB, and the PBB. The decline of the parties votes have been raised new parties such as the Democrats (as nationalist party) and PKS (as Islam Party). In the 2009 election, the party votes continued to decline, especially PKB which was suffering in conflict, and bring new parties like Hanura and Gerindra. These conditions have resulted in a high electoral volatility at the local level election.

### **THE FRAGMENTATION OF POLITICAL PARTIES AND THE CHANGING OF PARTY SYSTEM**

The high electoral volatility implies a fragmented party system. Over the past three elections starting from 1999, 2004 and 2009 indicate that the change of the party system continues to run, the number of parties that won seats continues to change (21, 17, and the last 9 party). As well, judging from the score or the Number of Party-effectiveness value (ENPV)-based votes and chairs, from election to election in which national ENP is changed from 5.06 and 4.17 (election 1999), 8.55 and 7.0 (election 2004), and 9.59 and 6.13 (elections 2009). The height a amount of ENP means that the votes were more distributed to many parties. This condition is related to the high electoral volatility is still high number of parties, 48 (1999), 24 (2004), and 38 (2009). Furthermore the high electoral volatility is also caused by the enactment of the threshold of 2.5% and 3% (1999 and 2004) and parliamentary 2.5% (2009) which resulted in a lot of parties that must be dropout. The problems following from the threshold rules were disproportional, where parties do not obtain the number of seats proportional to the number of votes obtained in elections. This issue is often raised to be an issue related discourse representative ness

In the 1999 elections the total amounts of parties who pass the threshold were six political parties, but in 2004 one of the parties must accept the fact that the PBB stage eliminated from the next election due by votes 2.56% and 2.09% were not enough seats to meet the demands threshold of 3%. After PBB, entered two political parties, one is the PKS (the 1999 elections were named PK) and one new party is the Democratic Party. Both of these parties gained enough equal votes, PKS 7.20% and 7.46% with the percentage of Democratic seats 8.18% and 10.36%. In the 2009 election, the distribution of votes and seats is increasing. If the election of political parties that qualify for the threshold 6 and 7 political parties, then in the 2009 elections with parliamentary threshold system amounted to nine political parties. This means

that in the 2009 elections there were two new political parties that qualified for the threshold, Gerindra and Hanura.

Change in the party system does not only occur at the national level, but also in the local. In the 1999 election, 2004, 2009 at the national level the number of parties that gained seats, 21 parties, 17 parties, 9 party; Kota Malang 6, 8 and nine parties, and Kabupaten Malang 5, 6, to 9 parties . If we use a model of party system from Sartori, then the terms of the number of parties that gained seats in parliament, party systems belong to the type of extreme pluralism. This is also confirmed by the Effective Number of Party (ENP) in the Kota and the Kabupaten Malang, with the ENP, 1999, 2004, and 2009-based votes 4.06, 6.79, and 7.65 (the City), 3 , 69, 5.3, and 7.75 (District). In terms of their seats: ENP 3.67, 6.0, and 6.23 (the City), 2.4, 4.14, and 6.19 (District).

In the 1999 elections there were six party PDI-P pass the threshold, PKB, Golkar is quite large, and three other parties such as PAN, PPP, and that includes middle-PK. The six parties in fact if it was sorted out a vision that is almost not much different. Golkar and PDI-P, although at the grassroots level frequent friction, but in fact both parties in terms of platform has much in common. So also with the PKB, PAN, PPP, PK, although there is always a gap between the parties primarily voters based Modernist Islam with traditional Islam-based. However, because both have the support of voters based on Islam, the parties were in fact relatively still can work together. In the 2004 election, seven parties passed the threshold like Golkar, PDI P, PKB and PAN plus two new parties, the Democrats and PKS. While the 2009 elections there were nine political parties passed the threshold to qualify parties' threshold 7, 2004 and two new parties, Hanuran and Gerindra.

New parties emerge and gain a significant votes both in 2004 and 2009, generally based nationalist party. In 2004, although the PKS is a new party, but not at all because the new party in 1999 elections had competed with the name of the Justice Party (PK). Mean while Democrats were the party that really new, formed to facilitate SBY running for president. PKS and the Democrat vote nationally in 2004 relatively similar, namely 7.2% and 7.46%, the difference is only 0.26% for the nationalist Democratic victory. While at the local level and the city of Malang Regency, PKS and the Democrats gain votes for 7.16%, 14.55% (difference 3.9%) and 3.05%, 7.76% (difference 4.71%). This situation also reflects the reality of shifting the balance of the block is relatively small in 2004 that only 2.22%. Thus, when it is said that the political stream in 1999 and 2004 elections is still showing its existence (King, 2003; Baswedan, 2004), then the claim block is in line with the low volatility that occurred.

In the 2009 election, there were two additional new parties have a significant vote of the nationalist bloc Gerindra and Hanura, while none of the Islamic bloc. Bipartisan vote nationwide totaled 8.23%, 4.46% and Hanura Gerindra 3.77%. While at the local level: 4.13%, 2.93% (Kota Malang) and 4.17%, 5.06% (Kabupaten Malang) respectively. In addition to the phenomenon of the new party, in the 2009 election also surprised by the skyrocketing Democratic votes for 13.39% (National) from 7.46% to 20.85%, 16.92% (Kota Malang) from 14.55% to 24,08%, 9.96% (Kabupaten Malang) from 7.76% to 17.42%. Positive trend of the nationalist bloc is inversely proportional to the Islamic bloc. PKS is predicted to gain his votes would rise in the 2009 election, only increased by 0.68% from 7.20% to 7.88% (National), while in Kota Malang increased 0.27% from 7.16% to 7, 43%, and in Kabupaten Malang increased 2.22% from 3.05% to 5.27%. On the other hand, there was a significant reduction of PKB due to internal party conflicts involving Gus Dur as the founder of the party and Muhamimin Iskandar as the Chairman of which is a nephew of Gus Dur himself. In the 2004 national election vote PKB decreased by

7.04%, from 11.98% to 4.94%. While at the local level decreased by 7.06% PKB from 17.36% to 10.30% (Kota Malang), 12.64% from 25.72% to 13.08% (Kabupaten Malang).

The phenomenon of increasing the block votes of the Nationalist and Islamic block vote decline has affected the balance between the blocks. In the 2009 election the Nationalist bloc vote rose by 8.61% from 2.22% to 10.83% (National), 7.16% from 1.89 to 10.05% (Kota Malang), 14.52% of 0.51% to 15.03% (Kabupaten Malang). By looking at the high decrease in the Islamic bloc vote in the 2009, it showed that the cleavage role in structuring the party's voters, it is different from the findings of Liddle and Mujani. According to Liddle and Mujani, the influence of religious orientation in 1999 and 2004 were very limited, whereas the authors found that the weaker influence of religious orientation was in the 2009 election.

### **ELECTORAL VOLATILITY AND PARTY SYSTEM INSTABILITY**

After The New Order Era, Indonesia is undergoing on the democratic and de-nationalization process: the governor, district heads, mayors were no longer chosen by the House of Representatives (DPRD), but has been direct vote. These conditions have implications on the dynamics of electoral politics in the region, also shows that the party system in the region to be important. This is reinforced by the statement of Smith (1983) who argued that the stability at the local level will impact on the stability at the national level, this indirectly indicates the importance of the political process at local level. In addition, competition between political parties and party with his issues at the national level is no longer sufficient to capture the essence of the dynamics of democracy today.

### **ELECTORAL VOLATILITY AT THE LOCAL LEVELS WERE HIGH**

Electoral volatility of the individual parties was high in Malang that was equal to 32.27 higher than the national volatility (28.55). The height volatility in 2004 election is caused by disappointment PDIP's constituent in which government policy from the president PDIP, namely Megawati. PDIP's votes in the 1999 elections was the highest vote nationwide in the amount of 41.22%. But in 2004 his votes was cut by 15.38% to 25.84%. In the 2009 election, the volatility of Malang City decreased by 5.1 to 27.17, although declining but the index were still relatively high. Total 2009 to record the historic volatility politics in Malang, because PDIP which was the majority party during the two periods must be the runner up, because it was defeated by a Democrat who became the party of government with President SBY as the founder of the party. In the 2004 elections the Democrats gained votes 14.55%, and in 2009 the Democratic vote rose 9.53% to 24.08%. It was inversely proportional to the PDIP which decreased to 5.15% of votes in the 2009 election to 29.69, a difference of 3.39 with the Democrats win the election.

In contrast to the individual volatility, the block volatility was increased. In 2004 election, block volatility was 2.89%. 2004's block volatility was driven by a decline in the performance of the Islamic block party in the city of Malang, although the reduction was counter to the national increase 2.22%. With individual volatility of Malang that reaches 32.7, then this shows that the volatility of votes was more common in blocks of the same ideological umbrella. The volatility of votes of the block party in 2004 election was 29.38%.

In the 2009 election, the electoral performance of Islamic party bloc continues to decline, even quite large, namely 10.05%. The decrease in the Islamic bloc was triggered by the decline of PKB's vote, which was one of the dominant party the Islamic bloc in the city of Malang. In 2009 elections, in the structure of PKB was occurring conflict involving Gus Dur and Muhamimin

Iskandar as Party Chairman. This conflict has an intact to Malang electoral making PKB decreased from 17.36% vote (2004 elections) to 10.30% (2009 elections). However, this reduction was not until the devastated buildings in the city of Malang PKB.

While electoral volatility of the individual Malang Regency parties, which did not show such a high rate that is equal to 19.82 in 2004. However, this condition can not last because in the 2009 election, the District individual volatility rose sharply to 27.99. This increase was the impact of electoral chaos caused by many factors, but the most striking the result of changes in the electoral system of closed lists to open lists without BPP (majority). These conditions encourage the parties to use the new strategies, such as the popular or the recruitment of candidates who have a high nomination in terms of social, political and economic. It stung the most was the phenomenon of vote buying and selling was done between candidates and voters. This condition has been ravaged building the party and voter relationships, many voters who jumped over ideology in choosing the party line because its votes were mortgaged to money. Therefore, in the 2009 election, block volatility also rose sharply to 15.03 in 2004 to just 0.51.

In Kabupaten Malang, the 1999 elections, the party vote showed a balance between the PDIP, PKB, each of which represents the Nationalist and Islamic. PDIP gain votes for 38.47% and 29.57 PKB. While Golkar in the early days of reform got a blasphemy, and even demands the dissolution, in Malang Regency still get voters to vote 18.32%. In the 2004 election, even though third parties still exist, but were under threat from new entrants, the Democratic Party and the Prosperous Justice Party (PKS). Democrats in the 2004 election votes 7.76%, and PKS received 3.05%. Both parties were a symbol of the power block of the new party, the Nationalist for Democratic and the PKS for Islam. In the 2009 election, the party power more evenly. This can be seen from the distribution of votes that were relatively close, such as Golkar and PKB were both received 13%, while Democrats the party 17.42%, it almost close to PDIP with 22.59%. Surprisingly, PKS as a modernist Islamic party could be able to crawl up by 5.27% of the votes.

From the above data, we can get an idea that incumbent parties vote steadily declining, while new parties continued to crawl up the acquisition of votes. On the other hands PDIP, Golkar and PKB were steadily declining due to higher performance of PKS and the Democrat. In 2004 and 2009 PDIP, Golkar, and PKB had to lose votes respectively 9.50% and 6.38%, 1.64% and 3.13%, 2.85% and 12.64%. On the other hand the Democrats and the PKS in 2004 and 2009 get a flood of votes respectively 7.76% and 9.66% (Democrat), 3.05% and 2.22% (PKS).

## **FACTORS OF ELECTORAL VOLATILITY AND PARTY SYSTEM CHANGE**

In this paper I also will analysis the sources of electoral volatility. Why post-New Order's Indonesia elections both National and Local show a high electoral volatility? And why was there a difference between the high electoral volatility of national and local? *First*, the national factor consisting of the rules of the establishment parties, the electoral system, the threshold of votes / seats. *Second*, local factors were decline in the support of NU and Muhammadiyah, the popular movement of cadres and party candidates. *Third*, the party's internal factors consist of the conflict parties, the performance of the party. Fourth, the factor is rational economic behavior of the voters.

The Rules for a party from election to election continues to be revised and made it more difficult for new parties to be able to participate in elections. Therefore in 2004 the number of parties has decreased to 24 compared to the 2009 election, amounting to 48, despite an increase in the

2009 election because of political compromises related to the determination of threshold. Electoral system continues to change towards a more enabling the de-legitimizing of the party, of a proportional system with a closed list (closed list) in the 1999 elections turned into a proportional open list (open list) by BPP 50%. In 2004, continue to change again into a fully open or proportional majority system. Like wise with the threshold that continues to change the electoral threshold of 2.5% of the 1999 elections, turned into electoral threshold of 3% threshold parliamentary elections of 2004 to 2.5% of the 2009 election. Furthermore the flow of political forces also suffered a setback. Furthermore, due to the low performance of political parties in carrying out its functions as inter mediatory between the public and the government has reduced public confidence in political parties.

The claim can be proved by the low resistance in the party establishment at the beginning of the reform has resulted in the height the amount of the parties in the election of 1999, this affects to the number of parties that gained seats in parliament at the first election, 21 political parties. While in the second election in 2004, tightened the party rules, and therefore in 2004 only by 24 political parties, and political parties that gained seats also dropped to 17 political parties. In the 2009 election the political party voted to increase again to 38 parties plus 4 parties at the local level Nangru Aceh Darussalam. While for the effective number of party from election to election were continuing, the 1999 elections with ENP for 5.06, 8.55 for the 2004 election, and in the 2009 election 9.6. Increased levels of ENP from election to election showed that the concentration of votes more distributed (more parties having a significant vote).

Role in structuring the behavior of party cleavage in bridging the interests of society with government, in Indonesia the role of cleavage in the 2009 election is shifting. This can be seen from the decline in traditional party support group, Muhammadiyah members were no longer necessarily support the PAN, as well as Nahdiliyin on PKB. In addition to shifting the role of elite cleavages, which is a representation of the social base of the party. Nahdiliyin groups joining to NU is no longer the party that determines the social basis of PKB, as Gus Dur is a representation of the traditional Islamic group more influential. Likewise with the PAN is more influenced by Amin Rais, in which Muhammadiyah is the social base. Furthermore, the PDI-P which is a representation of abangan voter, highly dependent on Megawati, and Democratic Party is more a social movement of supporting Susilo Bambang Yudhoyono to be president. In other findings related to the dynamics behind the high electoral volatility is pragmatic development among political parties, especially parties that were not clear social base.

Weakening of the political stream has led to a change of political power among the parties by Mair et al (1990) named as a process of de-alignment, which is related to the symptoms of the electoral market change or market change election. Changes in the electoral market can be seen from such things as changes in social structures, structural de-alignment, decline in party identification, the change in value orientation, competition issues, and the crisis of the party. Changes in social structures that were intended by Mair et al is based on changes in socioeconomic structure, but in the case of Indonesia, in economy class does not have a significant impact on political behavior in Indonesia, as evidenced from the results of Afan Gaffar's research. Social structure based on primordial (religious) was more prominent in influencing political behavior in Indonesia. It is interesting from Mair et. al. (1990), "this is the crisis of the party, which political party loses the confidence of voters." In 2004 and 2009 in Indonesia occurred a significant political shift and has led to a fragmented party system due to the emergence of voter disappointment at the result of a political party lace party's performance.

Emergence of new political parties was not caused by the emergence of new socioeconomic class. But there is something new: the figure of Susilo Bambang Yudhoyono (SBY) in the party who could be a symbol of the party's ideology. As with the other parties gained significant votes: Gus Dur for PKB, Amin Rais for PAN, Megawati for PDI-P that symbolized the ideology of each party. Therefore, it can be said that the flow pattern suggested by Geert is a certain degree is actually still running, but has suffered a setback as an explanatory tool of political realities of Indonesia or already occurring anomalous processes (Quoted from Khun (1962) concept in The Structure of Scientific Revolution) Moreover, seen from the growth PKS votes that is representative of the Islamic group.

Furthermore, the discovery of interesting to note that electoral volatility is mostly due to the high voter distrust to the party, it triggered the pragmatic behavior in society and also welcomed by the party of pragmatism in the form of vote buying. High-cost program is used as a bridge to reach out to voters outside the traditional base is a way to build a catch-all party. While the great political cost to develop a sustained cartel politics that has impacted on the amount of corruption cases involving the members of the parliament.

## **CONCLUSION**

Electoral volatility in Malang Region after the new order, based on the calculation of index Pederson(1979), were very high, with an average above 15%. The high electoral volatility, in terms of individual parties (total volatility), supported by the votes decline of the major parties such as PDIP, Golkar, PAN, PBB and PKB. In terms of the party (block volatility), the high electoral volatility caused by votes reduced of block Islamic parties, especially in the 2004 election.

The high electoral volatility, both in terms of individual parties and block parties, had an impact on fragmentation of the political parties in the Parliamentary from election to election. It obviously impacted on the changes of the amount of parties in parliament that indicate an unstable party system. In terms of ideology, party system change also occurred, the seat of the national party in parliamentary from election to election continue to increase.

The high electoral volatility in Malang region was caused by a combination of several factors: *First*, the national factor consisting of the electoral system, the threshold of votes / seats. *Second*, local factors such as the declining support for NU and Muhammadiyah, the movement of popular cadres and party cadres. *Third*, the internal party. *Fourth*, factor of voting behavior like voter pragmatism.

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# SOME CURRENT TRENDS IN SUPPORT OF E-GOV BY CONTEMPORARY SMART TECHNOLOGIES

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## ABSTRACT

Since its inception by the Lisbon strategy 2000 on e-Europe strategy and then its continuation through i2010 strategy up to now with the Horizon 2020 in support of the Innovative Europe 2020, the applications of smart ICT in the EU has passed a rather complex and sometimes also a quite controversial development.

In general it has been hampered by several key factors like e.g. the original Lisbon strategy adopted in year 2000 has been adopted by then only 15 EU member states while very soon the EU has been enlarged by 15 (2004) and then by another 2 (2007) mostly less developed CEECs and recently last year by another one new member up to current EU 28.

The other and a very negative factor has been a lethal and still ongoing Euro crisis that since its start in year 2008 has substantially and quite negatively influenced priorities and also financial means for the Union's strategies related to the future EU as the most advanced and innovative Union being based on the knowledge based economy and information society.

In the following parts of this paper we are dealing with the current status as achieved in the development of the future EU as the e-Europe as well as we are trying to find the ways and means how to accelerate the entire development in this respect within the selected ten sectors of the future e-Europe..

**Keywords:** e-Europe, e-Government, G2G, G2C, G2B

## INTRODUCTION

In spite of the above existing problems and weaknesses in the development of the e-Europe there has been gradually going an increase in funding for the R&D activities including research for the ICT and/or IST and related smart technologies programs from around 35 billion Euro for 6FP (2002-6) to 52 bil Euro for 7FP (2007-13). And now under the HORIZON 2020 it goes up to 70 billion Euro for years 2014-20. What by itself is a steadily growth in financial support to the EU R&D but it remains still only fraction of the funding going to the most controversial CAP – Common Agricultural Policy that gets about the same amounts or in other words almost the half of the EU annual budget but ... not for 5-7 years as it is in case of the support to R&D but for annual subsidies to the EU farmers.

However, in spite of these objective but also not so objective problems there has been achieved some evident progress regarding applications of smart ICT technologies for the needs of the future electronic Europe although there are still some gaps between the achievements of the "old" EU15 and the "new" EU12 and now also EU13. According to some key sectors the

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main results but also some problems as so far achieved and/or identified in the e-Europe development are as they are presented in the following parts of this paper. :

## **SELECTED TEN KEY APPLICATION AREAS OF THE FUTURE e-EUROPE AGENDAS AND/OR SUBSYSTEMS**

In this part of the paper we are going to deal at least very briefly with some key application areas of the future e-Europe. Into these areas we have selected the following ten key application areas as follows:

- e-Government
- e-Signature
- e-Invoicing and e-Procurement
- e-Health
- e-Surveillance
- e-Inclusion
- e-Education
- e-Content and e-Libraries
- e-Knowledge and e-skills
- e-Infrastructure

### **e-Government**

As far as the development of the future e-Government as one of the key application areas of the future e-Europe is concerned, the main results and challenges in this problem area have been within the following main three government services and that being G2C, G2B, G2G. The G2C stands for the governmental services of the future e-Government to citizens. The G2B means the services of the future e-Government to and/or for businesses. and the G2G represents the governmental agendas and interactions between and among the various governmental agencies on the central as well as regional levels. In general we could state in this connection that even after the more than 14 years since the inception of the Lisbon strategy, the results are still mixed ones exactly as it has been stated yet in 2004 in the well known W. Kok's mid-term evaluation report that later on has led to replacement of the Lisbon strategy by its less ambition version of i2010 and nowadays we have been looking forward in its current version till year 2020 under the HORIZON 2020 strategy adopted for years 2014-2020. As the main problems have been basically still the same ones i.e. that some fundamental technical preconditions have not yet been created like e.g. the e-Signature as the main access tool for becoming an authorized user for various e-Government applications. That we will deal in more details in the separate part of this paper. But even more negative aspect of the entire concept of e-Government has been still the fact that there were not existing sufficient numbers of e-Government applications and services not only for citizens but as well as for businesses and also for interactions between various governmental agencies, ministries, etc. It would be really desired to have more relevant applications after the more than decade long "implementations" of various strategies related to e-Europe. As far as the Government services to citizens are concerned we could state that only now some main preconditions are created e.g. in many especially new EU member states

including our country of Slovakia. In this connection it is worth to mention that e.g. only now has been launched the system of e-ID as a replacement of the still utilized system of classical plastic ID cards. Only now with the new by a chip equipped e-ID it will be possible for citizens to identify themselves in various ways and means of e-communications with various governmental agencies. But again it will be needed to implement as soon as possible the governmental applications that will enable citizens to arrange their needs from the government in the modern e-communications regarding e.g. issuing new passports, driving licences, e-health or cadaster and other governmental services including e.g. also e-voting as a part of the e-Democracy, etc. The same also for various other e- applications regarding various permissions, authorizations, approvals, agendas that are integral part of the daily life of citizens who should have now an opportunity to arrange all those often bureaucratic demands without necessity to be running from an office to other offices, etc. For example only for the arrangement of a permission to build a new house it is estimated that it requires up to about 50 "signatures" of various governmental agencies what of course is also a source for a possible corruption, clientelism, favoritism, etc. All these and other negatives could be almost removed from the daily life if the particular contacts G2C would be carried out in the e-way of communications also for all other subjects not only citizens. At the moment most of data in this respect are collected mostly by individual governmental agencies rather than to be shared by various governmental agencies within the G2G from some common data storage facilities, etc.\

The same we could say also regarding the G2B as to open e.g. a new business even on the level of SME nowadays requires again various applications, permissions and authorizations from various governmental agencies. In the new modern e-G2B all these bureaucratic obstacles could be removed and the creation as well as operation of the modern e-businesses could be arranged through several steps within e-communication with the one-stop e-business service centers.

As for the G2G communications, the main task remains still the same as we have mentioned it above i.e. to remove lack of e-interactions between and among various governmental agencies. Especially it is needed to remove the kind of autonomy in collection, storage and utilization of various data being collected by the individual governmental agencies from citizens, businesses, etc.

### **e-Signature**

This very important e-tool for carrying out any and/or all fundamental e-activities has not been still generally available across the e-EU in the form that would meet the general requirements of the EU common market i.e. that it will be easily and equally available and functional across the entire single market of the Union. In different countries there was applied a different approach, so in principle there exist 28 different versions of e-signature. Some of them are offering it for free, in some other countries like e.g. in Slovakia it has been available only for a rather high fee of around 80 Euro. But there are still not yet so many applications as we have mentioned it above where to use it. Hence, especially in the case of SME, citizens, etc. it is rather too expensive if there are not available so many e-applications where e.g. SME could use it. The same situation is regarding G2C where is still relatively little e-agendas where the citizens could use their e-signatures, etc. Now there has been going e.g. in Slovakia a gradual implementation of the new e-ID with chips. It could be expected that the entire procedure will be then more simple and it can serve not only as an e-signature tool. It is also much cheaper than a "classical" e-Signature as it costs only 4.50 Euro so it is possible to expect that it will be more

widely used than the existing e-signature. All that makes this problem area more closer to the practical needs of people as well as businesses especially those belonging to SME. All such applications like arranging e-ID, passports, driving and other documents, etc. are promised to be accessible electronically through this new e-ID alias e-signature. We have to only hope that it will be as being promised.

### **e-Invoicing and e-Procurement**

E-Invoicing and e-Procurement are other main and very important preconditions for developing modern e-Business within the future EU digital internal e-market. There again has been achieved some progress on the national level of individual EU member states but just a very little regarding the unified "EU common e-digital market" of the EU28. The situation is similar like in the case of e-signature i.e. there are more or less working national systems but not the one for the needs of the EU future common digital e-market. One of the main problems is not only the technological one but also the language one as most countries are publishing their e-tenders only in the national languages and thus cutting off potential suppliers from other EU member states. Although it is clear that if it is published in one of 24 official but also national languages of the EU and not also in one of the basic three working languages of the EU i.e. especially in English but also French and German then it is really difficult to consider such tenders as really ones that could be also EU acceptable. More strict legislation regarding also the language aspects is more than needed also in this problem area. As in many other similar problem areas just to have an EU directive and not more stronger EU regulation is most probably not the solution for achieving really and truly EU-wide solutions suitable for the future e-Europe.

### **e-Health**

Without any doubts the e-health is one of the key sectors of the future e-Europe if we take into account the demographic development in the EU and especially very fast growing the share of the aging population on its overall population. Again as in other areas also in this one, some progress has been achieved on the national level especially in some most developed EU member states and especially in its Nordic group of states but there is again existing a big problem regarding the e-Health for the entire e-Europe. The main problems again are not in the technological aspects of its implementation but in the legislative and organizational ones. There has been existing already for years a kind of the "common" EU Health Insurance Card but in its classical plastic form only. It means that if the patient needs some medical care outside of its national territory the main problem is that foreign doctor has no information about the particular patient as the above plastic card contains no e-medical records, diagnosis, medications, etc. Hence for the foreign doctor it is sometimes too risky to offer any kind of medical services without this key medical information. Of course in case of life threatening cases some first emergency is normally provided but anything else without the proper medical e-documentation is very problematic and mostly rejected. It will be definitely needed to force the EU member states and their medical authorities to speed up their effort in creating a kind of unified and/or standardized EU e-medical records in the form that it will be easily acceptable within the entire EU! Then also all other related agendas like e-prescriptions, e-consulting and advisory medical services will be fully available to all EU citizens irrespectively where they need any kind of medical services or help.

### **e-Surveillance**

Again it is a certain paradox of the entire e-Europe implementation strategy that although this specific sector of the future e-Europe originally has not been a part of it at all, in practice it is one of the most developed and according to many accounts one of the sectors being truly and fully developed across the entire EU. As in various other similar problem areas also in case of e-surveillance its enormous development and almost perfection has been achieved as a kind of secondary result of the ongoing technological development in the modern smart ICT and their applications as it is in case of e.g. mobile phones, tablets, social networks, navigation systems, etc. Mostly it is so thanks to their enormous popularity among the people in general and the EU citizens as well. Moreover if we take into account that it is a citizenship with one of the highest standard of living in the world and thus having enough finances also for following and utilize the results of the latest technological development in this area. Hence even without any special interest and intentions of the operators and through them all interested parties either from the governmental as well as private sector they all have at their finger-tips enormous amounts of and very often even most sensitive personal, business, state/administrative information. As our ongoing research under the EU funded projects SMARTY, CONSENT, RESPECT have documented then it is only a question of legislative, ethical and administrative respects to what extent and if at all that very rich source of data would be used properly exclusively only for the purposes that data was officially recorded for, or it would be misused also for some other often discriminatory, non-ethical or even criminal purposes. In this connection again more stronger and unquestionable EU legislation on the protection of personal data, human dignity, privacy, confidentiality in communications, etc. would be needed to be enacted as soon as possible as otherwise there is a real threat that the generally adopted fundamental human rights and protection of personal data, etc. will become only a document that nobody will be respecting.

### **e-Inclusion**

Thank to above technological progress being achieved especially in popularity of mobile phones but also tablets, smart phones, etc. as we have been dealing with them in the previous part of this paper also one of the critical and most important parts of all strategies on the e-Europe has become a very practical and relatively easy to be implemented. Although again as in various other similar cases the strategies since the first one i.e. regarding the EU/Lisbon strategy have not been quite clear how to achieve the full e-Inclusion i.e. that every citizen of the future e-Europe will become integral part of this modern information society where everybody will become e-included one. Thanks again especially to popularity of mobile phones and/or in particular of their smart phone versions it has become a common reality. From smallest kids up to the oldest senior citizens all of them are nowadays users of this mobile latest smart ICT and thus also an integral part of their e-inclusion into the contemporary modern information society of the EU. The only problem is that this natural and easy going process of "informatisation" of society is not more supported by those who are for this e-Inclusion directly responsible i.e. the EU as well as national authorities. There is still not existing enough relevant applications and programs that would be really fully and truly utilized their extremely big potential of these mobile as well as smart phones for all various needs of people in the case of e-Health, e-Education, e-Culture, e-Democracy, etc. There is not a short list of various applications in this respect but they are mostly results of business needs of producers and operators and in many cases more for their profit needs like e.g. various games, entertainment, etc. than for above practical needs of ordinary citizens in other they could to the full benefit from being an integral part of the e-Europe and all its potential e-benefits and e-services, etc.

## **e-Education**

As mentioned in the previous part of this paper, the potential of the development in e-education especially regarding the so-called long-life education especially for adults as well as senior citizens has acquired through above mobile ICT quite new potential horizons. So far this potential has not yet been fully utilized especially in case of elderly and senior citizens for whom the e-education and/or better m-education is the most convenient ways together with the TV how to keep them up-to-date regarding the abruptly changing world. Hence in this respect there are quite big reserves and also potential to use the latest ICT for long life and/or various other forms of informal education. Otherwise, e-learning facilities for young people studying in various educational institutions are basically fully provided as the necessary technological basis has been widely available especially thanks to relatively cheap laptops and tablets and of course also smart phones. However also in this area of e-education there has been existing a serious problem regarding the availability of suitable teachers and educators. As in the most countries especially in the new EU member states the salaries of teachers are quite low ones it is no attraction especially for young people to teach at schools. After acquiring some practical skills and practice as the rule they quit their school jobs and go to work for private sector that has been paying much better salaries than it is in the school system.

## **e-Content and e-Libraries**

Very closely related issue to the above problems regarding the e-education has been the problem of e-content and e-libraries. As we have mentioned also above there is still existing to some extent the lack of programs that would be supporting e-learning, life long and/or other forms of informal education i.e. educational forms especially intended for people who are already not a part of the regular formal educational systems at schools, etc. In this specific respect the role of the rich e-content and e-libraries are representing a very important and needed part of the e-Europe strategy. It is clear that some progress has already been achieved also in this respect but the more consistent progress has been to some extent negatively effected by the lack of funding for the necessary staffing as needed for this kind of work. In most cases the practice in this problem area has been based on utilization of the work of some volunteers who in cooperation with librarians have been providing scanning of documents, materials, etc. of the future e-content and e-libraries. It is evident that such an important and to some extent also specific work especially in case of work with some historical or archive documents and/or other objects of interest like cultural items (paintings, sculptures, museum artefacts, etc.) require a bit more professional than just a volunteers capacities of students, etc.. Then again the initiative is in the hands of various private providers of various searching engines that for their commercial reasons are placing on Internet an e-content that in many cases is in direct contradiction to any elementary requirements for good habits, morale, etc. Again as in case of some other problem areas as we have mentioned that above it would require to get more support from the national administrations and governments not to underestimate this one of the key areas of the future information society. They have to create all necessary also financial and professional preconditions in order it would be secured for the benefits of the future information society that without the e-content and e-libraries cannot be existing. Otherwise they would be dominated by the e-content not for benefits of people but for various private providers and their only mostly profit oriented interests including such criminal e-content like regarding pornography, drugs, violence, terrorism, etc. of which the Internet is unfortunately too full regarding its e-content.

### **e-Knowledge and e-Skills**

It is absolutely necessary that the tasks of e-Europe strategy in the above areas of e-Content and e-Libraries have to support first of all, all various forms of e-content that represents the best what has been achieved in all various forms and categories of the social, economic, cultural, social, etc. areas of the human and societal activities. After all it was one of the key strategic objectives of the original Lisbon strategy that has as one of its main objectives defined the future EU as the most advanced knowledge based economy and information society in the world, Although this objective then later has been to some extent subdued as unrealistic and has been replaced by some less ambitious strategic objectives, it is clear that the process of supporting the spreading and dissemination of the best knowledge and skills from all various sectors of the socio-economic life has to be still in the forefront of the EU as well as national authorities regarding their objectives regarding the future information society. In this respect the first and most important source of such best knowledge and skill we see in the projects and programs and their results as achieved by the research and development projects being funded by the EU under its Frame work programs up the latest one 7FP that was running as the main vehicle of the EU funded research in years 2007-13. For the future it has been reorganized as the HORIZON 2020 R&D strategy for years 2014-20. Under these previous 1-7FPs there were completed really many so to say thousands of very successful projects with in many cases most relevant results for potentially very important improvements in various aspects of the socio-economic reality in the future EU. The main problem was that until now there have not been found a system that would guaranty that these remarkable R&D results would be fully utilized and implemented also in the practice on the EU as well as national level of individual member states. From our own long year experience from working permanently on various EU funded projects since adoption of the Lisbon strategy i.e. since year 2000 we have learnt that most or at least many member states rather apply for the EU funding for their own national programs and projects than would apply for the less funding that would be needed for using the results of the successful EU funded projects that are available for an immediate utilization and implementation in the national conditions from the EU Repository of all successfully completed EU funded projects. Again a more strict regulation would be needed that would force the member states to use these results rather than to claim EU funding for their various national projects or initiatives. That is in our opinion the best way how to achieve that we would not have in the EU so many various national versions of e-Signature, e-Procurements, e-Invoicing, etc. as we have characterized these problems in the previous parts of this our paper.

### **e-Infrastructure.**

It is absolutely clear that all the above mentioned problem areas of the future e-Europe and of course also many other of them not to mentioned here in order to be developed properly are fully depended on the existence and some availability of suitable modern latest ICT technological basis. Or as it has been characterized in all EU development strategies it has to be based on the modern technological "backbone" based on the cheap and widely available Internet and the same also regarding the mobile phone networks with again cheap roaming across the entire EU, etc. In this respect all EU strategies on the development of the future modern e-Europe have stressed first of all also the necessity to build a EU wide high speed broadband Internet that would cover all EU member states in full of its availability by the target year 2020 under the HORIZON 2020.strategy. Thus the entire e-Europe strategy has to have at its disposal also its inevitable e-Infrastructure. It is clear it would be much better if such an e-infrastructure has been already available in full right now, but as the popular saying goes it is better if it is late than never.

## **SOME CONCLUSIONS AND RECOMMENDATIONS**

In conclusion we would like just to state that as we have presented it in the previous parts of this paper it is clear that since the inception of the original Lisbon strategy on e-Europe some evident progress has been achieved in implementation of all various areas of this strategy. In many cases as we have tried also to point it out it is not needed much more effort to achieve the objectives in full. But in any case it would require a better coordinated approach especially from the EU member states regarding e.g. their willingness to use the results of the EU funded R&D projects rather than to emphasize their own "ambitions" to build the future e-Europe more through various national initiatives than to accept and fully utilize results of the EU funded projects. After all, they are financed from the EU budget that is primarily based on the contributions from all EU member states! On the other hand in many cases it would help to the EU e-Europe strategy if also the EU itself would be supporting its own strategies also by more strict legislation that would force the member states to be more interested in achieving the Union objectives than only in their own national "subsystems" of the future e-Europe as the whole!

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# **FIVE - FACTOR MODEL (FFM) AND DEVIANT WORK BEHAVIORS OF ACADEMIC STAFF IN NIGERIAN UNIVERSITIES: CONCEPTUAL MODEL**

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## **ABSTRACT**

This is a conceptual paper about understanding the impact of the big five-factor model on deviant work behaviors among academic staff of universities in Nigeria located in the north-western zone. Deviant work behaviors are employee free-will behaviors that transgress organizational norms and do negatively affect goals and effectiveness of the organization, its members, or both. Generally, literature reveals lack of comprehensive empirical research regarding the relationship between personality factors (big five) and deviant behaviors in the academia. Thus, studies about how these behaviors interact with each other remain critical for all organizations, especially those in Nigeria where limited related research studies were observed. Specifically, literature available, especially the internet-based, reveals absence of empirical studies on Nigerian academic staff deviant work behaviors and the impact of the big five personality factors. This paper attempts to close this gap by proposing a model that would explain the role of the big five personality factors in influencing deviant work behaviors of faculty members in some selected universities in the Northwestern Nigeria.

**Keywords:** personality, big five personality factors, five-factor model, deviant workplace behavior.

It is widely believed that performance is considered a function of employees' workplace behaviors (Borman & Motowidlo, 1993; Campbell, McHenry & Wise, 1990). Job performance involves "those actions and behaviors that are under the control of the individual and that contribute to the achievement of the organization's objectives" (Rotundo & Sackett, 2002, p. 66). Literature reveals that there are two components of overall performance in the job namely formal tasks (task behaviors) and informal tasks that are defined outside the job analysis (discretionary behaviors). Deviant workplace deviance (DWB) is defined as employee free-will behavior that transgresses organizational norms and consequently puts the functioning of that organization, or its members, or both, at risk (Robinson & Bennett, 1995). Examples of DWB behaviors in academic environment include dodging class, sexual harassment, embarrassing colleagues, or students.

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DWB plays an important role in determining overall organizational performance (Bennett & Robinson, 2000; Filipczak, 1993). Deviant work behavior (DWB) consists of voluntary acts that break major organizational norms and threaten the welfare of the organization and/or its members. Robinson and Bennett (1995) identified four types of deviant behavior: (1) production deviance which involves damaging quantity and quality of work; (2) property deviance which involves abusing or stealing company property; (3) political deviance which involves badmouthing others or spreading rumors; and finally (4) personal aggression which involves being hostile or violent toward others.

Generally, workplace deviant behavior (DWB) is a pervasive and expensive problem for organizations (Bennett & Robinson, 2000). In the U.S. organizations, research indicated that 75% of employees steal from their employer at least once (McGurn, 1988). It has also been estimated that 33% to 75% of all U.S. employees have engaged in deviant work behaviors such as theft, fraud, vandalism, sabotage, and voluntary absenteeism (Harper, 1990). DWB leads to huge financial cost and therefore poses a serious economic threat to organizations. Regardless of the type, deviant workplace behavior has accounted for a tremendous financial cost and even permanent damage to a workplace environment (Appelbaum, Deguire & Lay, 2005). Bensimon (1994) reported that the annual costs of workplace deviance were estimated to reach as high as \$4.2 billion for workplace violence alone, \$40 to \$120 billion for theft (Buss, 1993; Camara & Schneider, 1994), and \$6 to \$200 billion for a wide range of delinquent organizational behavior (Murphy, 1993).

There are numerous DWBs that employees can engage in, such as lying (DePaulo & DePaulo, 1989), spreading rumors (Skarlicki & Folger, 1997), withholding effort (Kidwell & Bennett, 1993), absenteeism (Johns, 1997) and outright violence (Appelbaum et al., 2005). Therefore, employees may choose from among deviant behaviors within a family that are functionally equivalent, least constrained, most feasible, or least costly, given the context (Robinson & Bennett, 1995). If an individual engages in one behavior from a family, he or she is more likely to engage in another behavior from that family than to engage in a behavior within another family. However, employees may engage in behavioral switching within families because the behaviors within each are substitutable and functionally equivalent (Robinson & Bennett, 1995). Therefore, employees may engage in one or several behaviors from a wide set (Bennett & Robinson, 2000).

Considerable research effort has been put toward determining the antecedents and consequences of DWB. Various studies suggest a wide range of factors responsible for deviant work behavior (Bennett, 1998, Robinson & Bennett, 1995; Robinson & Greenberg, 1999), ranging from reactions to perceived injustice, job dissatisfaction, role modeling and thrill-seeking.

Globally, the primary function of any educational system and its teachers is to promote learning among players within the system (Alam, Hoque, & Oke, 2010; Oke, Okunola, Oni, & Adetoro, 2010). If organizational members fail to perform their roles or tasks, it will be very unlikely that the organizational goals will be achieved. Indeed, past studies have confirmed that work behavior measured in terms of employee cooperation, conformity, commitment, morale and participation, are part of the conditions for measuring the achievement of organizational efficiency and goals (Ojo, 2009). However, success of university and indeed all tertiary institutions depends not only on the task behaviors of faculty members but on their non-work behaviors. Therefore, how well the university's goals will be achieved will largely be affected by the non-work behaviors such as decreasing DWB.

In Nigeria, the public, parents, government and researchers have unanimously agreed that academic activities, particularly teaching and facilitation, have deteriorated in the Nigeria's institutions of higher learning. Most often, this problem has been labeled on lecturers, pointing that they have fallen short of their job and public expectations. For example, Oke et al. (2010) have reported that some administrators of schools and universities express concern over increasing nonchalant attitude of teachers in carrying out their duties. Some of these bad attitudes include habitual late-coming; frequent absence from school without good reasons; refusal to teach students even when on ground; and dodging classes. Generally, these negative behaviors by teachers result in a poor atmosphere in the schools and universities (Williams, 1993). More specifically, it has been revealed from a study of employers conducted to evaluate the quality of graduates from Nigerian tertiary institutions, that the quality of the graduates is deteriorating (The Scholar, 2001). It is common, in Nigeria, to learn from the public and grapevine that lecturers are responsible for poor performance of their students leading to production of half-baked graduates. Empirically, Oke et al. (2010) have argued that parents and the general public have attributed the poor level of students' performance to teachers' unwillingness to do their job well. Additionally, Shoyole (1998) has summarized the public impression on teachers in Nigerian tertiary institutions as "teachers are so high in demand, yet they are low in spirit" (p. 1). He further stated that teachers seem to have lost satisfaction for their work and all their zeal and energy appear to be largely directed to fighting for one thing or another.

Furthermore, many parents and members of the public look at academics in Nigerian universities as morally bankrupt. The public have some negative perception against the academics regarding sexual harassment, victimization of students and collection of bribes from students. In fact, research has confirmed the public allegation of sexual harassment as a deviant behavior in Nigeria's institutions of higher (Imonikhe, Aluede & Idogho, 2012). Previously, the commission on the review of higher education in Nigeria (CRHEN, 1991), as reported in Ladebo (2001) has claimed that sexual harassment has been gradually assuming critical dimension in Nigeria's higher institutions of learning.

On the other hand, in view of the destructive effects of non-task behaviors in form of deviant work behaviors, there is continuous need for understanding of factors that are responsible for negative deviant work behaviors from the faculty members of Nigerian universities. Therefore, the current study will investigate the effects of personality characteristics of lecturers of Nigerian universities.

## **STATEMENT OF THE PROBLEM**

Different studies on deviant work behaviors were conducted with various findings. More specifically, numerous studies examining antecedents of DWB have been conducted. Important individual and personality antecedents of deviant work behaviors include emotion (Levine, 2010), moral mandate and social influence (Fox, & Spector, 1999); attributional style (Proudfoot, Corr, Guest, & Dunn, 2009), negative affectivity (Watson, Clark, & Carey, 1988); trait anger, attribution style, negative affectivity, attitudes toward revenge, self-control (Doughlas, & Martinko, 2001); Five-Factor Model (FFM) of personality (Bodankin, & Tziner, 2009; Milam, Spitzmueller, & Penney, 2009; Salgado, 2002). Secondly, various studies relating organizational factors with DWB were conducted with different significant results. Specific organizational factors considered in the studies include work situation (Colbert, Mount, Harter, Witt, & Barrick, 2004); work stressors (Bowling, & Eschleman, 2010; Katyal, Jain, & Dhanda 2011);

environmental conditions (Fox & Spector, 1999; Miles, Borman, Spector, & Fox, 2002); organizational justice (Zoghbi Manrique de Lara, 2006); job insecurity (Reisel, Probst, Chia, Maloles, & König, 2010); ethical climates (Peterson, 2007); work–family conflict (Darrat, Amyx, & Bennett, 2010); organizational support (Chullen, Dunford, Angermeier, Boss, & Boss, 2010); leader mistreatment (Mayer, Thau, Workman, Dijke, & De Cremer, 2011); and occupational pressure (Heeren, & Shichor, 1993).

Despite the fact that personality factors especially Five–Factor Model (FFM) or the big five factors have received considerable research interest across different organizational criteria (Bodankin, & Tziner, 2009; Milam et al., 2009; Salgado, 2002), most of those studies were only conducted in the United States and Western countries. Important to this study, no study relating the big five personality factors and university lecturers' DWB has been reported in the literature. However, a few studies were conducted regarding the relationship between personality factors and academic activities in tertiary institutions. For example, Komarraju and Karau, 2005 examined the relationship between personality factors and students' academic motivation; Shinde and Patil, 2011) examined the influence of personality factors on job satisfaction of lecturers (Shinde, & Patil, 2011).

Additionally, several issues about the connection of personality traits and deviant behaviors remain unexplored. After several decades of researching the relationships between Five-Factor Model (FFM) traits, a number of effect sizes are not known (Chiaburu, Oh, Berry, Li, & Gardner, 2011). Prior studies were limited to either the number or focus of personality predictors, that is most of the previous studies included only Conscientiousness and Agreeableness, while excluding the rest in the equation (Ilies, Fulmer, Spitzmuller, & Johnson, 2009). The present study is an attempt to bridge these theoretical gaps. Therefore, this study will consider all the five personality factors (Emotional Stability, Extraversion, Openness to Experience, Conscientiousness and Agreeableness) in relation to DWB. Secondly, previous studies though explored the impact of personality factors on some academic criteria; literature revealed that no single study has examined the effects of the FFM on the discretionary behaviors of DWB of faculty members. This study will, therefore, test the direct effect of personality factors (five – factor model) on the deviant work behaviors of faculty members of Nigerian universities.

In summary, this paper is aimed at presenting a model that will test the direct effect of personality factors (five –factor model) on the deviant work behaviors of faculty members of Nigerian universities. This paper is structured into four sections: section one treats the introduction. Section two discusses the research questions, research objectives, significance of the study and hypotheses of the study. Section three discusses review of the relevant literature. Section four discusses methodology of the study. Finally, section five discusses the conclusion.

### **Research questions**

Based on the foregoing problem statement, the broad question to which this study attempts to answer is: what is the influence of personality on Nigerian lecturers' deviant workplace behaviors. Based on the main research question, the following specific questions are raised in order to guide this study.

- 1.To what extent does emotional stability influence deviant work behaviors among lecturers in Nigerian universities?

- 2.To what extent does extraversion influence deviant work behaviors among lecturers in Nigerian universities?
- 3.To what extent does openness to experience influence deviant work behaviors among lecturers in Nigerian universities?
- 4.To what extent does conscientiousness influence deviant work behaviors among lecturers in Nigerian universities?
- 5.To what extent does agreeableness influence deviant work behaviors among lecturers in Nigerian universities?

### **RESEARCH OBJECTIVES**

Consistent with the above research questions, this study intends to investigate the role of personality in form of five-factor model in influencing deviant work behaviors of lecturers in the Nigeria's universities. The specific objectives of this study are as follows:

- 1.To examine the extent to which Emotional Stability influence deviant work behaviors among lecturers in Nigerian universities?
- 2.To examine the extent to which Extraversion influence deviant work behaviors among lecturers in Nigerian universities?
- 3.To examine the extent to which Openness to Experience influence deviant work behaviors among lecturers in Nigeria's universities?
- 4.To examine the extent to which Conscientiousness influence deviant work behaviors among lecturers in Nigerian universities?
- 5.To examine the extent to which Agreeableness influence deviant work behaviors among lecturers in Nigerian universities?

### **SIGNIFICANCE OF THE STUDY**

This study is expected to contribute to the body of knowledge both practically and theoretically. Practically, this study will assist universities and all tertiary institutions in Nigeria to better understand the value and influence of personality factors on deviant behaviors of lecturers. Hence, this knowledge can help them in employee recruitment, selection and training. Additionally, this study will be significant theoretically by providing knowledge about the Five-Factor Model and DWB in a new contextual framework (Nigeria). Furthermore, this study will expand the scope of personality-DWB research by proposing a new model where all the big five personality factors will be made to predict DWBs related to academic environment.

### **HYPOTHESES OF THE STUDY**

With the help of the literature for this study and theoretical justifications, hypotheses for this study have been formulated for empirical testing and validation. This study has five independent variables (big five factors) and one dependent variable (DWB). Therefore, five main hypotheses have been formulated for testing in this study.

- 1.Extraversion is significantly related to deviant work behaviors among lecturers of universities in Nigeria.
- 2.Openness to experience is significantly related to deviant work behaviors among lecturers of universities in Nigeria.
- 3.Conscientiousness is significantly related to deviant work behaviors among lecturers of universities in Nigeria.
- 4.Agreeableness is significantly related to deviant work behaviors among lecturers of universities in Nigeria.
- 5.Emotional stability is significantly related to deviant work behaviors among lecturers of universities in Nigeria.

## **LITERATURE REVIEW AND HYPOTHESES DEVELOPMENT**

Workplace deviance occurs when an employee voluntarily pursues a course of action that threatens the well-being of the individual or the organization. Examples include stealing, hostile behavior towards coworkers, and withholding effort. Stealing and withholding effort are categorized as organizational deviance, whereas hostile and rude behaviors toward coworkers are categorized as interpersonal deviance.

Research found that workplace deviant behaviors are related to the five-factor model of personality (Mount et al., 2002). Interpersonal deviance is negatively correlated with high levels of agreeableness. Organizational deviance is negatively correlated with high levels of conscientiousness and positively correlated with high levels of neuroticism. This implies that individuals who are emotionally stable and conscientious are less likely to withhold effort or steal, whereas those who are agreeable are less likely to be hostile to their coworkers.

### **Relationship between extraversion and DWBs**

Extraversion or positive emotionality is concerned with an individual's expressiveness, energy, and positive mood (Fleeson, Malanos, & Achille, 2002). Individuals identified with high levels of extraversion are characterized by warmth, gregariousness, and positive emotions (Harden, & Hitlan, 2005). Literature reveals significant relationship between extraversion and DWB (Colbert et al., 2004; Mount et al., 2002; Prinzie et al., 2010; Rogers, Seigfried, & Tidke, 2006; Torrente, & Vazsonyi, 2012). Broadly, Lee, Ashton and Shin (2005) found extraversion trait to be a predictor of both destructive deviances directed at the organization and at individuals in the organization.

More specifically, some previous studies have provided evidence that extraversion is positively related to antisocial or deviant behaviors among youth including alcohol, drug abuse, vandalism, and theft (Torrente, & Vazsonyi, 2012). Another research conducted among students of information technology program indicated that the only significant variable among the Big Five personality factors for predicting criminal/deviant computer behavior was extraversion (Rogers, Seigfried, & Tidke, 2006). Similarly, other studies have demonstrated that sexual promiscuity was highly related to extraversion across many, but not all, world regions (Brackett, 2001;

Schmitt, 2004). Furthermore, research found that one plausible reason why extraverts engage in sexual promiscuity may include that they have a higher libido than introverts (Schmitt, 2004).

Based on these findings, which were obtained from diverse contexts and settings, the following hypothesis is formulated:

H1. Extraversion is significantly related to deviant work behaviors among lecturers of universities in northwestern Nigeria.

### **Relationship between openness and DWBs**

Openness is defined as openness to knowledge that implies intelligence as well as openness to experience and becoming artistically sensitive, creative, and imaginative (Caspi, Roberts, & Shiner, 2005). Individuals high in openness to experience are characterized by unconventional values and divergent thinking, being more emotionally expressive (both positive and negative), being more intellectual, and being more open to reexamine their value system (Harden & Hitlan, 2005). Similarly, individuals who are low on openness were reported to be too traditional, conventional, narrow-minded, intolerant of ambiguity, inflexible, prefer the status quo and dislike changes, or surprises (Goldberg, 1999). Thus, suggesting that individuals who are high in openness trait are expected to be critical in their approach, sensitive, creative, and imaginative. Furthermore, individuals high in openness trait might be negatively related to DWB because of their ability to quickly understand changing demands of novel situations at work, ability to understand and tolerate individuals who are different and their general preference for change and innovation (Goldberg, 1999).

Previous studies conducted in different context and settings (Harden, & Hitlan, 2005; Liao, Joshi, & Chuang, 2004; Mount & Johnson, 2006). Liao et al., (2004) found that this personality dimension was negatively correlated with organizational destructive deviance. Another study that used both self- and boss ratings conducted among Caucasian customer service employees in the US revealed that people who were low in openness engaged in more deviant behavior than those who are high in openness (Mount & Johnson, 2006). Similar study among medium-sized utility company employees in the US revealed that counterproductive behaviors are associated more with employees reporting low levels of openness to experience (Harden & Hitlan, 2005). Additionally, in a survey of employees working in franchised stores in the US, results demonstrated that openness to experience was significantly but negatively related to organizational deviance (Liao, Joshi, & Chuang. (2004).

Against these backgrounds, which explicitly related openness to experience to workplace deviance, the following hypothesis is formulated:

H2. Openness to Experience is significantly related to deviant work behaviors among lecturers of universities in northwestern Nigeria.

### **Relationship between conscientiousness and DWBs**

Conscientiousness is defined as cognitive and behavioral control (Caspi et al., 2005). Individuals who score high on conscientiousness are usually persistent, neat, attentive, responsible and good planners (Caspi et al., 2005). Conscientious individuals are those who are naturally hardworking, achievement oriented, punctual, dependable, and careful (Colbert et al., 2004). Conscientiousness does affect DWB negatively because conscientious individuals are likely to exert more effort to achieve effectiveness, and are also likely to sustain a high level of

effort even when they hold unfavorable perceptions of the situation at work (Colbert et al., 2004). Additionally, conscientious individuals are better workers than less conscientious people because they have self-control (Salgado, 2002). Thus, conscientious individuals may be able to control their behavior despite existence of negative work situations (Colbert et al., 2004). Furthermore, other studies (Ones & Viswesvaran, 1996; Yang & Diefendorff, 2009) demonstrated that when individuals who are conscientious experience negative emotions, because of their self-control, they refrain from engaging in retaliatory deviant behaviors than less conscientious individuals.

Various studies conducted across different settings have consistently revealed negative relationship between conscientiousness and DWB (Farhadi et al., 2011; Farhadi, Fatimah, Nasir, & Shahrazad, 2012; Berry et al., 2007; Dalal, 2005; Salgado, 2002; Schmitt, 2004; Waheeda & Hafidz, 2012). Using a sample of store managers and assistant managers of convenience stores in the USA, Colbert et al. (2004) found that the personality traits of conscientiousness, emotional stability, and agreeableness were negatively related to performance of DWB. Specifically, they demonstrated that the relationship between perceptions of the developmental environment and organizational deviance was stronger for employees scoring low in conscientiousness. Additionally, results from a survey involving a wide variety of jobs across heterogeneous organizations in Thailand indicated that DWB was predicted by personality characteristics including low conscientiousness (Changa & Smithikrai, 2010). Similarly, Schmitt (2004) has demonstrated that across 10 world regions, sexual infidelity was universally associated with low conscientiousness. In addition, a study, conducted among employees of governmental and private sectors in Thailand, has indicated that, under a weak situation, conscientiousness has a stronger negative relationship with DWB when agreeableness is low than when it is high (Smithikrai, 2008). More recently, in a study conducted among Malaysian civil servants, conscientiousness was found to be significantly negatively correlated with workplace deviant behaviors (Fatimah et al., 2012).

Against these backgrounds, which explicitly related openness to experience to workplace deviance, the following hypothesis is formulated:

H3. Conscientiousness is significantly related to deviant work behaviors among lecturers of universities in northwestern Nigeria.

### **Relationship between agreeableness and DWBs**

Agreeableness is defined as an individual's warmth-affection, gentleness, generosity, and modesty-humility (Saucier & Ostendorf, 1999). Agreeable people are known to be considerate, nurturing, kind, forgiving, and tolerant of others, thus, are not likely to engage in deviant behaviors against others even if provoked by negative perceptions of others' behaviors or the environment. Additionally, highly agreeable people are more likely to engage in helpful, courteous interactions with others even when provoked by negative perceptions of the work situation (Colbert et al., 2004). Similarly, agreeable individuals possess traits that facilitate positive social interactions (Graciano & Eisenberg, 1997). Moreover, highly agreeable employees refrain from DWB because they avoid hurting others and are submissive to rules (Bowling et al., 2011; Torrente & Vazsonyi, 2012). Furthermore, agreeable individuals have more positive relationships with others in the workplace, whereas disagreeable individuals may be more likely to exhibit interpersonally deviant behavior (Colbert et al., 2004; Mount et al., 1998).

Literature reveals consistent significant positive relationship between agreeableness and DWB (Bodankin & Tziner, 2009; Colbert et al., 2004; Farhadi et al., 2012; Mount et al., 2002; Schmitt, 2004; Torrente & Vazsonyi, 2012; Waheeda & Hafidz, 2012). Using employees of convenience stores in the US, Colbert et al. (2004) found that the relationship between perceived organizational support and interpersonal deviance was stronger for employees with low level of agreeableness. Also, in a study of workplace deviance among customer-service employees, Mount et al. (2002) found that agreeableness was the Big Five personality factor that had the strongest negative relationship with supervisor ratings of interpersonal deviance. Similarly, in a different setting, Mount et al. (2006) revealed that agreeableness had a direct negative relationship with interpersonal deviant work behaviors. In another study, findings have shown that agreeableness was related to interpersonal destructive deviance (Bodankin & Tziner, 2009). Agreeableness was found to be negatively correlated with deviant behaviors such as physical fights and vandalism of organizational property (Brackett & Mayer, 2003). Importantly related to this finding, three meta-analytic results have demonstrated that agreeableness personality trait is negatively related to deviant behavior in organizations (Berry et al., 2007; Dalal, 2005; Salgado, 2002).

Similarly, studies conducted in non-work settings have also demonstrated significant negative effect of agreeableness on individuals' deviant behaviors. For example, Schmitt (2004) has demonstrated that across 10 world regions, sexual infidelity was universally associated with low agreeableness. Similarly, using youths as sample, Torrente and Vazsonyi (2012) demonstrated that under conditions of low paternal control, the relationship between agreeableness and vandalism was statistically significant and negative. In a similar study, Miller, Lyman, and Lukefield (2003) who examined relationships among agreeableness, conscientiousness, neuroticism, and antisocial behaviors including aggression, and personality disorder symptoms reported that all the three domains were significant predictors, but the facets of agreeableness were most consistently related to the antisocial behaviors (i.e. deviant behaviors).

Based on the findings of the previous studies and theoretical explications regarding the relationship between agreeableness and deviant behaviors, the following hypothesis is formulated:

H4. Agreeableness is significantly related to deviant work behaviors among lecturers of universities in northwestern Nigeria.

### **Relationship between emotional stability and DWBs**

Emotional stability is defined as an individual's predisposition regarding to low irritability, low insecurity and low emotionability (Salgado, 2002). Thus, an individual who is predisposed to experience negative emotions (i.e., a person low in emotional stability) is likely to engage in disproportionate amounts of DWBs. Several studies about the relationship between FFM and DWBs revealed consistent significant relationship among three FFM's traits (neuroticism/low emotional stability, conscientiousness and agreeableness) and DWBs (Bowling et al., 2011; Cullen & Sackett, 2003; Mount et al., 2006; Ones et al., 2003).

Some plausible reasons about the non-significant relationship between emotional stability and deviant workplace behaviors among lecturers were proffered as follows: First, all related previous studies (Berry et al., 2007; Dalal, 2005; Farhadi et al., 2012; Salgado, 2002; Torrente & Vazsonyi, 2012) that shown significant relationship between emotional stability and DWBs were conducted in western cultures and more importantly in settings that were not academic. Second, lecturers who participated in this study might not have taken emotional stability to be an

important personality characteristic that could impact on their relationship with others, or the institutions they work with. They might also not have considered measures of emotional stability important for career development and success. Third, another reason for the non-significant effect of emotional stability on deviant behaviors of lecturers in Nigeria's tertiary institutions of learning might be because emotionality is practically more difficult to understand, assess and measure compared to the other four personality factors. For example, emotional intelligence which is a correlate of emotional stability is found to be more difficult to measure than IQ which is a correlate of conscientiousness (Stys & Brown, 2004).

Generally, lecturers work in a relatively environment that freedom of expression and association (academic freedom) reign supreme. This unique experience may have provided lecturers with different perception and value systems by which they form their personality, particularly how they form their emotions and view the world around them. Because most of the personality traits could be impacted by environment and world views, it is critical to mention the kind of the work environment might have contributed to the current non-significant relationship between emotional stability and performance of DWB.

Based on the findings of the previous studies and theoretical explications regarding the relationship between agreeableness and deviant behaviors, the following hypothesis is formulated:

H5. Emotional Stability is significantly related to deviant work behaviors among lecturers of universities in northwestern Nigeria.

## **THEORETICAL FRAMEWORK**

The Five-Factor Model of personality has become the most widely accepted and robust taxonomy of personality traits (Block, 1995). Related to this, James and Mazerolle (2002) stated that the conscientiousness, agreeableness, extraversion, emotional stability and openness to experience (Five- Factor traits) are the dispositions at the highest level of a hierarchy of personality traits.

Understanding the relationship between personality characteristics and academic staff deviant behaviors may be central to understanding human tendencies of lecturers to engage in DWB, and perhaps sheds some light on managing strategies. The Big Five traits (Neuroticism, Extraversion, Openness, Conscientiousness and Agreeableness) represent core aspects of human personality and have strong influences on behavior (Costa & McCrae, 1992). Personality is adjudged to be a significant determinant of behavior in weak or ambiguous situations in which there are few situational constraints on behaviors (Mischel, 1973; Organ, 1994). More elaborately, it has been argued that when situational pressures or constraints on behavior are few, people are freer to express themselves and behave according to their characteristic tendencies, predispositions or innate traits. Against these theoretical backgrounds, universities in Nigeria are believed to be autonomous environment where freedom is relatively enjoyed by staff members, thus personality traits model can offer a useful explanation of academic staff deviant behaviors (DWB) in universities operating in Nigerian.

Furthermore, substantial evidence suggests that at least some features of the personality such as the Big Five affect workplace discretionary behaviors including OCB and DWB (Dalal, 2005). Personality theory has well established that individual traits such as trait anger, neuroticism, conscientiousness, and agreeableness are the causes of some forms of workplace deviance (Berry, Ones & Sackett, 2007; Mount, Ilies & Johnson, 2006; Salgado, 2002). It is most likely,

that same influence of personality Big Five may be established in academic environment where lecturers freely interact with students, colleagues and the organization

Figure1: Personality-DWB Framework

## METHOD

This study will be explanatory as it aims at explaining the relationships between personality factors (Big Five) and DWB of academic staff of universities in Nigeria. Moreover, the study is cross-sectional in which questionnaires would be used for data collection at once. Specifically, this section discusses other aspects of this study including measures to be used in the research instrument.

### Personality

The Big five traits would be assessed using some selected items from the popular Costa and McCrae's (1992) FFM measurement. Specifically, the Big Five factors (BFF) will be measured using 26 modified items. A 5-point Likert-type scale ranging from "Never" to "Always" will be used in ranking responses. Except conscientiousness, five items have been drawn from each of the big five factors. Previous studies have indicated strong reliability coefficients for the five personality dimensions; for example, Salgado (2002) established the BFF individual average reliabilities to be .81, .79, .74, .76 and .81, for emotional stability, extraversion, openness, agreeableness and conscientiousness, respectively.

### Deviant Workplace Behaviors

The DWB instrument for this study includes 23-item scale designed to measure deviant behavior of academic staff of universities in Nigeria. In addition, a 5-point Likert-type scale ranging from "Never" to "Always" would be used in ranking of responses. Specifically, the Bennett and Robinson (2000) work deviance instrument would be adopted with modifications. Some example of the scale items include: "I tell badly about my university in public, "I say things that hurt feelings of some colleagues at work, and "I force students to purchase reading materials where profits accrue to me". Previous study reported internal consistency of .75 (Zoghbi Manrique de Lara, 2008).

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# **LEGAL ASPECTS OF DAMAGES RELATED FINANCIAL MANAGEMENT LIMITED SOE STATE**

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## **INTRODUCTION**

### **Background**

One of the characteristics is a legal entity having its own separate wealth from the wealth of the people who run the activities of the legal entity and the wealth of its members, so that the wealth of a legal entity may be the object of a claim or in other words have a legal entity "separate wealth".

Associated with the legal entity that the legal order in force in Indonesia is divided into two types, namely; 1). Public entity (personae morale), which was established with the construction of public law, which has the authority to issue public policy, both binding and non-binding general public, such as the State. 2). Private legal entity (personae Juridique), which was founded on the statement of the will of the individual, does not have the authority to issue a binding public policy public, such as a Limited Liability Company.

Similarly, in science there are two laws also known environmental attorney: 1). power of public law governing the relationship between the rulers and the public/individuals are bound by rules made by the authorities and 2). Environmental authority of civil law, which governs the relationship between the individual/individuals by individuals/other individuals. State is a legal entity *sui generis*, which means the state as a public entity can simultaneously not only the public but the legal status as well as to act as a private legal entity.

SOE Limited is a corporation, a business entity that is a legal entity, limited liability and aims to make a profit. In running the business, state-owned PT. Limited subject to the Limited Liability Company Act (the Act PT). Assertions about the submission of SOE Limited to the Limited Liability Company Act contained in Regulation No. 12 of 1998 on Limited Liability Company and Law No. 19Tahun 2003 on State-Owned Enterprises. Article 3 of Regulation No. 12, 1998 states that the principles applicable Limited Liability Company Limited as set out in Law No. 1 of 1995 on Limited Liability Company. While in the Article 11 of Law No. 19 of 2003 states that the provisions of all applicable Limited and principles that apply to the Limited Liability Company as set forth in Law No. 1 of 1995 on Limited Liability Company. Maintenance of state-owned PT. Limited run by 3 (organ), namely the General Meeting of Shareholders (AGM), the Board of Directors, and Commissioners.

In terms of running the business activities then the organ must be held accountable in accordance with the provisions of the Company Law. When the Board of Directors makes a

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decision that raises the refractive loss of the Company, under the provisions of the Company Law shareholders have the right to sue the Board of Directors and the Commissioner especially if the decision is outside the authority given to him. If there is an unlawful act therein, shareholders may report to the Investigators of the alleged criminal offense committed and the Board of Directors or Commissioners.

Corruption under Article 2 paragraph (1) and in Article 3 of Law No. 31 of 1999 on the eradication of Corruption. That any person who unlawfully enrich themselves or another person or a corporation that could harm the state finances or the economy, and so on (Verse 1). In Section 3, that every person who with the intention of enriching himself or another person or a corporation, abuse of power, opportunity or means available to him because of the position or positions that could harm the country's financial / economic state, and so on.

SOE Limited is a corporation, a business entity that is a legal entity, limited liability and aims to make a profit. In running the business, state-owned PT. Limited subject to the Limited Liability Company Act (the Act PT). Assertions about the submission of SOE Limited to the Limited Liability Company Act contained in Regulation No. 12 of 1998 on Limited Liability Company and Law No. 19Tahun 2003 on State-Owned Enterprises. Article 3 of Regulation No. 12, 1998 states that the principles applicable Limited Liability Company Limited as set out in Law No. 1 of 1995 on Limited Liability Company. While in the Article 11 of Law No. 19 of 2003 states that the provisions of all applicable Limited and principles that apply to the Limited Liability Company as set forth in Law No. 1 of 1995 on Limited Liability Company. Maintenance of state-owned PT. Limited run by 3 (organ), namely the General Meeting of Shareholders (AGM), the Board of Directors, and Commissioners. In terms of running the business activity then the organ must be held accountable in accordance with the provisions of the Company Law. When the Board of Directors makes a decision that could lead to the loss of the Company, under the provisions of the Company Law shareholders have the right to sue the Board of Directors and the Commissioner especially if the decision is outside the authority given to him. If there is an unlawful act therein, shareholders may report to the Investigators of the alleged criminal offense committed and the Board of Directors or Commissioners.

### **Problem Formulation**

There are 2 main problems studied in state-owned PT. PertaminaPersero, namely:

- 1). Characteristics of state-owned PT. Limited as a Legal Entity
- 2). The legal status of any losses on state-owned PT. Limited authority of the Board of Directors in carrying out related functions.

## **RESULTS AND DISCUSSION**

### **Characteristics of state-owned PT. Limited as a Legal Entity**

In legal theory an organization or institution may be subject to the law as well as human, when she meets certain requirements specified either formally with closed systems by positive law or legislation as well as an open system that is embraced by Article 1653 BW. In connection with the construction of a legal entity, the relationship between law and positive law theory is a dialectical relationship. Legal theory is a theory of law positive symptoms (*positive rechtverschijnsel*) in people live that cannot be ruled out in order to achieve perfection the sense

of a legal entity. Therefore, a review of the legal entity should not be viewed in terms of positive law, but such a review should also look at the theoretical terms.

When viewed from the angle of the control law is known there are 2 (two) types of legal entity that is a legal entity of public and private legal entities. Public legal entity has the authority to issue a public policy, both of which bind the public (e.g. tax laws) as well as non-binding general (e.g. Budget Act). Furthermore, the state as a public entity may not exercise its powers without going through the organs of government as represented by the public authorities. State may establish a public entity (local) and set up a private legal entity (Persero). Private legal entity, it does not have the authority to issue a public policy that can bind to the general public. Civil entity/private does not have the authority to establish a public entity, or public policy issue generally binding.

*a. Property Characteristics of Legal Entity*

One of the characteristics is a legal entity "has a wealth of its own apart from the wealth of the people who run the activities of the legal entity and the wealth of its members, so that the wealth of a legal entity can be the object of a" claim "or in other words" a separate legal entity having wealth ". Capital of legal entity obtained from a collection of treasures from each member /owner who is then separated from the status of the property/wealth they each were then reduced capital in running a legal entity. Such property is necessary in carrying out the legal relationship with a third party (person/legal entity), as well as those in legal relations. When people establish a body and wealth in order to deposit the operationalization of the legal entity, then a transfer of ownership of private property the person/legal entity into the wealth of the newly formed legal entity.

As a consequence of the juridical subject of the law is a legal entity has separate assets and is also able to have their own laws. Wealth can be the object of a legal entity demands a third party if the third party is harmed by the actions considered legal entities in connection with the law. In this case the legal entity is said to have its own accountability. Despite the wealth of legal entity is derived from the income of its members, and then separate the position of such property at all with the wealth of its members. Thus a separate legal act of its members with third party has no legal effect with a wealth of legal entity. Vice versa, the legal act of the legal entity does not have legal effect to its members.

Wealth separate legal entity following the Consequences: 1) the personal creditors of its members do not have the right to demand the assets of a legal entity; 2) the private members cannot collect debts from third parties against legal entities; 3). compensation between private debt and the debt is not a legal entity allowed, 4). legal relations, both the agreement and the processes between members and legal entities may be legal entities as well as between the third party, 5). in bankruptcy, the creditors only legal entities can demand that a separate property wealth.

*b. Characteristics of state-owned PT. Limited as a Legal Entity*

*Subject to the Limited Liability Company Law*

SOE Limited is a corporation, a business entity that is a legal entity, limited liability and aims to make a profit. In running the business, state-owned PT. Limited subject to the Limited Liability Company Act, hereinafter called the Company Law. Subjugation of SOE Limited to the

Company Law can be seen from the definition of SOEs Persero itself and the provision requiring SOEs to submit to the Limited Liability Company Law Limited.

Of the provisions of the Act clearly stated that SOE Limited is shaped "Limited Liability Company". Due to limited liability, the provisions governing the rights and obligations of the business entity is a legal entity shall be subject to the provisions of "Law No. 1 of 1995 on Limited Liability Company, which has been amended by Act No. 40 of 2007 on Limited Liability Company. Assertions about the submission of SOE Limited to the Limited Liability Company Act contained in Regulation No. 12 of 1998 on Limited Liability Company and Law No. 19 of 2003 on State-Owned Enterprises. Article 3 of Regulation No. 12, 1998 states that the principles applicable Limited Liability Company Limited as set out in Law No. 1 of 1995 on Limited Liability Company. While in the Article 11 of Law No. 19 of 2003 states that the provisions of all applicable Limited and principles that apply to the Limited Liability Company as set forth in the Act NO. 1 of 1995 on Limited Liability Company. This means that the provisions governing the administration and operation of Company Limited under the Limited Liability Company Act then also apply to state-owned PT. Limited to the extent not specifically defined.

#### *Organs of state-owned PT. Limited*

Limited Liability principles that guide the operation of state-owned PT. Limited statutory No. 1 of 1995 as amended by Act No. 40 of 2007 on Limited company attached to the maintenance of state-owned PT swampland activities. Persero run by 3 (organ), namely the General Meeting of Shareholders (RUPS), the Board of Directors, as well as the Commissioner.

#### *Deposit Status State Capital Into State-owned PT. Limited*

In the legal order in force in Indonesia is divided into two types, namely; (1). Public entity (personae morale), which was established with the construction of public law, which has the authority to issue public policy, either binding or non-binding general public. That the State is one example of a pure public legal entity, which is founded on an agreement with the community, has certain goals and interests as well as have a regular organization. State as a public entity run through organs such as the government, the House/Senate, a Supreme Court (MA) and the Supreme Audit Agency (BPK). These organs can also set up a legal entity of public or private legal entities in carrying out its activities in accordance statutes that form the Regional Act, the agency's financial authorities (central banks) and others. For private legal entity of which the entity established by the state with the intent and purpose in order to support the goal of incorporation state itself. (2). Private legal entity (personae Juridique), which was founded on the statement of the will of the individual, bereft of authority to issue a binding public policy generally. An example is a Limited Liability Company. Private legal entity run by the organs and also in carrying out its activities can also establishes other private legal entity.

Legal science itself is divided into 2 (two) to the power of attorney of environmental public law governing the relationship between the rulers and the public/individuals are bound by rules made by the authorities. Next is the power of the environmental civil law, which governs the relationship between the individual/individuals by individuals/other individuals.

State is a legal entity *sui generis*, which means the state as a public entity can simultaneously not only the public but the legal status as well as to act as a private legal entity. At the time of the state as a public entity establish a public legal entity, then the state as legal subjects carry out its activities within the public attorney. This means that provisions must be followed in the implementation of the procedures and processes of a public entity by its organs subject to the

provisions of public law. Conversely when the state itself or with the legal subject (the individual/legal entity) establish other private legal entity, then the establishment of a private legal entity that is subject to a private attorney. As a legal entity, the Republic of Indonesia has a wealth of its own, separate assets of the founders/members of the public that the country/folk of the country of Indonesia. Such property belongs to be in the public (domain public) which of course is because it is a public entity, the wealth management with public law. In this case, the government as an organ that runs the state as a legal entity issuing regulations relating to the management of state assets is termed as public finances.

Furthermore, when the country singly or together subject to the law (the individual/legal entity) other private legal entity set up a then newly formed legal entity must also meet the criteria for a legal entity can be Categorized as a legal entity. Of which has its own wealth / wealth apart. This means that a new legal entity set up, whatever it's called have the wealth itself apart from state assets or wealth of other legal subjects are members. More clearly, the wealth of the new legal entity is no longer a state of wealth. Furthermore, the management of the new wealth of private legal entity subject to the power of private law.

#### *Characteristics of state-owned PT. Limited as a Legal Entity*

In connection with the investment of the SOEs into Limited as set out in Article 4 paragraph (1) that the SOE capital and wealth came from countries that had been separated. Based on the understanding of SOEs and regulations governing state corporate capital/state mentioned above, it has been legally recognized by formal law that the wealth of SOEs has been separated from the country's wealth, the wealth of the company in short state/state as a legal entity is no longer included in the country's wealth. He said that the wealth of the riches of the country apart Limited, unless there is a "next-owned wealth transformation such dividend or tax from the next Persero deposited into the State Treasury.

#### **Legal Status loss at state-owned PT. Limited relating to the authority of the Board of Directors in carrying out its functions**

- a. Status of State Finance Law on State-owned PT. Positive limited company under the law in Indonesia

Based on the positive law in force at this time, not less than 5 (five) laws governing the State finances associated with the presence of state-owned PT. Limited, namely: Law No. 17 of 2003 on State Finance, Treasury Law, the Law on State Audit Agency (BPK), the Corruption Act (TPK), and Law No. 19 of 2003 on State-Owned Enterprises (SOEs).

#### *State Finance Law (KN Law)*

Under the provisions of Article 1 paragraph 1 of Law No. 17 of 2003 on State Finance, which is the "Financial State" means all the rights, and obligations which can be valued in money as well as everything in the form of money or goods that can be used in connection with the conduct of the state rights and obligations. State finances as referred to in Article 1 of Law No. number 17 of 2003 on State Finance, letter g and the letter (i) include; (g) the wealth of the country/regional assets managed by yourself or by another party in the form of money, securities, receivables goods, as well as other rights that can be valued in money, including corporate assets separated at the state/regional companies; (i). Wealth of other parties is obtained by using the

facilities provided by the government. In the explanation section, the wealth of others as mentioned in the letter i include wealth managed by another person based on government policy, foundations environment ministries/agencies, or companies' country/region. Under the State Finance Act is the financial management of SOEs, especially state-owned PT. Limited included in the scope of state finances. This is not out of the approach used in the formulation of state finances in the formulation of state finances in the Act NO. 17 of 2003 is to use the approach from the side of the object, the subject, the process and purpose.

#### *State Treasury Law (PBN Law)*

Under the terms of Article 1 paragraph 1 of Law No. 1 of 2004 on State Treasury, stated that the "State Treasury" is the management and accountability of state finances, including investments and assets separated, set out in national and regional budgets. Under the provisions of the Act PBN, there is no specific explanation about state finances to be accountable, but there are the words "including investments and assets separated". This means that all property derived from state assets set aside within the scope of the management and accountability of state finances. Furthermore, the provisions of Article 67 Paragraph (2) of the Act states that PBN; "Loss settlement provisions of the country/region in this Act shall also apply to managers of companies state/local and other agencies which hold the state of financial management, to the extent not set forth in a separate Act". In the PBN Act clearly regulate the compensation mechanisms, if there is a loss in SOEs, so that according to this Act SOE losses including losses to the state. The definition of state losses are as set out in Article 1 paragraph 22 of Law PBN as follows: "the lack of money, securities, and real goods and definite as a result of an unlawful act, either intentionally or negligent". The definition that has always been the basis for the definition of government auditors in providing expert testimony related to the loss of the state in a process of investigation and court proceedings.

#### *Law of the Supreme Audit Agency (BPK Law)*

Auditing Firm (BPK) is the state agency that implements the control function of the use of state finances. Establishment of CPC based on the 1945 Constitution before the amendment and expands on its function in 1945 after amendment, Article 12, Paragraph E (1). After the amendment of the 1945 Constitution, has established two (2) laws relating to the CPC and inspection management and financial responsibility of the state, namely: Law No. 15 Year 2004 concerning the Financial Responsibility and Management of State and Law No. 15 of 2006 on the State Audit Board (BPK Law).

1). Law No. 15 Th 2004 on Investigation and Management of State Financial Responsibility. In this Act is not mentioned in the definition of state finances separately but referred to in Article 2 paragraph (1) and (2) of Law No. 17 of 2003 on KN. Furthermore, in Article 3 paragraph (1) states that "the examination and management of state financial responsibility undertaken by the CPC covers all elements of the state finances as referred to in Article 2 of Law KN, without any further information within the explanation section. 2). Law No. 15 of 2006 on the State Audit Board (BPK Law). Meanwhile, the CPC Act regulates the state's losses in Article 2, paragraph (1) and paragraph (2), Article 3 Paragraph (1), Article 6 Paragraph (1) with description and last in Article 7 Paragraph (5).

### *Act Against Corruption (PTPK Law)*

In the state of Indonesia, since Indonesia's independence in 1945, the problem of corruption as if always overshadows the lives of government enforcement. Various efforts have been done, but there is no significant change in the behavior of corruption in Indonesia. This includes changes several times Anti-Corruption Act made on the grounds that previous legislation less accommodating and there are various weaknesses. Associated with eradication of corruption to date the government has issued five (5) of Act/government regulation in lieu of law or PERPU, namely: a). Law No. 24 Prp 1960 on Investigation, prosecution and examination of Corruption (See Article 1). b) .UU No. 3 of 1971 on the Eradication of Corruption (See Section 1), c). Jo Act. 31 of 1999 on Corruption Eradication (See Article 1 paragraph 2, Article 2 paragraph (1), Article 3) .d). Law No. 20 of 2001 on the amendment of Law No. 1999 31 1999 on Eradication of Corruption. In this Act there is no change in the offense, just more focused on the consideration that the corruption has been widespread, not only financial harm the country, but also has been a violation of the rights of social and economic society at large, so that the follow-need to be classified as a criminal corruption crime eradication should be done outside, e) .UU No. 39 of 2002 on the Corruption Eradication Commission. As the mandate of the Act NO. 31 Year 1999 on Eradication of corruption and background by not function effectively and inefficient government agencies that handle corruption cases in combating corruption.

### *State Corporate Law/SOE*

SOE Act was first published by the government in 1960 in the form of Government Regulation No. 19 of 1960, State Company. The goal is to seek uniformity in the way of care and control as well as the legal form of business entity existing state. In this Government Regulation in question is a state enterprise in any form all company whose capital is for all of the wealth of the Republic of Indonesia, except as otherwise provided by or under the Act. CPC authorities conduct master control over job and take care of state enterprises and accountability, the CPC examination submitted to the government (Article 25 Paragraph (1)). The next in 1969, a comprehensive Law No. 9 of 1969 which simplifies SOEs into three (3) state establishments. As a guideline issued Regulation No. 3 1983 which was amended again with PP 12 of 1998 on Limited Liability Company (Persero), PP No. 13 of 1998 on Public Company (Perum) and PP 6 of 2000 on the Company-fold (PERJAN). The next in 2003, issued Law No. 19 of 2003 on State-Owned Enterprises (SOE Act). Associated with the audit of SOEs, the Act gives authority to the 2 (two) different agencies, namely; 1). External Auditor (Public Accounting), provided for in Article 71 Paragraph (1) of the Act both state enterprises and the State Audit Board (BPK), provided for in Article 71 Paragraph (2) of the Act SOE.

### **Legal Status of losses in state-owned PT. Limited relating to the authority of the Board of Directors in carrying out its functions**

In my opinion, the way of thinking errors in defining the state of financial chaos caused in defining the state's loss, loss of PT. Pertamina as the company and the position of the state as a shareholder. For example in the case of PT. KarahaBodas (KBC) on project development Geothermal Power Plant (PLTP) based on the Energy Sales Contract (ASC) which delayed the project by a potential state government will bear all the losses suffered by the company, including money 95% owned by the Government which are The Bank of the United States. This happens because the notion that equate with the financial state finances. Pertamina as a company. Given these two equations, then if PT. Pertamina suffered losses, the state also has to bear the loss without any limitation which may exceed the number of shares held as state

property is considered equal to the wealth of the country. If the pattern of thinking that still maintained the country will be very high to bear any losses suffered by other state-owned enterprises in Indonesia Persero shaped. A statement that then arises is critical in the event of bankruptcy. As a company that is subject to the provisions and principles of the Limited Liability Company as stipulated in the Company Law, the PT. Pertamina may be declared bankrupt by the bankruptcy decision of the Commercial Court as set forth in Law No. 37 of 2004 on Bankruptcy and Suspension of Payments. If at the end of PT. Pertamina declared bankrupt, whether it will lead the country into bankruptcy as well.

When wearing a suit thinking logic KN Act which has no restrictions between the companies's financial state finances then if PT. Pertamina declared bankrupt according to the rules in force, then the state will be bankrupt. This kind of thinking would be very misleading, because it is not a country may be declared bankrupt. Related to this description there are two (2) things/aspects that still need attention are: 1) Aspects of the State Loss Corruption, and 2). Legal Aspects of Privatization.

### 1. Aspects of the State Loss of Corruption

Ambiguity also occurs in the field of criminal law, where the last few years the Indonesian legal developments marked by the increasing cases of corruption were brought to court on the basis of state losses. In this case the definition of loss to the state is the basis for the prosecution of corruption in the PT. Pertamina is the impact that "financial harm state" or "state economy". Even if the law is used logic, where the offense occurred within the private attorney. The public prosecutor did not realize that at the time of the offenses are committed state money is money that is still owned by the company are included in the scope of the private law, while the money owned by the state included in the scope of public law. So it is not appropriate if the diversion of money that occurred in the Company is considered as a criminal act of corruption because of the element of "financial harm state" or "state economy", because in fact the injured is owned money, not the money between the two countries which are in the two domains (scope attorney / rechtsgebeid) different.

### 2. Legal Aspects Regarding Privatization

As a limited liability company whose capital is divided into shares, the state as a shareholder of PT. PertaminaPersero may waive some or all of the other parties. However, the results of the privatization to be deposited directly into the state treasury as mentioned in Article 86 paragraph (1) of the SOE, namely: "The privatized by way of sale of state-owned shares delivered directly to the state treasury." It is completely contrary to the purpose of privatization as mentioned in Article 74 Paragraph (2) of Law No. 19 of 2003 is to improve the performance and value-added companies and increase the participation of the community in the ownership of shares owned. "Conflicts occur because it is not logical if the goal is to improve the performance of the company (Persero), which is in the scope of the private law, but the results of the privatization directly deposited into the State Treasury which are within the scope of public law. Based on these penjeleasan PT. PertaminaPersero obvious can be termed as a business entity owned by the state because of PT. Pertamina as a private legal entity has an independent legal status as owned by the subjects of law and clearly different from the position of the state that may have the capacity as a private legal entity and a public entity. The position of the state in the PT. Pertamina is responsible shareholder limited to the extent of the shares they own.

## **CONCLUSION**

1. Characteristics of state-owned PT. Limited as a legal entity, that SOE Limited is a corporation, a business entity that is a legal entity, limited liability and aims to make a profit. In running the business, state-owned PT. Limited subject to the Limited Liability Company Act (the Act PT). For the investment of the SOEs into PT.Persero derived from the wealth of the country which has been separated legally recognized by formal law that the wealth of SOEs has been separated from the wealth state. In my firm view that the wealth of the riches of the country apart Limited, unless there is a "transformation is the next-owned wealth Persero such dividend or tax must be paid to which the State Treasury.
2. The legal status of the loss in state-owned PT. Limited relevant authority in carrying out its functions the Board of Directors, a State loss. This is caused by wrong concepts about state finances. That impacts the loss of State significance. That should be the loss of PT. Pertamina as the company and the position of the state as a shareholder. With the sense of loss equation Limited as financial loss state, if PT. Pertamina suffered losses, the state also has to bear the loss without any restrictions so as to exceed the number of shares owned by corporate wealth is regarded as equal to the wealth of the country. Then the state will be very high to bear any losses suffered by other state-owned enterprises in Indonesia Persero shaped. As other critical statements in the event of bankruptcy, if PT. PertaminaPersero declared bankrupt, whether also can lead the country into bankruptcy. So it is still worth noting that the State Loss Aspects of Corruption, Legal Aspects of Privatization.

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# CORPORATE GOVERNANCE AND THE NIGERIAN BAILED-OUT BANKS PERFORMANCE: A PROPOSED MODEL ON THE INFLUENCING ROLE OFBOARDS' EQUITY OWNERSHIP

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## ABSTRACT

This paper proposes a model on the moderating role of board equity ownership on the relationship between corporate governance and performance of banks during a post banking crisis era that necessitated a bailout reform. The corporate governance characteristics in this study were appropriately selected specifically based on the Nigerian banking sector's corporate governance problems. This paper also addresses the board's functions of resources provision as established by resource dependence theory.

**Keywords:** Corporate Governance, Board Equity Ownership, Banks Performance, Resource dependence theory, Resource provision roles of BODs

## INTRODUCTION

Corporate Governance (hereafter called CG) had been regarded as one of the basic fundamental determinants of the performance of a corporate organisation. Poor CG had been severally cited as the major cause of the Asian financial crisis in 1997, the CG scandals in USA, and Europe that turns out to be a global phenomenon (de Villiers, Naiker, & van Staden, 2011; Kao, Hodgkinson, & Jafar, 2008). CG was not as an important issue in many countries until the advent of a series of corporate scandals such as Enron and WorldCom in the US and Parmalat in Europe. Nigeria as a developing nation was greatly hit by sporadic collapse of various financial institutions especially the banking sector. Banking sector becomes the most regulated sector in the economy in order to sustain the confidence of depositors, enhance efficiency, ensure the continued soundness of the system itself and thereby minimizing the risk of bank failures (Oluranti, 1991). In the Nigerian financial sector, poor managerial performance and poor CG had been identified as the major factors causing almost all known cases of a financial institution's distress in the country. These two also necessitated the introduction of consolidation reform in 2004 (Soludo, 2004) and yet re-emerged afterwards, and led to another reform that brought a rescue program termed "bail-out" reform in late 2009. The reform necessitated the bail-out by injecting N620 billion naira into ten (10) banks which nearly collapsed due to high non-performing loans, poor CG, bad liquidity and risk management (CBN, 2010; NDIC, 2011; Sanusi, 2010). Consequently, the bail-out reform generated a lot of panic and doubt concerning the status of the investments of these banks' depositors, shareholders and

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other Nigerians consequently, led to a sparked interest in examining the potential outcome of this reform through researches.

The relationship between CG and firm performance is important in ensuring efficient corporate control through the monitoring or advisory, counselling roles of Board of Directors (hereafter called BODs) who are regarded as the instrument of corporate control (Clifford & Evans, 1997). Majority of prior literature mostly focuses on the CG practices in the developed western countries like US, UK, Germany, Australia and others etc. (e.g., Albring, Robinson, & Robinson, 2013; Bhagat & Bolton, 2008; de Villiers et al., 2011; Guest, 2008; Zahra & Pearce, 1989; Zahra, 1996 etc.). While few studies are conducted in developing nations like Nigeria with a particular emphasis on examining the resultant effect of CG on firm performance in a post reform era. Therefore, this paper aims at proposing a framework in Nigerian context that could examine the potential relevance of board equity ownership (BEO) in influencing the relationship between CG and the performance of these bail-out banks. This study is therefore proposing a framework that focuses on the board resources provision variables (board size, and female membership in a board) that best address the banks' CG problems peculiar to Nigeria, and introducing a moderating variable (BEO) that will strengthen the inconsistent conflicting results on the relationship between CG and banks performance indirectly, as opined by Hillman and Dalziel (2003), Zahra and Pearce (1989). This framework, unique as it is, aims at covering only the bailed-out banks with a total of 2,811 branches in Nigeria using a primary source of data (i.e. questionnaire).

There is paucity of studies that use BEO as moderating variable that captures board's resource provision role which addresses the Nigerian bail-out banks, hence the need to be introduced into these inconclusive mixed results. The outcome of this paper shall be of immense importance to the academia by addition to literature, regulators, shareholders, and other Nigerians as it will reveal the contribution of BEO in strengthening BODs' functions in ensuring good banks' performance. The paper is subdivided into 5 sections from 1. introduction, 2. literature review, 3. BEO (moderator), 4. Bank performance, framework, conclusion, 5. Reference.

## LITERATURE REVIEW

### Overview of the Nigerian Banking Sector Crisis and Reforms

Historically, the banking system in Nigeria has experienced so many major challenges since after commencement in 1892. Banking crisis is dated back to the late 1940s and early 1950s, 1962 which were mostly attributable to lack of proper regulations, followed by Structural Adjustment Programme (SAP) in 1986, financial liberalisation in 1987-1988 and prudential guidelines in 1991 (Beck, Cull, & Jerome, 2005; Oluranti, 1991). Additionally, between 1990 and 2004, Central Bank of Nigeria (hereafter called CBN) as bank regulators, mandated all banks to increase their required minimum share capital about five (5) times, in 1991, 1997, 2000, 2001 and 2005. Yet, all these measures had failed to curtail the series of bank distress and failures within the 1990s and beyond (Aburime, 2008). Lastly came the consolidation reform in 2005 and then the recent bail-out reform in 2009. Apparently, consolidation reform occurred when CG standards were ineffective. Factually, CG failure was among the key factors that contributed to the financial institutions' crisis (CBN, 2006; SEC, 2003). Consolidation brought stronger banks but failed to address the necessary faults in CG of most of these banks.

Recently, due to a major hit by the global financial crisis, another set of banking sector rescue program “Bail-out” was inevitably being introduced to ensure stability and prevent distress. After a joint special examination of all the 24 banks in Nigeria by CBN and the Nigeria Deposit Insurance Corporation (hereafter called NDIC) in July 2009, significant poor CG practices, poor liquidity and capital adequacy, poor risk management practices were found to give birth to excessively high level of non-performing loans in the banks. The Governor of CBN Mal. Sanusi Lamido Sanusi, declared ten (10) banks as being distressed and a bail-out of about N620 billion was injected to rescue them, and then the Chief Executive Officers (CEOs/MDs) and the board of directors of eight (8) banks were immediately removed and then replaced with new ones. These CEOs were then detained, prosecuted by the Economic and Financial Crimes Commission (EFCC) and also tried before the high court for outright stealing, corruption and mismanagement of their banks (CBN, 2010; NDIC, 2011; Sanusi, 2010). The CBN has also appointed advisory companies like Deutsche Bank, Chapel Hill Denham, KPMG Professional Services and Akintola Williams Deloitte etc. to work with the new boards and management of these banks by exploring all options for securing their stability and long-term future growth. Even though some of these banks had been acquired by other banks, up till now their performance is still probationary under watch.

### **Corporate Governance**

Since after the global financial crisis that touched many nations, the mid 2000s saw a renewed academic interest in the field of CG and firm performance. CG has been viewed from different perspectives by different authors and practitioners based on certain reasons. In simple terms, CG is the system by which organizations are directed and controlled in order to enhance the strategic values, corporate performance and accountability, for the interest of shareholders and other stakeholders. However, most researches conducted globally and Nigeria in particular, are observed to have some kind of limitations that usually results in mixed or conflicting results such as, inconsistent operationalization of board variables, limited scope, and convenience samples, and usual focus mainly on the direct relationships between board variables and firm's performance, thus ignoring the indirect path through roles and strategic initiatives (Hillman & Dalziel, 2003; Zahra & Pearce, 1989). Studies in the Nigerian context which adopts a moderating variable that captures board resource provision role are very rare, hence the need to be introduced into these inconclusive relations/findings. Also, most of the studies on CG in Nigerian context are either conducted before the banks' bail-out, or not in the area of bail-out reform or not covering the banking sector such as Adekoya (2011), Okereke, Abu, and Anyanwu (2011), Onakoya, Ofoegbu, and Fasanya (2012), Uwrigbe and Fakile (2012). Only few studies were found on bail-out such as Kuye, Ogundele, and Otike-Obaro (2013), Nworji (2011), Oghojafor, Olayemi, Okonjia, and Okolie (2010), which all have certain kind of shortcomings, small sample, addressing policy issue not the banks' performance etc. Studies on CG covering both financial and non-financial performance are very rare in Nigeria except Ogbechie, Koufopoulos, and Argyropoulou (2009). Finally, in terms of theory, there had been mix-up or misapplication of theories that should underpin the diverse CG variables leading to vague findings (Hillman & Dalziel, 2003).

In this paper, board size and female membership in a board are classified under the resource dependence theory perspective where “board size is the total number of board members in a board while number of females in a board is the other”. Again, independent directors and directors who own shares will be more likely to guide and advice rigorously

(Bhagat & Bolton, 2008; de Villiers et al., 2011; Hillman & Dalziel, 2003). This study therefore, propose two board variables and develop hypotheses in this paper which reflect directors' resource provision role (driven by resource dependence theory). Additionally, these variables were actually selected based on their prominent importance in solving the practical problem of CG in Nigerian banks as mentioned in Sanusi (2010).

### **BODs' Resource Provision Role (Resource Dependence theory based)**

This study adopts resource dependence perspective as in the framework as in Bhagat and Bolton (2008) de Villiers et al., (2011), Hillman, Cannella, and Paetzold (2000), Hillman and Dalziel (2003), Pfeffer and Salancik (1978) which opined that boards have the functions of facilitating access to vital resources because accessibility to resources is a serious problem for firms. A resource rich directors could be actively involved and certainly influence business strategy and programs. Resource provision role emanates from the resource dependence theory, through a seminal work of Pfeffer and Salancik (1978). They explained the various resources which a director can provide to aid a firm were identified, comprising advice, guide and/or counsel, legitimacy, creating information networks between the firm and externals members, in addition to privileged linkage to various external resources. All this constitute the vital resources that brings a sound performance to a company if directors effectively utilize these in delivering this role.

Also, Hillman et al., (2000), categorized outside BODs according to resource dependence theory by suggesting their classification as "business experts," "support specialists," and "community influentials," signifying the diverse kinds of resources BODS could bring to its board. Extant studies had offered results that confirms these roles such as de Villiers et al., (2011), Hillman and Dalziel (2003), and Zahra and Pearce (1989). In support of this, Kor and Misangyi(2008) contend that BODs having special professional experience may perhaps complement the inexperience of CEOs of new enterprises in making strategic investments/production. This kind of expertise expedites contact to essential information as well as business resources linkages and collaborations (Hillman & Dalziel, 2003). Zahra and Pearce(1989) opined that, under this role, BODs could review strategic opportunities through recommending new business innovative ideas. Therefore, this study identify board size and female membership in a board, as CG characteristics that are linked to the diverse important resources obtainable from the BODs of the bailed-out banks.

However, to the best of our knowledge, no study has been conducted using these selected variables together in a single framework on the Nigerian bail-out banks. Therefore, these board characteristics are proposed to examine their indirect effect on banks' performance with the influence of a moderator (board equity ownership) due to the inconclusive, conflicting findings on the relationship of these variables to firm performance as suggested by Baron and Kenny (1986) on mixed inconclusive results. Also, since boards' ownership is found to be related to firm performance, then it can moderate CG to performance.

### **Banks Performance**

Organisational performance is an important concept that relates to the way and manner in which financial, material and human resources available to an organization are judiciously used to achieve the overall corporate objective of an organisation. Various measurement models were previously developed to take care of either managerial or organisational or

both performance. However, among them all this study adopts the Balance Scorecard (BSC) performance model which was developed by Kaplan and Norton (1996). Balance Scorecard model provides an excellent system for performance measurement in the commercial banking industry Bremser and Chung (2005). The BSC is the major element of a strategic management system that enables organizations to translate strategic goals into measures of performance. The measures consist both financial and non-financial measures which serves as indicators used in monitoring strategy implementation throughout the organization and whether strategic goals are being achieved or not (Bremser & Chung, 2005).The framework comprises of four (1 financial, and 3 non-financial aspects (customer perspective, internal process, learning & growth).

## **HYPOTHESES DEVELOPMENT**

### **Direct Relationship**

#### **Board Size (BS) and Banks' Performance**

As explained by the resource dependence theorist, the total number of directors within a firm's boardroom significantly influences its effectiveness. Despite uniform regulation on CG, up to date, there are contradictory notions about the proper or optimal size of BOD in a firm. The CBN Code of CG for Nigerian Post-consolidated banks (2006), No.5.3.5 however provided that "the number of non-executive directors should be more than that of executive directors subject to a maximum board size of 20 directors" (CBN, 2006, p.10). Here, it could be deduced that no specific figure is legally stated as the optimal size, and such allowing the shareholders/board to determine it. However, if a board size (BS) is too large, directors may be individually constrained in actively participating in board decisions, create an ideological conflict hence, lead to trivial contribution. Also, if a board size is too small, the directors may not be able bit the time and effectively deliver their functions. Due to the Sanusi(2010)report that BODs fail to make meaningful contribution in their boardrooms, this study will therefore seek to examine the relative effect of the diverse sizes of the banks' boards on their banks performance. In an attempt to determine the effect of BS on the performance of a firm, several conflicting results were reported.

The theoretical link amongst these different activities is their common focus on BODs as resources provider instead of monitor of firm's management (Hillman & Dalziel, 2003; Zahra & Pearce, 1989). Regarding board size, several conflicting mixed results were given since the past decades. On one hand, studies of Eisenberg, Sundgren, and Wells(1998), Hermalin and Weisbach (2001), Jensen (1993), Lipton and Lorsch(1992), Uwugbe and Fakile (2012), Yermack (1996)etc. contends that smaller BS contributes better to the firm performance as bigger BS are usually ineffective and cumbersome to manage. On the other hand, majority of other prior and extant researches such as Chen and Al-Najjar (2012), Dalton, Daily, Johnson, & Ellstrand (1999), de Villiers et al., (2011), Guest (2008), Hillman and Dalziel (2003), Sanda, Mikailu, and Garba(2005), Uadiale (2010) among others asserted that larger board size relates positively to firm performance. This is because, bigger BS were predicted to consist many directors with different expertise, qualifications and business experience, external connections, reputations and other qualities that lead to qualitative decision making. As BS increases, the domination of BODs by a CEO becomes more challenging and BODs would have a good chance to utilize their authority in leading the firm (Zahra & Pearce, 1989). Consistent with these prior studies, this study argues that, in a larger board, it is more likely that one or more BODs may have acquired skills regarding banking crisis and on how to revive the bank

especially after a bail-out. As such, any director having such skills/exposure can guide the remaining BODs regarding the related strength, weakness, challenges and opportunities that must be managed to succeed in their function. Thus, we form the following hypothesis:

**H.1:** Board size is significantly related to bail-out banks performance.

### **Female Membership in a Board (FMB) and Banks' Performance**

To strengthen the resources provision abilities, more recent researches on CG has begun to refocus on proposing of gender diversity (female board membership) in top management positions and corporate boardrooms (Carter, Simkins, & Simpson, 2003; Dalton et al., 1999; Farrell & Hersch, 2005). Female membership as corporate BODs is very minimal globally. Female corporate board membership is less than "15% in countries like UK, USA, Canada, Australia and many European countries, but some Asian countries have as low as 0.2%"(Terjesen & Singh, 2008). However, in Nigeria, no empirically data is reported as female representation is also less than 0.2% of Asia. Several researches have reported conflicting findings about the influence of female membership on board on the performance of firms (Carter et al., 2003; Vo & Phan, 2013). In Nigeria's context, nothing is known in the case of bail-out banks hence, there is need to investigate whether the female members might be more ethically responsible and might be more vigorous in monitoring management to ensure better banks performance after the bail-out rescue. Therefore, the study will introduced it to the model, testing it alongside a moderator. Vo and Phan(2013)'s work reveals that female membership on boards signifies that board's membership is actually diversified which in turn improves the firm's performance. Several other views were found regarding the effect of female membership in a board. Both Carter et al., (2003) and Adams and Ferreira (2003) found a strong relationship between the number of female membership on board and value of the firm using Tobin's q. Also, the Norwegian study of Nielsen and Huse (2010) additionally confirmed the positive correlation between women directorship and firm performance using a survey questionnaire data administered among 120 firms in Norway. They added that women directors positively influence strategic decision making and monitoring. Their result is also supported by another study in Australian context by Kang, Cheng, and Gray(2007).

Also in support, Agrawal and Knoeber (2001), revealed a significant correlation between Board size and the female membership on board. Since the presence of an experienced, competent female director could provide more credible, unbiased advice, counsel, connections, and also monitoring the management's strategy implementation to protect their reputation, the firm performance tend to be better (Farrell & Hersch, 2005). The study of Farrell and Hersch (2005) reported that females naturally tend to only serve in better performing firms, hence this study argues that presence of female in boards could probably lead to better firm performance due to her ability to deliver her advisory and guidance duties diligently, effectively and vigorously. Thus we form the following hypothesis:

**H2:** Female Membership in a Boardis significantly related to bail-out banks performance.

## **Indirect Relationship**

### **Board Equity Ownership (Moderator)**

Practically, the implementation of CBN code of corporate governance in Nigeria, posed some challenges, prominent among which were: ambiguities regarding the appointment of independent directors and the share ownership status of these independent directors (CBN, 2008). Thus, it has been an unresolved debate concerning the potential importance/effect of board members' equity ownership on both the board functional performance and firm performance. Albring et al., (2013), opined that in the USA, the Blue Ribbon Committee (1999), among others, suggests that director stock ownership should reduce agency problems and therefore the need for external monitoring. Thus, in an attempt to make a proper alignment of the interest of director and shareholders, many boards have implemented stock ownership guidelines and holding requirements for directors, leading to a substantial rise in the ownership of managers and directors but in Nigeria, there exist ambiguities and challenges regarding the directors share ownership status (CBN, 2008).

There exist conflicting researchers' views regarding this which until now, no clear position is given by the CBN. This show the real extent of the misconception on whether or not equity ownership by the board of Directors would influence their mandated functions. Also, the percentage of the shareholding is still not clearly determined. However, Bhagat and Bolton (2008), Bhagat, Carey, and Elson (1999), de Villiers et al.,(2011), Hillman and Dalziel (2003), and Zahra(1996)all agreed and suggested that Stock ownership aligns the interests of the directors with those of shareholders. Bhagat & Bolton, (2008)'s study further revealed that particularly in a poor firm performance, the likelihood of disciplinary management turnover (replacement) is positively correlated with stock ownership of board members. As such, directors with more equity ownership are likely to objectively evaluate firm performance and control firm choices (Patton & Baker, 1987). Similarly, Weisbach(1988) also reported that CEO replacement in poorly performing firms was greater as the representation of independent outside directors increases. Board members (both executive and non-executive) share ownership reduces manager/shareholder conflicts. To the extent that executive board members own part of the firm, they develop shareholder-like interests and are less likely to engage in behaviour that is detrimental to firms' / shareholders interest. In support, Kren and Kerr, (1997) shows that boards with significant holdings are more likely to link CEO pay to firm performance and replace CEOs of poorly performing firms Bhagat, Carey, and Elson(1999).

On the contrary view, Demsetz and Lehn(1985)) reported that BEO is not associated with the performance of firms and a trivial support for the discrepancy in managers and shareholders' interests. Fama and Jensen (1983) argued that contribution of board's ownership is considered as a "two-edged knife" in which there is an optimal level of board ownership which contributes positively to a firm's performance. However, the study of Morck, Shleifer, and Vishny (1988) revealed that performance of companies improves firstly BEO increases up to 5%, and then decreases as BEO rises up to level of 25% and then lastly increases again slightly at a higher BEO. McConnell and Servaes (1990) in their study confirmed that there exist a significant curvilinear interrelationship between BEO distribution and the value of a firm. Uadiale, (2010) in a Nigerian study with a sample of 30 listed firms reported a negative relationship between BEO and the financial performance of firms.

### **Corporate Governance, Board Equity Ownership, and Banks Performance**

By and large, boards' equity ownership, was viewed as an encouragement that will help board members advice, guide and supervise management in a more efficient way. Consistent with the positive view, Chung and Pruitt (1996), Jensen and Murphy(1990), Mehran (1995)supported that, board's ownership will improve firm's performance and are positively correlated. More related to this study, (Albring et al., 2013; Bhagat & Bolton, 2008; Bhagat et al., 1999; de Villiers et al., 2011; Hillman et al., 2000; Hillman & Dalziel, 2003; Westphal, 1999; Zahra, 1996)show that director ownership influence or improves boards' advisory, external connections, and guidance of strategic decision making. Similarly, Hillman and Dalziel (2003) argue that ownership incentives motivate directors to forgo short- term returns for long-term projects and strategies.

The study further argues consistent with many studies like Albring et al., (2013), Bhagat and Bolton, (2008); de Villiers et al., (2011); Guest, (2008) that, if these banks' board of directors were having a substantial equity ownership in the banks or compensated with equity as incentives for a targeted performance, they would definitely have advised, monitored and counselled those sacked incompetent/fraudulent banks' managements. In the current aftermath of banking crisis, it is plausible that higher ownership could motivate directors to provide resources (advices, counsel connections etc.) to management which will in-turn lead to higher firm performance in the long run. Boards' equity ownership could motivate large or small sizeof a board and motivate a female board member in her fiduciary duty. Thus, we form the following hypotheses:

**H.3:** Board equity ownership has a relationship with the bail-out banks' performance.

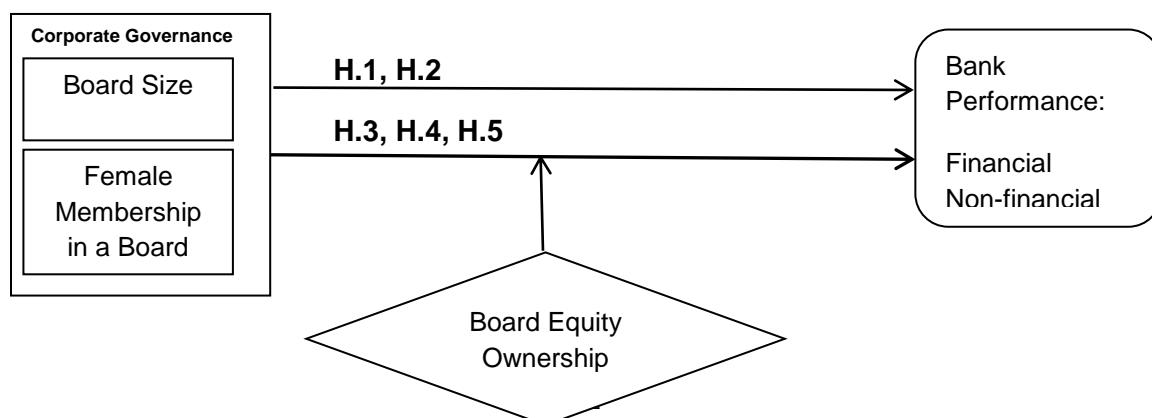
**H.4:** Board equity ownership moderates the relationship between board size and bail-out banks' performance.

**H5:** Board equity ownership moderates the relationship between female membership in a board and bail-out banks performance.

### **PROPOSED FRAMEWORK:**

Figure 1 is the proposed study framework based on the perspective of resource provision roles of BODs which is covered by the resource dependence theory.

Figure 1: Framework



## CONCLUSION

This paper proposes a framework based on an ongoing research, to examine the influence of equity ownership in motivating BODs of banks and improving their functional effectiveness in providing advisory, guidance, and other resources to the managements' overall strategic control system. This will results in a better banks performance after the reform. The findings of this research will provide significant contribution to the literature, managers and banks regulators like CBN, NDIC etc.

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# THE CONSTRAINTS OF EDUCATION STAKEHOLDER'S ENGAGEMENT IN POLICY DECISION MAKING IN NIGERIA

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## ABSTRACT

The relevance of education to the existence and survival of nations cannot be over stressed as no nation can progress without its citizens being educated. However, to reap the benefits of education, stakeholders should be engaged in all education related matters, policy decisions inclusive. Education stakeholders comprise of all those interested in the welfare, success and progress of a school and its students including educators, parents, community members, elected officials, state representatives and non-governmental organizations etc. Engaging the stakeholders is indeed a great mechanism for the realization of the objectives of education as well achieving its quality, despite this there are some constraints to their engagement in the Nigerian context. In the first instance, even though the National Policy of Education provides and guarantees stakeholder's participation with a view to eliminating overlaps achieve and sustain synergy, the government did almost everything itself without fully incorporating those with a stake. Added to this is the issue of unnecessary politicization of the education policies by governments through frequent revising of the policies as well as communication gap pertaining education issues between government, stakeholders and the masses. In situations where they are involved, for example the educators and parents through what in Nigeria is called Parent Teacher Association, the constraints encountered include delay in decision making, increase expenses and lack of consensus. This research uses literature and document review to identify the extent of stakeholder's engagement in policy decision making as well as the constraints of accomplishing the goal of their engagement.

**Keywords:** Education Policy, Stakeholders' Engagement, Decision Making, Nigeria.

## INTRODUCTION

Contemporary governments do not operate any longer as entities distinct and separate from the larger population making unilateral decisions, but rather they increasingly involved several other actors to share power and influence (Geurtz & van de Wijdeven 2010). Citizen engagement and participation have been essential in facilitating and

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transforming the workings of government and education is not an exception in this trend as education is no longer the responsibility of any government alone. The goals of education could however be achieved fully when all stakeholders join hands and share responsibilities.

Education is the first and foremost a human right as proclaimed in article 26 of Universal Declaration of Human Rights; a key to building up individual capacities in all ramifications as well as increasing their skills that are necessary for techno-economic development and a means for hopefully addressing some of the pressing societal issues in the current century.

In Nigeria education is upon viewed as an instrument for accelerating and transforming individuals, community and the nation; a mechanism for knowledge and skills acquisition required for a societies survival and growth (Kazeem, 2010). Education is an important tool for achieving socio-economic as well as political development (Agba, Ushie & Agba, 2007); an instrument par excellence for national development (National Policy on Education, 2004). The guiding principle of education in Nigeria is equipping every citizen with such knowledge, skills, attitudes and values capable of enabling the citizens to derive maximum benefits of being members of the society, leave a fulfilling and promising life that will enable them contribute to the development and welfare of the community.

Being a medium for bringing families out of poverty and a means for promoting social security, education enables people to understand their immediate environment and the world in general that invariably enables them improves the quality of their lives and leads to broad social benefits to individuals and society. To attain this, there is paramount need and desire of all those with a say in education to come together and contribute their own quota towards the realization of the objectives, goals, aims as well as the aspirations that education seeks to achieve especially through participatory decision-making.

This paper aims at identifying education stakeholders; their constraints in policy decision making and how to overcome them. The paper will start by highlighting briefly on the concept of policy decision making, an overview of the Nigerian education sector and finally a look at education stakeholders and the constraints of their engagement in policy decisions.

## **DECISION MAKING**

Decision making has been defined by Bernhard (2006), as the process through which individuals, groups or teams arrive at implementable outcomes from a range of competing choices about issues in their organization. The advanced learner's dictionary defines it (decision-making) as the process of deciding about something important, especially in a group of people or in an organization .Engagement of stakeholders in participative decision making has been identified as major accelerators of performance in the education system (Drummond and Reitsch, 1995; Lipman, 1997; Clinton and Hunton, 2001 in Sukirno & Sununta 2011). Stakeholders engagement and participation in decision making especially the educators, enhances schools management policy and make it more sound and responsive to the needs and demands of the school and that of the society (Pashardis, 1994). Pashardis further stated that educators can make a great difference and change by ensuring the overall success of the school when they are fully engaged in the decision-making process. Decisions have to be made and re-made in the light of what

is intended to be achieved. In some instances decisions are not permanent in so far as they have to take cognizance of the dynamics of time.

## **AN OVERVIEW OF THE NIGERIAN EDUCATION SYSTEM**

The educational legal framework in Nigeria is based on the current constitution in use by the country that is the 1999 Constitution of the Federal Republic of Nigeria together with relevant Federal and State laws coded in the past. The constitution specifically defines the nation's educational objectives and also regulates the sharing of responsibilities among the three tiers of government i.e. the Federal, State and Local. The constitution provides that both Federal and States governments can legislate on the Planning, Organization and Management of education. The major statutory duties and responsibilities accorded to the Federal Government are those of policy formulation, co-ordination and monitoring. Added to this, the Federal Government is saddled with the responsibility of directly controlling a large proportion of the universities and other tertiary institutions, as well as small number of secondary schools. State Governments on the other hand control most of the secondary schools and a considerable proportion of the tertiary institutions. However, both Federal and State Governments are legally empowered to establish parastatals through which some of their responsibilities are discharged, and these are widely used at the Federal level. On their part, the Local Governments are charged with the responsibility of managing primary schools under the guidance of higher levels of government. In the Nigerian education sector the highest policy making body is the National Council on Education (NCE) having the Federal Minister of Education and all State Commissioners of Education as members. The major obligation and responsibility of the council is that of approving a National Curriculum for Primary and Secondary Education, the determination of Policies on all aspects and levels of education and receipt of feedback on the delivery of Education for All (EFA). It also sets standards for quality assurance and guidelines for National Examinations for both Primary and Secondary Schools.

The National Policy of Education which is the Nigeria's policy document regarding education, restates the overall philosophy and goals of the nation's education and also specifies the objectives as well as the structure and strategy for the provision of education. Apart from this, the National Education Policy set guidelines and required standards for the delivery, management and for quality assurance. It further clarifies the responsibilities of the three tiers of government, their agencies and all other education stakeholders (National Education Policy, 2013).

However, in keeping with the dynamics of social change and demands on education, the policy has been revised over time, the most recent in 2013, but the underlying philosophical basis has not changed.

The 6<sup>th</sup> edition of the Policy revised in 2013 and the current one highlights and emphasizes on:

- (a) The consolidation of kindergarten, Primary and Junior Secondary Education to a 10-year basic education in line with UBE and its establishment Act;
- (b) Improved quality assurance, restructuring and enhancing the capacities of Federal and States/FCT inspectorate services through effective performance evaluation;
- (c) The development and maintenance of a credible and up-to-date National Education Management and Information Systems (SEMIS);

- (d) The effective use of strategic planning to improve the quality of education provision and service delivery;
- (e) Improving teacher quality through professionalizing the teaching profession in Nigeria and the provision of more in-service training opportunities and other incentives for teachers; and
- (f) Better coordination, collaboration and networking of activities, programmes and interventions of all tiers of government, development partners and all other stakeholders in the Nigerian education sector to eliminate overlaps, achieve and sustain synergy.

In Nigeria however, there are three distinct and fundamental education systems: the Indigenous System, the Qur'anic schools, and formal European-style education institutions. Education development in Nigeria as outlined earlier on is guided by the National Policy on Education, which provides for both Formal and Non-Formal Education. At present, the formal system prescribes enrolment in Primary School at the age of six years and stipulates a 9-3-4 structure offering nine (9) years of Basic Education (six years of Primary, three years of Junior Secondary), three (3) years of Senior Secondary and four (4) years of Higher Education provided by a mixture of Public and Private providers of Education. This hierarchical structure is based on Early Childhood/Pre-Primary education in which the government's role has been limited to setting standards, providing curriculum guidelines and training teachers with the private sector providing educational service. Together, Primary and Junior Secondary Education constitutes basic education, which is free and compulsory (Sokoto Education Account, 2012).

## **EDUCATION STAKEHOLDERS**

Education stakeholders are group of people who have vested interest in the education sector (Adebayo, 2013). In other words they are a group of people who are interested in the welfare, success and progress of a school and its students. Stakeholders could be an individual or group of individuals with an interest in the school in delivering intended results and maintaining the viability of the school's services. They influence programme of activities and services offered by a school. Hence stakeholders are identified as head-teachers/principals (both ex and present), educators, pupils/students, parents, parents educators association or parent teacher association, ex school students (school old boys/girls) school management committee/school board members, community members, elected officials, non-governmental organizations (NGO's), board of governors and Ministry of Education etc. (Halle, Mokeki & Marinda 2011). Education stakeholders are many and there is the need for all of them to effectively play their role so that students will learn better and attain their potentials in their fullest form.

The roles played by education stakeholders are very much inevitable to the progress, success and achievement education especially the school system's objectives. These roles include among others an advisory roles by developing strategies to train and retrain staff and leaders, they also play the role of turning the academic research into practical points for policy making and international cooperation among countries to promote efficiency of processes and production of reliable leaders and training of teachers to improve teachers' integrity (Brussels 2011). In this paper efforts are made to discuss some of the stakeholders among which include the educators, parents, students and lastly the parents and educators association popularly known as parent teachers association the most widely known stakeholders in the education sector across the country.

### **Educators**

Educators constitute one of the important pillars in the education sector for without them the society would not be able to function as a global competitor. As stakeholders, the educators are expected to possess adequate professional and requisite knowledge that will enable them lead the students in instruction. In addition to this, educators can be mentors, supervisors, counsellors and community leaders. They can be a mentor to students, to other educators and the entire community. The supervisory role is present in every aspect of a educator's daily responsibilities. They also use their role as counsellors to offer advice to students and school advisory committees. The ends of education are providing the society with a culturally literate citizenry and a world-class workforce that can think freely and reason rationally (Schlechty, 2001). This is further justified in a study conducted by Mualuko et al. (2009) who found out that educators desire greater involvement in decision making and that their involvement in that direction can improve the quality of decisions which will in turn lead to high performance and provision of the much needed education aimed at producing quality citizenry that will man the affairs of the public. Educators and students together play an interactive role as one cannot function without the other in an educational set-up and processes. Empowering them however facilitates, empowers and strengthens the students (Short and Greer, 2002). Empowering the educators takes the form of providing them with an active and significant role in decisions making in order to have control over their work environment and conditions as well as providing them with ample opportunities to serve in a variety of professional roles (Short & Greer, 2002).

### **Parents**

Parents play key roles as educational stakeholders. Parents' primary objective is the assurance that their children will receive a better education that will enable the children to lead a fulfilling, productive and rewarding life as adults in a global society (Cotton and Wiklund, 2001). This is indeed one of the purposes that education policy set to achieve as outlined in the National Education Policy. Being most familiar with their children, parents bring a valuable quality to their educational experience and can thus influence their behaviors significantly. Behaviors such as time management and study habits, eating practices, and their personal safety and general welfare can be managed much more effectively by the parents. Parents as educational stakeholders provide additional resources for the school by assisting with student achievement with a view to enhance a sense of community pride and commitment, which may be of benefit and influential to the overall success of the school. This could be achieved by engaging in their children's educational process by attending school functions, participating in the decision making process, encouraging students to wisely make use of their social and academic time and for modeling the desirable behavior for their children (Cotton & Wiklund, 2001).

### **Students**

Students' on the other hand, plays the leading role in the educational process and as stakeholders they are expected to participate in the process. Successful schools encourage significant participation by parents, students and educators (Wilson, 2008). Although the student's primary role is that of a recipient, empowering them with shared decision making increases their choices and responsibilities for their own learning (Short and Greer, 2002). Apart from participation, students are also used as a determining factor for some aspects of education. The student determines the educational services offered

such as special education for those who are gifted and learning challenges. The number and needs of students can also be a determining factor for allocating resources. Through participation students gain the skills and knowledge needed to be productive and viable members of the society. However, students as stakeholders possess both intrinsic and extrinsic motivational factors. The intrinsic motivation comes with understanding the value of an education. Extrinsic motivations are the accolades students receive for successful completion of their education.

### **Parent and Educators Association**

The Parent and Educators Association popularly known as the Parent Teachers Association (PTA) is a voluntary association of parents and educators in a particular school that is specifically established to ensure school development. This trend eventually facilitates good school – community relationship (Ugwulashi, 2012). In this perspective, obeying the principles of good school – community relationship, parents are put in a better position to understand what exist in the school that their wards attend as well as the difficulties that the school is experiencing in the process of carrying out the administrative and instructional functions. In Nigeria, PTA is backed by law in some states making it compulsory for parents and teachers; while in other states it is voluntary. Whichever way, parents pays some levies imposed by the association as agreed upon for their wards attendance in that particular school and for the progress of the association (Igwe, 1999). The formation of the PTA was necessitated by the desire to tackle or solve some pressing issues concerning the management of affairs of a particular school which can best be managed cooperatively. Usually the PTA convened at regular intervals either monthly or at the end of each term/semester.

### **CONSTRAINTS OF EDUCATION STAKEHOLDER'S ENGAGEMENT**

It was observed that involving stakeholders in governance and management of schools improve the quality of educational system (Kamba, 2010). Parental involvement in schools through PTA has been widely supported and accepted in both the developed and developing countries (Brain and Reid, 2003 & Kamba, 2010). The Parent's engagement is however linked or connected to the school effectiveness as well as children's performance. This view was however strengthened by Clase (2007) who asserted that: "Parental involvement despite the educational background or social position is an essential component for successful education and teaching at school level". Parental engagement is however very critical to sustained educational quality (James (2010). Lin (2010) reported that parental support and engagement in decision making is a very important factor to the success of a school and that co-operation between educators and parents is capable of enhancing students' performance.

Despite the numerous benefits to be reaped out of stakeholders' engagement in policy decision making process as well as the great importance attached to it, there exist certain stumbling block towards accomplishing the goal of their engagement. First of all stakeholders major aim of trying to be part and parcel of decision making process is necessitated by the desire to bring back the lost glory of the education sector. In Nigeria there has been a pervasive degradation of the education system for some decades to such an extent that the Nigerian graduates are often described as lacking in quality, low in perception and unfit in skills to perform the jobs assigned to them. Most of the graduates are not adequately qualified and are unprepared for work. In some cases, employers have

to compensate for insufficient academic preparation by organizing refresher and induction courses for new employees with a view to making them fit for organizational tasks. The educational system emphasizes on theoretical knowledge at the expense of technical, vocational, and entrepreneurial education. It is with a view to addressing these and other numerous problems in the education sector that stakeholders seek to participate or are involved in policy decision-making.

It is however imperative to know here that the National Policy of Education provides and guarantees stakeholder's participation with a view to eliminating overlaps achieve and sustain synergy, but some issues culminate and hinder their smooth engagement in policy decision making among which include the followings:

- i. In the first instance, the government did almost everything itself without fully engaging or incorporating the stakeholders. This is indeed a serious drawback and one of the reasons that the Nigerian educational sector has not been able to over the years deliver.
- ii. The second aspect is the issue of unnecessary politicization of the education policies. Each government usually comes up with its set of policies that it wants to implement during its tenure without taking into cognizance the impact on the recipients in particular and the society at large. This is evident in the frequent revising of the policies that the country witnessed from the inception of the 1977 National Policy on Education to date. From 1977 to date, the National Policy on Education has been revised for almost five times in 1981, 1983, 1998, 2004 and 2013. However, despite the saying that the policies were revised to accommodate changes in the direction of education brought about by technological development (Nwagu, 2007), the policies (revised inclusive) were yet to achieve the stated objectives in its fullest form.
- iii. There is however, the issue of lack of proper information dissemination about government's educational programs as a result of which educational issues are not properly conceived by most of the people. In other words, there is communication gap between education providers i.e. the government, the masses and those with a stake in education regarding programs, policies and other government educational issues.
- iv. In situations where the stakeholders are involved, for example in the area of parent educators association or the parent teachers association, some of the constraints encountered are lack of consensus while trying to arrive at a definite conclusion on a particular decision but the most disturbing is that some of the members of the association makes use of the avenue to enrich themselves through unnecessary levy imposed on parents. That was why some are even calling for its scrap.

## **RECOMMENDATIONS**

Non engagement of stakeholders such as the parents in school activities especially in financial and some key decision making areas have been attributed to the cause of weakness or failure in the management of a school as well as its governance (Azeem, 2010). To curtail this menace and other shortcomings in the education sector the following need be given attention:

i. Stakeholders in education should be allowed to come together and join hands with the government to determine or decide on the form of education that is fit for the country. There is the need to have a plan of the form of education that would make the country develop in all aspects. This can be done by identifying the areas of educational challenges and on the aspects that need to be focus on. These areas are in most cases understood much better by the stakeholders and as such their involvement can play a great role towards making the right decision in the right direction. Moreover, going by the contents, structure and composition of the National Education Policy, it is evident that Nigeria has a sound and quality education policy that if properly put into effect can take the country to the promise land. Therefore, all hands must join together in order to have a cooperative education for the benefit of all.

Effective stakeholder engagement in policy decision making enables a better planned and more informed policies, projects, programs and services which could be of mutual benefit not only to the stakeholders but to the education providers or the government and the society as a whole. For stakeholders, the benefits to be reaped out of taking part in educational activities include among others the opportunity to make their contribution as experts in their field to policy and program development, have their issues heard and get engaged in decision-making. For the government or the ministry of education, the benefits of stakeholder's engagement include improved flow of information by tapping into local knowledge and having the opportunity to 'road-test' policy initiatives or proposals with stakeholders. The more the stakeholders are engaged in participatory decision making, the more likelihood of reaping these benefits.

- ii. Secondly, in order to make a steady progress towards the realization of the objectives of education policies as well as achieve synergy and overcome overlaps, educational issues should not be politicized unnecessarily. There is the need to involve all those with a stake whenever the need arises even in cases of policy revision. Education policy formulation and consideration should be for the good of all and these call for a holistic overhaul, reorientation and rebranding of education. Government should make sure that all the recommendations as well as suggestions offered by in reports, pronouncements and positions canvassed by educational accreditation, visitations and probe panels are implemented.
- iii. There is the need to have adequate enlightenment of the masses by the government through the mass media especially the electronic media so that educational matters can reach everyone even those at the grassroots for them to understand what is really happening. This will go a long way in making the public aware of government educational programs and how best they can contribute towards its success.
- iv. Parents and educators should realize that among the education stakeholders they are the most important and that their coming together is indeed a move in the right direction aimed at benefiting the students as well of course as the schools. It is paramount therefore, that they should join hand cooperatively in order to achieve the goal of their coming together. All differences should be set aside. It is often said that two heads are better than one. They should therefore

make optimum use of the opportunity in order to boost the education of their children so as to move the country forward.

## CONCLUSION

Education stakeholders are group of people, individuals or organizations with a stake or an interest in education. They have a common goal of boosting the education and their contributions can be harnessed to improve its quality. It was however observed that engaging them in policy decisions have been seen to open doors to a number of educational progresses through elimination of overlaps as well as sustaining and achieving synergy. Among the issues constraining the education stakeholders to make adequate contributions include non-involving them by the government in policy decisions, the politicization of the education policies, delay in decision making (in cases where they are involved like the PTA) and lack of consensus among others. It is however believed that if the stakeholders are effectively engaged in the decision making process, if there is politically neural issues pertaining to education, if there is a well communication network for information dissemination of educational intents and programs by the government to the masses, if also the differences between various stakeholders are eliminated especially between the educators and parents, a more sound, planned and programmed policies could be put in place for the benefit of all.

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# KAJIAN TINJAUAN TREN DAN PELAKSANAAN UNDANG-UNDANG RASUAH DI MALAYSIA

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## ABSTRAK

Kerajaan Malaysia telah melaksanakan usaha berterusan serta mengadakan pelbagai strategi dan institusi dalam menangani gejala rasuah dan mempromosi integriti di kalangan masyarakat. Walau bagaimanapun, usaha dan strategi yang telah dilakukan masih belum mencukupi untuk membanteras gejala rasuah. Ini berdasarkan data yang dikeluarkan oleh Transparency International, *Corruption Perception Index* Malaysia 2013 berada di tempat ke 53 dari 177 buah negara yang dinilai. Dari tahun 2009 sehingga 2011, kedudukan dan indeks Malaysia telah menurun. Pada tahun 2009, indeks Malaysia ialah 4.5 dan pada tahun 2011, indeks Malaysia semakin menurun kepada 4.3. Walau bagaimanapun pada tahun 2012, indeks Malaysia meningkat kepada 4.9 dan tahun lepas (2013) Malaysia mencapai skor 5.0. Mengapakah senario turun naik ini terjadi? Objektif kajian ini ialah untuk meneliti tren rasuah di Malaysia, menganalisis peruntukan undang-undang yang berkaitan jenayah rasuah dan mengkaji pelaksanaan penguatkuasaan undang-undang berhubung rasuah di Malaysia. Analisis awal dapatan kajian ini berdasarkan data yang diterbitkan oleh SPRM ke atas tren rasuah dan pelaksanaan undang-undang. Dapatkan awal kajian mendapati bahawa penguatkuasaan Akta SPRM 2009 telah mempengaruhi secara positif jumlah siasatan, tangkapan dan sabitan kes rasuah di Malaysia.

**Kata kunci:** rasuah, integriti, Akta Pencegahan Rasuah Malaysia, Suruhanjaya Pencegahan Rasuah Malaysia

## PENGENALAN

Kerajaan Malaysia telah melaksanakan usaha berterusan serta mengadakan pelbagai strategi dan institusi dalam menangani gejala rasuah dan mempromosi integriti di kalangan masyarakat. Pelbagai undang-undang yang telah digubal dan penambahbaikan dilakukan untuk menangani jenayah rasuah di Malaysia. Akta Pencegahan Rasuah 1961 (Prevention of Corruption Act 1961) diganti dengan Akta Pencegahan Rasuah 1997 (Anti-Corruption Act 1997) dan yang terbaharu, Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 (ASPRM 2009) diperkenalkan. Badan Pencegah Rasuah yang telah ditubuhkan sejak tahun 1967 juga telah dibubarkan dan diganti dengan Suruhanjaya Pencegahan Rasuah Malaysia.

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Walau bagaimanapun, usaha dan strategi yang telah dilakukan masih belum mencukupi untuk membanteras gejala rasuah. Ini berdasarkan data yang dikeluarkan oleh Transparency International, *Corruption Perception Index* Malaysia 2013 berada di tempat ke 53 dari 177 buah negara yang dinilai. Dari tahun 2009 sehingga 2011, kedudukan dan indeks Malaysia telah menurun. Pada tahun 2009, indeks Malaysia ialah 4.5 dan pada tahun 2011, indeks Malaysia semakin menurun kepada 4.3. Walau bagaimanapun pada tahun 2012, indeks Malaysia meningkat kepada 4.9 dan tahun lepas (2013) Malaysia mencapai Skor 5.0. Mengapakah senario turun naik ini terjadi?

Kajian ini bertujuan untuk meneliti tren rasuah di Malaysia, menganalisis peruntukan undang-undang yang berkaitan jenayah rasuah dan mengkaji pelaksanaan penguatkuasaan undang-undang berhubung rasuah di Malaysia.

Analisis awal dapatan kajian ini berdasarkan data statistik yang diterbitkan oleh SPRM dan perkaitannya dengan tren rasuah dan pelaksanaan undang-undang. Data yang dikaji ialah data yang direkodkan antara 1997 hingga 2012 iaitu bagi tempoh penguatkuasaan Akta Pencegahan Rasuah 1997 (APR 1997) dan Akta Suruhanjaya Pencegahan Rasuah 2009 (ASPRM 2009).

Dapatan awal kajian mendapati bahawa penguatkuasaan ASPRM 2009 telah mempengaruhi secara positif jumlah siasatan, tangkapan dan sabitan kes rasuah di Malaysia. Selain itu transformasi polisi dan operasi dalaman SPRM juga memainkan peranan dalam meningkatkan keberkesanan pelaksanaan dan penguatkuasan undang-undang rasuah di Malaysia.

Bahagian seterusnya membincangkan tren rasuah dan pelaksanaan undang-undang rasuah di Malaysia dengan mengupas peruntukan kesalahan rasuah di bawah undang-undang, jenis kesalahan dan pelaku rasuah; nilai rasuah; jumlah siasatan, tangkapan dan sabitan kes rasuah di mahkamah. Transformasi dalaman SPRM yang berkaitan dengan tren dan pelaksanaan undang-undang rasuah juga turut dibincangkan.

#### **PERUNTUKAN KESALAHAN RASUAH DI BAWAH AKTA SPRM 2009**

ASPRM 2009 memperuntukkan kesalahan rasuah sebagai ‘kesalahan yang ditetapkan’ menurut ASPRM 2009. Akta ini menyenaraikan ‘kesalahan yang ditetapkan’ termasuk kesalahan di bawah ASPRM 2009, Akta Kastam 1967, Akta Kesalahan Pilihanraya 1954 dan Kanun Keseksaan.

ASPRM 2009 menyatakan kesalahan berikut sebagai kesalahan rasuah yang layak dikenakan tindakan undang-undang:

<b>ASPRM 2009</b>	<b>KESALAHAN</b>
S.16	Menerima suapan
S.17	Memberi dan menerima suapan oleh ejen

S.18	Memperdayakan prinsipal oleh ejen
S.19	Penerima atau pemberi suapan melakukan suatu kesalahan tanpa mengambilkira maksud tidak dilaksanakan atau perkara tidak berkaitan dengan hal ehwal atau perniagaan prinsipal
S.20	Secara rasuah mendapatkan penarikan balik tender
S.21	Penyogokan pegawai badan awam
S.22	Penyogokan pegawai awam asing

Definisi suapan mempunyai pengertian yang luas. Apa-apa sahaja boleh dikira suapan di bawah ASPRM 2009. Menurut seksyen 3 ASPRM 2009 suapan ditafsirkan sebagai termasuk wang, derma, pinjaman, fi, hadiah, cagaran harta, jawatan, kebesaran, bayaran, pelepasan, diskaun, komisen, rebat atau potongan.

Prinsipal pula ditakrifkan sebagai termasuk majikan, beneficiari amanah atau estet amanah dan juga orang berkepentingan dalam pusaka orang yang sudah mati. Manakala ejen bermaksud orang yang diambil bekerja atau bertindak bagi pihak seorang lain dan termasuk pegawai badan awam atau subkontraktor.

Badan awam pula ditakrifkan sebagai termasuk Kerajaan Malaysia, kerajaan negeri, pihak berkuasa tempatan, syarikat atau pertubuhan yang berdaftar. Manakala pegawai badan awam bermaksud anggota, pegawai, pekerja atau pekhidmat sesuatu badan awam. Pegawai badan awam meliputi semua penjawat yang menerima apa-apa saraan daripada wang awam termasuklah Ahli Parlimen, Ahli Dewan Undangan Negeri dan hakim yang dilantik.

### JENIS KESALAHAN DAN PELAKU RASUAH

Menurut ASPRM 2009, kesalahan rasuah merangkumi perbuatan meminta dan menerima suapan, menawar dan memberi suapan; tuntuan palsu; dan salah guna kedudukan oleh penjawat awam.

JADUAL 1: TUDUHAN MENGIKUT JENIS KESALAHAN TAHUN 2005 -2012

Bil.	Kesalahan	2005	2006	2007	2008	2009	2010	2011	2012	JUMLAH	%
1	Menerima Rasuah	88	94	100	99	83	121	85	83	753	36
2	Memberi Rasuah	40	39	19	34	28	151	139	145	595	28

3	Tuntutan Palsu	26	24	55	23	29	31	15	39	<b>242</b>	<b>12</b>
4	Salahguna Kuasa	4	31	6	15	8	2	9	4	<b>79</b>	<b>4</b>
5	Lain-lain Kesalahan	47	66	42	37	28	76	49	79	<b>424</b>	<b>20</b>
<b>JUMLAH</b>		<b>205</b>	<b>254</b>	<b>222</b>	<b>208</b>	<b>176</b>	<b>381</b>	<b>297</b>	<b>350</b>	<b>2093</b>	

Jadual 1 di atas menunjukkan tuduhan rasuah yang dibuat mengikut jenis kesalahan yang dilakukan sejak tahun 2005 sehingga 2012. Berdasarkan Jadual 1 ini, peratusan yang tertinggi berhubung jenayah rasuah ialah kesalahan memberi (atau bersetuju untuk memberi) dan menerima (atau bersetuju untuk menerima) rasuah iaitu sebanyak 64%, atau sekiranya dibezakan, kesalahan menerima sebanyak 36% dan memberi sebanyak 28%.

Dalam tempoh 10 tahun (2003-2012), seramai 5864 orang telah ditangkap atas pelbagai kesalahan rasuah. Daripada jumlah tangkapan ini, penjawat awam yang ditangkap ialah seramai 2,725 (52%) dan swasta/orang awam seramai 2,430 (47%). Statistik ini menunjukkan bahawa tanggapan umum terhadap pelakuan rasuah hanya dilakukan oleh penjawat awam adalah tidak benar sama sekali. Jumlah tangkapan penjawat awam berbanding swasta/orang awam tidak banyak berbeza.

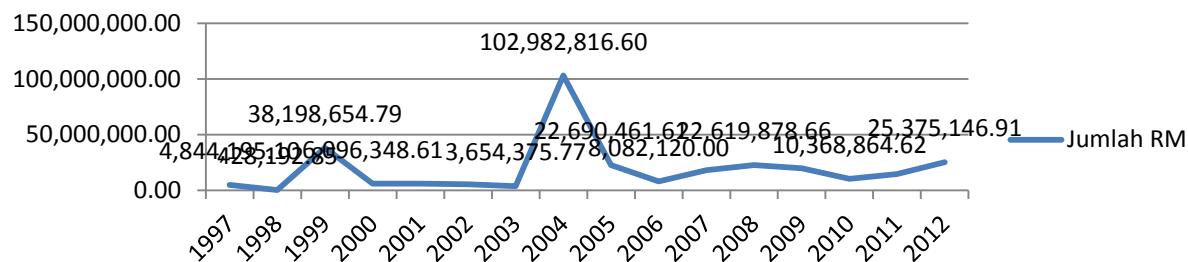
### **NILAI RASUAH**

Suapan boleh dinilai dalam bentuk kewangan dan bukan kewangan. Pada tahun 2013, SPRM menyiasat kes yang membabitkan harta bernilai lebih RM77 juta. Daripada jumlah tersebut, harta bernilai RM49 juta berjaya dirampas dan dilucut hak. Jumlah ini termasuklah kutipan denda yang diperintahkan oleh mahkamah.

Berdasarkan Jadual 2 di bawah, jumlah rasuah yang terlibat dari segi kewangan tidak banyak berbeza sepanjang tahun 1997 sehingga 2012 iaitu bernilai kurang dari RM40 juta setiap tahun, kecuali pada 2004 yang mana nilai rasuah yang terlibat mencecah sehingga RM103 juta.

Namun, terdapat juga rasuah yang tidak melibatkan wang ringgit seperti rasuah yang berbentuk pemberian hadiah, hamper, tanah, jam tangan, telefon bimbit, set elektronik dan peralatan elektrik, set golf, pakej percutian, kereta, motosikal dan rasuah seks.

## JADUAL 2:Nilai Rasuah (RM)



### SIASATAN, TUDUHAN DAN SABITAN

Apabila SPRM menerima aduan tentang kesalahan rasuah, aduan tersebut akan ditapis dan dikelaskan mengikut status. Status yang dimaksudkan ialah sama ada aduan tersebut akan disalurkan ke bahagian siasatan, bahagian risikan atau pendakwaan.

Setelah siasatan dilaksanakan dan tangkapan dibuat, SPRM akan mencadangkan supaya kes didakwa di mahkamah. Apabila selesai perbicaraan, mahkamah mempunyai dua kuasa sama ada mensabitkan orang kena tuduh atau melepaskannya.

Jadual 3 di bawah menunjukkan jumlah kertas siasatan yang dibuka berdasarkan maklumat yang diterima untuk sepanjang tempoh 2009 sehingga 2012. Sehubungan dengan itu juga, jumlah kes yang dituduh di mahkamah berdasarkan siasatan yang telah dibuat serta sabitan yang berjaya juga ditunjukkan untuk tempoh yang sama iaitu 2009 sehingga 2012. Undang-undang yang terpakai pada tempoh ini ialah Akta Suruhanjaya Pencegahan Rasuah 2009 (ASPRM).

Berdasarkan Jadual 3 di bawah, secara purata SPRM membuka kurang daripada 1000 kertas siasatan setiap tahun. Terdapat sedikit peningkatan dalam tindakan membuka kertas siasatan berdasarkan maklumat yang diterima selepas ASPRM diperkenalkan pada 2009.

Walaupun jumlah peningkatan membuka kertas siasatan tidak begitu ketara selepas ASPRM 2009 diperkenalkan, namun jumlah kes yang dituduh di mahkamah meningkat berdasarkan kertas siasatan yang didaftarkan dan melalui proses siasatan. Sepanjang tahun 2009 sehingga 2012 (iaitu untuk tempoh selama 4 tahun sahaja), terdapat 1204 kes yang dituduh di mahkamah berbanding 2293 kes yang dibawa ke mahkamah untuk tempoh 11 tahun bermula tahun 1997 sehingga 2008.

Lebih ketara lagi, jumlah sabitan meningkat mendadak terutama bermula tahun 2010 sehingga 2012. Untuk tempoh dari tahun 2009 sehingga 2012, dari jumlah 1204 kes yang dituduh di mahkamah, jumlah sabitan adalah sebanyak 852 sabitan kes. Ini menjadikan kadar sabitan

(*conviction rate*) yang amat tinggi iaitu sebanyak 70.76%.<sup>406</sup> Manakala kadar kes sabitan rasuah pada tahun 2013 telah meningkat lagi sebanyak 84%.<sup>407</sup> Kadar kes sabitan untuk tempoh 2009-2012 ditunjukkan oleh Carta 1 di bawah.



<sup>406</sup> Berbanding kadar sabitan sepanjang tempoh APR 1997 dilaksanakan iaitu peratusan sabitan ialah sebanyak 42%.

<sup>407</sup> Rosmawati Mion. "SPRM catat rekod terbaik tahun 2013" Utusan Malaysia September 2014.

Peningkatan kes yang dituduh di mahkamah dan jumlah sabitan yang meningkat selepas tahun 2009 menunjukkan keberkesanan ASPRM 2009 berbanding APR 1997. Perubahan daripada sebuah agensi penguatkuasa kerajaan kepada sebuah Suruhanjaya yang bebas menunjukkan langkah menjadikan BPR kepada sebuah Suruhanjaya adalah tepat dalam membanteras jenayah rasuah dengan lebih berkesan.

Di antara langkah positif yang diambil SPRM sejajar dengan status Suruhanjaya yang bebas ialah dengan menubuhkan Panel Penilaian Operasi (PPO). Fungsi utama panel ini ialah untuk menilai kes-kes yang dicadangkan ditutup oleh SPRM. Kes rasuah biasa ditutup kerana kekurangan bukti atau ketiadaan saksi.

Antara tahun 2009-2003 sebanyak 52 kes yang diputuskan ditutup oleh Timbalan Pendakwa Raya telah diminta dibuka semula oleh PPO. Daripada jumlah tersebut 8 kes telah didakwa semula di mahkamah. Menurut SPRM, kes rasuah yang mempunyai 90-95% kebarangkalian sabitan akan didakwa di mahkamah.

Selain PPO, SPRM juga dipantau secara pentadbiran oleh Panel Perundingan dan Pencegahan Rasuah. Fungsi panel ini ialah membantu tugas-tugas pencegahan dalam masyarakat.

Manakala ASPRM 2009 memperuntukkan penubuhan 3 buah badan bebas iaitu Jawatankuasa Khas Mengenai Rasuah<sup>408</sup>; Lembaga Penasihat Pencegahan Rasuah<sup>409</sup>; dan Jawatankuasa Aduan<sup>410</sup> untuk menjadi mekanisme ‘check and balance’ ke atas semua aktiviti penyiasatan dan operasi SPRM secara keseluruhan.

## KESIMPULAN

Dapatan kajian menunjukkan bahawa terdapat peningkatan kes siasatan, tangkapan dan sabitan berkait dengan rasuah di Malaysia. Peningkatan ini berlaku disebabkan penguatkuasaan undang-undang rasuah yang komprehensif iaitu ASPRM 2009. Selain itu, ASPRM 2009 telah memberi kuasa yang besar kepada SPRM untuk melantik panel-panel bebas dan pentadbiran untuk memantapkan lagi pelaksanaan dan penguatkuasaan undang-undang rasuah di Malaysia.

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<sup>408</sup> Lihat seksyen 14 ASPRM 2009

<sup>409</sup> Lihat seksyen 13 ASPRM 2009

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# CABARAN TADBIR URUS PENYALURAN PERKHIDMATAN: KES KEGANASAN TERHADAP WANITA

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## ABSTRAK

Tadbir urus(*governance*) seringkali melibatkan beberapa agensi yang bekerja bersama bagi mencapai matlamat yang ditetapkan. Isu-isu berkait dengan jaringan (*networking*) dan kolaborasi antara agensi menjadi lebih penting untuk dibincangkan apabila matlamat yang ingin dicapai itu melibatkan usaha mengelakkan kemudaratian atau membantu individu yang memerlukan khidmat bantuan. Masalah yang ingin diketengahkan dalam tulisan ini ialah berkaitan fenomena keganasan terhadap wanita (*violence against women*) atau lebih umumnya keganasan domestik (KD) yang menunjukkan peningkatan seperti yang dinyatakan oleh Kementerian Pembangunan Wanita, Keluarga dan Masyarakat dan juga Polis Diraja Malaysia. Penyaluran perkhidmatan bantuan kepada golongan ini cuba dipermudahkan dengan mewujudkan *One Stop Crisis Centres* (OSCC) yang melibatkan agensi-agensi seperti hospital, polis, Jabatan Kebajikan Masyarakat dan Pertubuhan-pertubuhan Bukan Kerajaan. Oleh itu, khidmat yang disalurkan kepada golongan vulnerabel ini bergantung kepada sejauhmana mekanisme kolaborasi antara agensi terbabit boleh berfungsi untuk membantu mereka pada waktu krisis. Kertas kerja ini bertujuan mengupas aspek tadbir urus agensi-agensi yang terbabit dalam menyalurkan perkhidmatan kepada mangsa keganasan. Perbincangan dibuat berdasarkan kajian kualitatif yang dilakukan dalam kalangan kakitangan dari agensi-agensi penyalur perkhidmatan dengan memfokuskan kepada cabaran-cabaran yang dihadapi.

**Kata Kunci:** Tadbir urus, jalinan hubungan, keganasan terhadap wanita, penyaluran perkhidmatan

## PENGENALAN

Tadbir urus didefinisikan oleh Rhodes (1997:15) sebagai "... *self organizing, interorganizational networks characterized by interdependence, resource exchange, rules of the game, and significant autonomy from the state.*" Definisi ini menjelaskan antara tema-tema yang selalu muncul apabila membincangkan tentang tadbir urus merangkumi alat-alat atau *tools* (seperti peraturan dan sumber-sumber), siapa yang terlibat (seperti pihak kerajaan atau persendirian), matlamat yang ingin dicapai dan apa yang berlaku dalam tadbir urus (seperti penggunaan atau aplikasi kuasa dan kerjasama antara pelbagai pihak). Tadbir urus juga boleh dikonsepsualkan dari sudut skop atau *coverage* yang boleh bersifat nasional atau antarabangsa. Disebabkan skopnya yang luas, maka wacana tentang tadbir urus perlu dihadkan kepada ruang lingkup tertentu bagi membolehkan perbincangan dilakukan dengan lebih tersusun dan menyeluruh.

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Tulisan ini membincangkan tentang jalinan dan kolaborasi agensi-agensi yang terlibat dalam penyaluran khidmat sosial kepada wanita yang mengalami masalah keganasan terutama keganasan rumah tangga. Perbincangan ini memfokuskan kepada persoalan bagaimana tadbir urus memberi kesan terhadap kebijakan atau kesejahteraan mangsa keganasan yang memerlukan bantuan. Tumpuan diberikan kepada proses penyaluran khidmat dan pengagihan sumber-sumber dalam kalangan agensi yang terbabit secara kolaboratif dalam ‘ekosistem’ penyaluran bantuan.

Perbincangan ini perlu diberikan perhatian yang sewajarnya dari sudut tadbir urus kerana walaupun ia bersifat agak lebih spesifik, namun isu ini memberi kesan mendalam kepada polisi negara terutama dari segi pelanggaran hak-hak asasi manusia. Kegagalan dalam tadbir urus pada peringkat mikro ini boleh memberi kesan kepada agenda polisi yang lebih besar, memandangkan ada pendapat yang mengatakan bahawa wujud kesan rantaian daripada kegagalan implementasi polisi pada peringkat bawah (Lipsky, 2010). Kertas kerja ini terbahagi kepada tiga bahagian. Bahagian pertama mengariskan secara ringkas aktiviti penyelidikan kualitatif yang dilakukan dan dijadikan atas tulisan ini. Bahagian kedua memfokuskan kepada jalinan dan kolaborasi yang wujud dalam penyaluran khidmat kepada mangsa keganasan yang memfokuskan kepada pemegang taruh (*stakeholders*) yang terlibat dalam *One Stop Crisis Centre* (OSCC) yang dilaksanakan di hospital. Bahagian terakhir membincangkan cabaran-cabaran dalam konteks tadbir urus penyaluran khidmat.

## LATARBELAKANG KAJIAN

Kajian yang menjadi latar kepada tulisan ini menggunakan kaedah kualitatif yang melibatkan temubual berstruktur dalam kalangan 18 orang responden yang terlibat dalam perlaksanaan polisi dan program terhadap mangsa keganasan terhadap wanita. Responden-responen ini mewakili jabatan-jabatan kerajaan seperti Polis Diraja Malaysia (Bahagian Siasatan Jenayah dan Unit Keganasan Seksual), Jabatan Kebajikan Masyarakat, Jabatan Pembangunan Wanita, Hospital dan Pertubuhan-pertubuhan Bukan Kerajaan seperti *All Women’s Action Society* (AWAM), *Women’s Centre for Change* (WCC), *Women’s Aid Organization* (WAO) dan Rumah Nurul Hana. Pemilihan agensi adalah dibuat berdasarkan kepada peranan yang dimainkan oleh agensi-agensi tersebut dalam OSCC. Sementara responden yang terlibat pula adalah ditetapkan oleh agensi atau organisasi masing-masing. Mereka adalah terdiri dari doktor, pegawai polis, pegawai kebijakan, pekerja sosial, kaunselor, pengurus program, pengarah, penolong pengarah dan pengurus pertubuhan.

## PEMEGANG TARUH (*STAKEHOLDERS*) DALAM PENYALURAN KHIDMAT KEPADA MANGSA KEGANASAN

Bahagian ini membincangkan tentang pemegang taruh (*stakeholders*) yang terlibat dalam menyalurkan khidmat kepada mangsa keganasan terhadap wanita. Terdapat pelbagai kaedah yang diperkenalkan untuk memperbaiki khidmat kepada mangsa keganasan yang dilaksanakan oleh pelbagai pihak. Antaranya ialah pembentukan OSCC yang dilaksanakan di bawah Kementerian Kesihatan dan beroperasi terutamanya di hospital-hospital besar di setiap negeri di Malaysia. OSCC melibatkan rangkaian pelbagai agensi (*inter-agency network*) seperti hospital, polis, Jabatan Kebajikan Masyarakat, Pertubuhan-pertubuhan bukan kerajaan (NGOs) seperti *Women’s Aid Organisation* (WAO), Biro Bantuan Guaman dan Jabatan Agama. Di Pusat ini mangsa boleh mendapatkan pemeriksaan kesihatan dan rawatan dan pada masa yang sama memperolehi bentuk-bentuk bantuan lain yang diperlukan seperti pengumpulan bukti atau specimen, membuat laporan polis, khidmat kaunseling, mendapatkan tempat

perlindungan sementara dan bantuan perundangan. Kakitangan dari agensi-agensi yang berkaitan akan datang ke OSCC bagi menyalurkan khidmat apabila dipanggil oleh pihak hospital. Ini kerana sebelum OSCC diperkenalkan, mangsa perlu pergi sendiri dari satu agensi ke satu agensi yang lain bagi mendapatkan khidmat yang diperlukan. Contohnya, mangsa perlu pergi ke balai polis polis untuk membuat laporan polis sekiranya ingin membuat pendakwaan, ke hospital untuk membuat pemeriksaan dan mendapatkan rawatan, ke Jabatan Kebajikan Masyarakat untuk mendokumentasi kes bagi mendapat Perintah Perlindungan Sementara atau ke NGOs untuk mendapatkan tempat berlindung. Mangsa juga perlu menguruskan sendiri usaha untuk membawa kes ke mahkamah sekiranya mereka inginkan. Kesemua proses ini memakan masa, tenaga dan memberi kesan mendalam kepada psikologi mangsa yang mungkin telah terjejas akibat keganasan terhadap mereka. Kewujudan OSCC membolehkan kesemua agensi yang berperanan dalam proses penyaluran bantuan kepada mangsa keganasan berfungsi dalam suatu bentuk ekosistem yang berdasarkan prinsip kerjasama dan perkongsian sumber.

Inisiatif ini mula diperkenalkan pada tahun 1986 di Hospital Universiti Malaya, Kuala Lumpur sebagai projek rintis hasil dari Kempen Anti Keganasan Terhadap Wanita yang diketengahkan oleh pertubuhan-pertubuhan bukan kerajaan (NGOs) seperti *All Women's Action Society* (AWAM) dan *Women's Aid Organisation* (WAO). NGO terbabit mendesak pihak kerajaan untuk mewujudkan mekanisme khas bagi menyalurkan khidmat kepada mangsa keganasan. Walau bagaimanapun, ia mengambil masa selama lapan tahun untuk hospital lain melaksanakan konsep ini iaitu di Hospital Kuala Lumpur. Pada tahun 1996, Kementerian Kesihatan telah mengeluarkan arahan supaya inisiatif ini dikembangkan ke semua hospital. Tindakan ini diambil bertujuan mempermudahkan perlaksanaan aktiviti dan khidmat dari pelbagai agensi di satu tempat dan meringankan beban kepada mangsa. Perlaksanaan mekanisme ini juga membawa kepada peningkatan kerjasama antara pihak hospital dan NGOs dari segi peningkatan pengetahuan dan kemahiran. Ini dilakukan melalui latihan yang dikendalikan oleh NGOs kepada doktor dan jururawat. Tumpuan latihan adalah kepada cara mengenal pasti dan berurusan dengan mangsa yang trauma akibat keganasan yang berlaku ke atas mereka (WAO, 2011).

Tindakan mewujudkan OSCC seharusnya wajar dipuji kerana ia secara langsung telah mengambilkira keperluan mangsa yang mungkin terjejas dari segi mental dan fizikal mereka akibat kejadian yang berlaku. Namun kewujudan agensi yang pelbagai dalam satu konfigurasi saling bergantungan di antara satu sama lain membawa cabaran yang tersendiri. Isu kekusutan yang wujud dalam tadbir urus merupakan salah satu daripada tema yang telah dicerapkan daripada respon kakitangan agensi terbabit hasil kajian yang telah dijalankan.

## **KEKUSUTAN DALAM PENYALURAN KHIDMAT KEPADA MANGSA KEGANASAN DOMESTIK: CABARAN DALAM KONTEKS TADBIR URUS**

Meskipun terdapat akta khusus melibatkan masalah keganasan dan keganasan domestik, proses melaksanakan akta itu sendiri dipenuhi dengan cabaran. Kekusutan melibatkan tadbir urus pengurusan kes keganasan paling ketara berlaku pada peringkat implementasi yang mana peranan utamanya dimainkan oleh personel bawahan. Michael Lipsky (2010) menamakan cabaran dalam proses tadbir urus yang berlaku pada tahap bawahan sebagai *street-level bureaucracy* (birokrasi tahap pelaksana). Lipsky menjelaskan bahawa pada tahap bawahan, personel yang bertanggungjawab melaksanakan sesuatu polisi menjadi penentu kepada sejauh mana polisi diterjemahkan ke dalam tindakan yang konkret justeru menentukan keberhasilan polisi tersebut. Menurut Lipsky (2010: 221):

*"Street-level bureaucrats may indeed 'make' policy in the sense that their separate discretionary and sanctioned behaviors add up to patterned agency behavior overall. But they do so only in the context of broad policy structure of which their decisions are a part. Street-level bureaucrats do not articulate core objectives or themselves develop mechanisms to achieve them."*

Oleh yang demikian, persoalan sejauh mana akta dan polisi berkaitan berjaya merungkai permasalahan keganasan terhadap wanita banyak bergantung kepada strategi yang digunakan oleh personel pelaksana. Ini kerana kakitangan bawahan yang melaksanakan polisi merupakan benteng barisan hadapan yang bersemuka dengan pelbagai ragam situasi yang timbul apabila menguruskan sesuatu kes. Seorang kakitangan OSCC menegaskan:

"Di atas kertas, semua nampak mudah dan jelas, seperti *flowchart* yang tunjukkan satu *step* ke *step* lain. Tapi ini berbeza dalam situasi sebenar sebab ada ground rules yang perlu diikut. Kami kakitangan bawah dalam organisasi, lebih tahu kesukaran untuk uruskan kes."

Meskipun pada tahap bawahan bukanlah menjadi tugas mereka menghasilkan mekanisme untuk mencapai sesuatu matlamat polisi, namun ada kalanya mereka perlu mengambil tindakan berbentuk improvisasi dan penggunaan budi bicara (atau *ground rules* seperti yang disebut oleh responden dalam petikan di atas) demi memastikan tugas mereka terlaksana. Dalam konteks keganasan terhadap wanita, antara cabaran yang muncul hasil kekusutan tadbir urus seperti mana yang disebut oleh responden di atas termasuklah kepincangan koordinasi antara agensi, masalah bidang kuasa dan kekangan sumber.

### **Masalah Koordinasi**

Kebiasaan pengurusan sesuatu kes keganasan terhadap wanita melibatkan banyak pihak. Ini kerana isu seperti ini memerlukan kes disiasat dan segala butiran berkaitan keganasan yang berlaku direkodkan dengan terperinci, siasatan perlu dilakukan, kerjasama dari pihak terbabit perlu diperolehi dan prosedur mahkamah perlu dilalui. Bagi setiap keperluan ini, ada pihak yang berbeza yang bertanggungjawab memenuhi sebelum pihak berikutnya boleh melaksanakan peranan mereka. Bagi agensi seperti WAO yang menyediakan khidmat perlindungan sementara bagi mangsa keganasan, adalah menjadi suatu bentuk cabaran yang besar bagi mereka menangani kes seumpama ini. Menurut seorang pekerja sosial yang berkhidmat di WAO:

"Kes perbicaraan mahkamah ambil masa lama. Kadang-kadang ambil masa lebih setahun untuk selesai siasatan dan dapat kelulusan dari Penolong Pendakwaraya untuk dapat tarikh bacaan dan mendakwa orang yang dituduh. Banyak kes, perbicaraan pertama tak berkesan atas beberapa sebab; peguam mereka kata dia tidak terima rekod perubatan, tak dapat *statement* dari Pendakwaraya. Jadi pendakwaan ditangguh tiga atau empat bulan... Tak terkejut pun... salah satu dari kes kami dah tiga tahun tapi tak pernah dibicara walau sekali pun."

Kerjasama yang erat menjadi kemestian apabila proses pengurusan klien melibatkan koordinasi agensi yang berbeza. Setiap agensi yang terbabit dalam ekosistem penyaluran bantuan seperti keganasan memiliki fungsi yang tersendiri. Maka tidak hairanlah sekiranya ada agensi yang

memerlukan sumber serta kepakaran dari pihak lain memandangkan ia sendiri memiliki kekangan yang mendorong pergantungan tersebut. Misalnya WAO sebagai sebuah organisasi yang menyediakan perlindungan kepada mangsa keganasan perlu mendapat kerjasama dari agensi lain seperti hospital dan pihak polis bagi melakukan fungsi yang di luar kemampuan atau skop peranannya. Kes yang melibatkan keganasan yang berlaku di waktu malam dan memerlukan klien dirujuk kepada pihak berkuasa yang berbeza misalnya menyukarkan pengurusan di pihak WAO sekiranya tidak mendapat bantuan dari agensi lain. Situasi ini dijelaskan oleh seorang kakitangan di WAO:

"Walaupun kami ada staf yang bertugas waktu malam, tapi kami tak ada kemudahan-kemudahan lain. Hospital ada lebih banyak kemudahan banding dengan kami, mereka patut ambil inisiatif untuk hantar mangsa pada kami. Kami memang boleh terima bila-bila masa. Tapi mereka patut datang dan serahkan mangsa pada kami. Bukan minta kami pergi ambil mangsa. Ia juga libatkan banyak kertas kerja dan borang untuk *transfer* mangsa dari hospital atau pihak polis."

Ada ketikanya apabila koordinasi tidak berlaku dengan betul, atau ada pihak yang gagal melaksanakan peranan mereka dengan sempurna, tindakan bersifat improvisasi atau budi bicara perlu dilakukan. Ini bagi memastikan situasi klien tidak menjadi bertambah buruk. Pekerja sosial yang sama di WAO menjelaskan:

"Contohnya ada banyak kes mangsa keganasan rumah tangga pergi ke balai polis untuk buat laporan, polis tu cakap 'ohh, ini masalah rumah tangga, kami tak boleh tolong. Kami ada banyak kes bunuh, kes rogol yang nak disiasat. Masalah rumah tangga, pergi balik bincang sama-sama atau pergi ke pejabat agama, mahkamah syariah.' Untuk wanita yang tak tahu hak-hak mereka, akan balik ke rumah dan kena dera lagi. Itu sebab kalau dia orang jumpa kami, kami akan pergi ke balai polis untuk *report* lagi untuk dapatkan *Interim Protection Order* (IPO) dari mahkamah."

### Dilema Bidang Kuasa

Jelas sekali antara dilemma para pelaksana dalam menangani kes-kes keganasan adalah apabila berlakunya kekangan bidang kuasa. Meskipun percanggahan bidang kuasa adalah lumrah dalam seting melibatkan koordinasi pelbagai agensi, namun apabila ianya berlaku implikasi utamanya ialah kepada kesejahteraan mangsa. Di WCC, peruntukan undang-undang dan pihak lain yang berkuasa membuat interpretasi terhadap sesuatu kes melibatkan keganasan ada kalanya menyulitkan keadaan. Pihak WCC pula tidak memiliki kuasa untuk menentukan situasi sebenar klien kerana ia melibatkan peruntukan undang-undang yang menetapkan hanya pihak-pihak tertentu boleh berbuat demikian. Keadaan ini digambarkan oleh seorang responden di WCC:

"Tapi masalah juga berpunca dari pegawai penguatkuasa sebab kalau kita cakap didera secara psikologikal atau mental, itu tak boleh dibuktikan kecuali kalau kita dapat bantuan perubatan dari ahli psikiatrik atau *psychologist* yang boleh buktikan kita dah didera dari segi mental."

Dilema yang sama diceritakan oleh responden dari OSCC:

"Kalau ibu bapa bawa anak berumur 20 tahun ke atas dan minta kita tentukan sama ada dia diperkosa atau tak, kami tak boleh buat terus. Kami kena tunggu polis datang dan beri kebenaran untuk periksa pesakit. Ini penting sebab masa bicara di mahkamah, peguam akan tanya sama ada pemeriksaan dilakukan selepas mendapat kebenaran pihak polis. Kes tak boleh *proceed* ikut jadual kalau kami tak ikut prosedur yang ditetapkan."

Manakala bagi pihak personel pelaksana, had bidang kuasa melemahkan mereka sebagai ejen perubahan. Hatta pada ketika mereka berasa benar-benar perihatin terhadap mangsa, ketiadaan jalan keluar dari dilemma yang dihadapi boleh menyebabkan mangsa tidak dapat diberikan pertolongan sewajarnya. Di WCC, kuasa menentukan status sesuatu kes yang diuruskan selalunya berada di luar had kuasa mereka. Misalnya seorang responden WCC menjelaskan dilema yang dialami dalam menentukan status gangguan seksual:

"Contohnya, tak ada undang-undang untuk gangguan seksual ... tak boleh gubal undang-undang gangguan seksual lagi sebab perkara itu sangat subjektif. Kita tahu bila orang ganggu kita, tapi kalau pada waktu kita diganggu, dia rasa itu hanya gurauan...seloroh...jadi dia boleh kata...sebenarnya saya tak ganggu awak. Tapi dari sudut yang lebih luas, kita rasa apa yang dibuat ialah gangguan seksual."

Berdepan dengan kes-kes seperti ini, pihak WCC terpaksa melakukan improvisasi bagi membolehkan mangsa mendapat perhatian yang sewajarnya. Responden di WCC menceritakan pengalamannya:

"Saya ada kes yang mana suami yang dera isteri secara *verbal*...kita boleh kata kes ini sebagai deraan dari segi mental dan psikologi. Dah banyak kali dia buat laporan polis, tapi tak ada tindakan yang diambil. Jadi dia buat aduan pasal polis yang tak ambil tindakan. Lepas tu, kami tolong dia pasal hal ini.... kami juga libatkan Pegawai Kebajikan yang kemudian bawa dia untuk buat laporan kes. Lepas lihat kes, Majistret terus keluarkan IP (*Interim Protection*)."

### Kekangan Sumber

Kebanyakan agensi menghadapi situasi sama apabila isu tentang sumber diperkatakan. Satu reaksi tipikal dinyatakan oleh seorang responden dari WCC apabila ditanyakan sama ada kakitangan yang ada di agensi mencukupi atau tidak:

"Memang saya akan kata tak cukup. Kalau kita nak bagi pelbagai bentuk khidmat, kita perlukan lebih banyak staf untuk buat kerja. Tapi untuk tujuan dapatkan peruntukan, kami limitkan jumlah yang diminta. Staf juga perlu lengkapkan diri supaya boleh buat banyak kerja termasuk bagi khidmat dan kadang-kadang buat kerja pentadbiran, dan sebagainya."

Dalam konfigurasi salingbergantungan antara agensi yang pelbagai, kekurangan sumber tentu akan berlaku pada mana-mana agensi terlibat. Dalam ekosistem sebegini, sebuah agensi tidak mungkin mampu menyediakan segala sumber yang diperlukan oleh klien. Oleh kerana itu wujudnya salingpergantungan antara agensi yang mana antara fungsi utamanya ialah

perkongsian sumber. Misalnya dalam kes keganasan agensi seperti pihak polis dan hospital berperanan sebagai benteng utama bagi mangsa mendapatkan bantuan. Pihak polis memiliki sumber yang bersesuaian dengan fungsi pencegahan kemudaratan kepada mangsa. Ia juga memiliki autoriti perundangan yang membolehkan tindakan diambil terhadap pelaku jenayah. Begitu juga hospital yang menjadi lindungan barisan hadapan (*front-line refuge*) bagi mangsa sama ada untuk mendapatkan rawatan atau sebagai tempat perlindungan jangka pendek. Manakala agensi lain seperti Jabatan Kebajikan Masyarakat dan WAO menjadi agen bantuan susulan untuk perlindungan yang lebih bersifat jangka panjang.

Oleh kerana itu,kekangan yang ada pada satu-satu agensi sepatutnya boleh ditampung oleh agensi lain yang berkaitan. Dari segi kakitangan misalnya, kekangan yang timbul bukan sahaja melibatkan bilangan akan tetapi sikap serta profesionalisme kakitangan juga boleh menyebabkan proses kerja dan pengurusan bantuan menjadi terganggu. Keseluruhan ekosistem bantuan akan terjejas sekiranya agensi yang sepatutnya menyediakan prasarana yang khusus kepada fungsinya tidak mampu menyediakan kemudahan tersebut di kala diperlukan. Dalam hubungan ini seorang kakitangan di hospital menyuarakan pandangan beliau yang menggambarkan kepincangan yang berlaku:

*"Personally, saya rasa di hospital kerajaan pun ada staff yang bersikap tak profesional dan tak membantu. Ada masa klien datang dan bagitau dia baru diperkosa... staf tak nak uruskan kes sebab shifkerja dia dah nak habis. Susah kalau ada orang macam ni... Kes ini sama dengan polis yang tak nak terima laporan kalau kes berlaku luar dari kawasan dia. Kalau macam tu siapa nak *fight* bagi pihak mangsa atau pesakit?"*

Jika diambilkira hakikat bahawa proses pengurusan kes sebegini melibatkan suatu ekosistem yang terdiri daripada pelbagai entiti salingbergantung antara satu sama lain, maka tindakan kakitangan yang tidak profesional akan menyebabkan berlaku kesan rantaian yang boleh memberi kesan kepada keseluruhan proses kerja organisasi yang terlibat.

Tidak dapat dinafikan bahawa kes melibatkan keganasan selalunya adalah kes yang mendesak, sama ada dari segi masa atau keperluan perlindungan oleh mangsa. Mangsa keganasan perlukan perhatian yang serius apatah lagi sekiranya wujud keadaan yang mengancam nyawa atau ada tanggungan lain yang terlibat sama. Namun dalam banyak keadaan, kekangan sumber dari segi tenaga kerja dan kewangan merupakan cabaran utama yang perlu dihadapi. Seorang responden dari WCC memperihalkan bagaimana kekangan kakitangan memberi kesan terhadap proses perolehan IPO:

*(Perolehan IPO memakan masa) "Dua ke tiga hari... la ambil masa lebih panjang kalau Pegawai Kebajikan tak ada. Mungkin ambil masa seminggu. Tapi kita perlu kejar dia orang. Kadang-kadang dia orang cakap... 'Ohh, saya nak kumpul beberapa kes kemudian baru pergi mahkamah' kalau dia orang tak rasa itu satu emergency. Tapi kalau itu emergency terus saja dalam 24 jam boleh pergi mahkamah. Klien boleh dapat IPO."*

Dari sudut tadbir urus, kekangan sumber yang terlalu ketara atau melibatkan fungsi utama adalah sesuatu yang perlu diberi perhatian. Seperti yang disebut oleh responden dalam petikan di awal tadi, kekurangan sumber akan sentiasa berlaku akan tetapi cara pengurusan dan tindakan improvisasi terutama dari segi bagaimana keutamaan diberikan berdasarkan sumber yang ada akan menambah kecekapan dan keberkesanannya agensi dalam mengurus operasinya.

### **Cabaran Tadbir Urus**

Dalam kajian yang dilakukan, hampir kesemua responden yang ditemubual menyatakan dalam nada yang sama kebimbangan mereka dalam melaksanakan fungsi dan tanggungjawab mereka, iaitu perihal ketiadaan modus urus tadbir yang mampu memenuhi keperluan mereka. Dilema mereka amat mudah difahami memandangkan urusan yang melibatkan kerjasama erat pelbagai pihak bukanlah sesuatu yang mudah untuk dilaksanakan. Namun daripada imbasan pandangan serta buah fikiran yang dilontarkan, terdapat indikator bahawa proses tadbir urus dalam konteks kes-kes keganasan sentiasa berhadapan dengan beberapa cabaran:

- Agensi yang bersedia memahami kehendak rakan kongsi kerjasama akan menghasilkan pengurusan yang mantap namun sebaliknya akan berlaku sekiranya agensi kurang menghayati semangat kerjasama dan salingbergantungan yang wujud sesama mereka. Ini menjelaskan kepada keperluan dokumentasi bertulis bagi menjelaskan peranan yang perlu dimainkan oleh setiap agensi. Namun menurut Colombini, Siti Hawa, Watts dan Mayhew (2011) ketiadaan dokumentasi tentang peranan setiap agensi telah menjelaskan keberkesanannya tadbir urus di OSCC.
- Mesyuarat penyelarasan sering diadakan melibatkan pemegang taruh yang berkaitan, namun apa yang termaktub dalam perbincangan selalunya tidak selari dengan apa yang berlaku di lapangan.
- Cabaran koordinasi yang sukar ini mungkin disebabkan oleh ketidaktentuan situasi yang terlibat dalam pengurusan kes-kes keganasan. Misalnya apabila kes berlaku di waktu malam di mana operasi agensi tidak berada pada tahap optimum, maka berbagai masalah boleh timbul.
- Dalam banyak situasi, agensi perlu melakukan improvisasi dan budi bicara dalam melaksanakan fungsinya bagi mengurangkan kerenah birokrasi. Hal ini dikongsi oleh salah seorang responden dari WCC:

“Kami tak ada masalah besar... sebab kami bekerja rapat dengan polis, hospital dan Jabatan Kebajikan. Kalau ada masalah staff kami akan jumpa terus dengan pegawai, kalau pegawai tak dengar atau beri perhatian kami jumpa dengan pegawai lebih tinggi. Ini cara kami berhadapan dengan masalah.”

Proses tadbir urus yang baik lazimnya melibatkan perundangan yang sistematik dan perlaksanaan yang teratur. Menangani situasi mangsa keganasan memerlukan keseimbangan tindakan dalam bentuk pertimbangan yang rasional, berprosedur dan tersusun. Namun ada ketikanya apabila tindakan berprosedur gagal menghasilkan keputusan yang memuaskan, atau mengambil masa yang lama untuk dilaksanakan. Dalam keadaan begini tindakan melaksanakan improvisasi yang sesuai turut diperlukan, terutama bagi meredakan situasi ketegangan emosi klien dan ketidaktentuan situasi yang berlaku.

### **KESIMPULAN**

Kolaborasi dan saling kebergantungan antara agensi-agensi yang berbeza dalam perlaksanaan polisi dan penyaluran perkhidmatan memang tidak boleh dielakkan. Sehubungan dengan itu, adalah sangat kritikal untuk kita memberikan perhatian serius dengan meneliti tadbir urus mekanisme yang wujud bagi memastikan setiap agensi memainkan peranan bagi mencapai

matlamat bersama. Ini seterusnya mampu menjamin kecekapan dan keberkesanan dalam penyaluran khidmat. Artikel ini secara khususnya membincangkan cabaran-cabaran yang dihadapi dalam tadbir urus OSCC bagi menyalurkan perkhidmatan kepada mangsa keganasan terhadap wanita. Kajian yang dijalankan dalam kalangan penyalur perkhidmatan mendapati terdapat masalah dari segi koordinasi antara agensi-agensi yang terlibat sehingga menyebabkan sesuatu tindakan yang perlu diambil itu sering tertangguh. Wujud juga dilema dari segi ketidakjelasan bidang kuasa oleh agensi-agensi terbabit sehingga menyebabkan agensi-agensi ini saling menganggap sesuatu tindakan itu bukan tugas mereka dan hanya menyerahkan kepada agensi lain untuk melaksanakannya. Kekangan sumber kewangan dan guna tenaga juga membawa kepada ketidakcekapan tadbir urus. Ini secara tidak langsung telah menjelaskan keberkesanan penyaluran perkhidmatan kepada mangsa keganasan.

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# THEORY VERSUS PRACTICE: DILEMMA OF PUBLIC POLICY PARTICIPATION IN THE DEVELOPING COUNTRIES

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## ABSTRACT

Practice of public policy participation in developing countries defies conventional theories. The participatory policy process of today is prominently known to be elites dominating the entire process, and control every bit of its stages. In this relationship, citizens participate to fulfill the requirements. The scenario avails citizens with limited unwarranted choice to influence the policy. Various contending views provide account of different facets of policy process in bits with little coherency and details. The existing impasse between the theories and practices of public policy in developing countries has call for redirecting the beam light into deepening search for real life experiences, and contextual antecedents of the societies in question in order to transposing theory. Given the fact that policies produced from true sense of participatory process stand the test of sustainability, bring to the fore, the importance of envisaging ownership-based participatory approach to policy formulation and implementation. This paper highlighted the ongoing discussions about different perspectives of participatory policy process and specifically appealed for conceptual shift from traditional perspective, which emphasizes channel of participation to a more holistic citizen's centric approach that emphasizes on citizen control of the policy process.

**Keywords:** Ownership Based Participatory Policy Process (OBPP), Collective Ownership, Process Control, Quality Decision Outcome, Developing Countries.

## INTRODUCTION

Public policies and democratic decisions are meant to solve citizen problems and or advance their course. This point underscores effectiveness of policy and democratic decisions to the development of society and its economic prosperity. Lie at the heart of effective policies and democratic decisions, citizen acceptance and sustainability of the policies. Direct citizens' participation and ways to improving it is the subject of an ongoing debate that required increasing attention to repositioning the vital role of citizens in ensuring successful policies.

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History of public policy in developing countries of Africa has been of manipulation, recalcitrant reproduction of wash-wash policies and archive of their carcasses. Average life span of public policies and democratic decisions in developing countries is short. One major reason responsible for the short-lived of most government policy is elitist domination of the policy process at the detriment of citizens' acceptance and ownership. Public policy is susceptible to premature termination in the circumstance it lacks basic support of the citizens. Hence, citizens' control of the policy process and ownership of the decision outcome become major issue of grave concern.

### **PUBLIC POLICY FORMULATION IN DEVELOPING COUNTRIES: STATE OF THE ART**

Despite growing number of literature on participatory policy processes, there have been few attempts to assess actual experience (Keeley & Scoones, 1999). Sometimes elites deliberately structure a systems to discourage citizens participation or at worst scenario prevent it in such a way "citizens either do not know how to, do not want to, or do not even care to try" (Robert, 2004, p 317). In developing countries, non-elite citizens hardly allowed initiating policy instead; elites initiate policies that reflected their line of thought, experiences, dreams and affluence economic interests. Those elites are urban cities oriented exposing to lifestyle of developed societies while having limited knowledge, experiences; and concern to real problems and demands of rural life, home to majority of the populace.

Travelling wide across developed countries of Europe and through ICT -internet, the elites became fascinated with the development strides of the west including performance of their policies and programs. Deceit by a notion of development and without taking into cognizance differences of contextual environments; socio-economic and political antecedents, policies of the western countries are leapfrog only to seek pseudo participation of citizens of some sorts in what Arnstein (1969) typology of participation termed as manipulation, therapy, placation and tokenism. Apparently, notwithstanding public funds are spent to execute policies, often, policies and democratic decisions in developing countries has turn into a mere conduit for siphoning public funds. And in most cases the policy outcomes benefit negligible percentage of the population who control the process (elites).

Consequently, the scenario has flung large populace into a state of hunger, poverty and misery life. Nevertheless, if citizens are allowed quality participation, policy preference should have been on quality education, food security, job creation, portable drinking water, electricity, good road networks, quality health care services, housing etc as against frivolous fantasies of space satellite, rocket, warship, cable cars, matrix cars, etc. In demonstrating the extent to which public policy processes in developing countries are abused, advanced technologies are often proposed without prerequisite complementary infrastructure (Maiye& McGrath, 2008).

It's blatantly clear that depriving citizen quality participation may lead to decreasing trust in the process, total loss of confidence and eventual civil disobedient. Consequently therefore, the phenomenon of elite domination of public policy arena in developing countries (Holmes & Scoones, 2001) subjects non-elites citizens to resolve to resistance in order to influence policy (Gaventa & Robinson, 1999). The situation suggest for exploration of structural changes in the spheres of the socio-political relations to advance the course of sustainable public policy (Alabi, 2009; Hai n.d.).

## **DIRECT PARTICIPATION VERSUS INDIRECT PARTICIPATION**

The discussions juxtaposing elite domination as against direct citizens participation has been an ongoing debate. A modern time apologists of elite domination represented by the proponent of representative democracy or indirect citizens participation criticize direct citizens' participation of among others, the tendencies of the opinion of uninformed public to override rationality and expertise, and tyranny of the majority. According to this view, indirect participation simplifies the complexities through technical, political and administrative expertise of officials designated and trained for the purpose. It also contemplates that given the size and a complexity of modern society, direct citizens' participation is a mere utopia (Dahl, 1989). In a circumstance involving plea for direct citizens' participation, the major challenge is that of distinguishing reality from myth (Buck & Stone, 1981).

Advocates of elitists' policy orientation further argued that knowledge and capacity to participate are conditions for the citizens' participation in political, technical and administrative policies and decisions (Barber, 1984; Box, 1998). They maintain a ground that for the citizens to effectively take part in policy making towards achieving ownership, there is need for them to have professional assistance. Conclusively, a hypothetical period of direct citizens' participation has reached its terminal red spot (Robert, 2004).

On the other wing, advocates of direct citizens' participation contended that direct participation of citizens in policy and democratic decisions is the viable means of resolving conflicts, enhanced institutional accountability, and an avenue where potentials of private individuals could be transforming into public goods. A good policy process places considerable emphasis on resourcefulness of citizens and take into cognizance their conditions and point of views. In essence, policy can be more effective when it is considered not only an avenue where citizens express their interests but also process where citizens identify problems, engage in problems' solving, monitor situations, convince other stakeholders and mobilize resources (Moro, 2005). Quality participation must allow unconditional participation of citizens at all the stages of the policy process, initiation inclusive. Sincerity, equity and transparency of the process must also be ensured to guarantee policies reflect true interest of the citizens to attain collective ownership as against elites' imposition.

However, discussions on the feasibility of direct citizens participation is inconclusive in that a number of parameters require critical evaluation, thus, the levels of government and the type of sectors involved, nature of the issues at the stake and the phase of policy process; size and kind of the groups involved, including instruments for participation (Robert, 2004). Others areas in cogent need of special attention include socioeconomic and political setting of the society in question, legal provisions, rule of law and degree of constitutionalism without which direct citizens' participation could be far from reality.

## **REDEFINING PARTICIPATION AND THE QUESTION OF MISSING LINK**

Some of the rarely assessed challenges associated with democratic institutions in developing countries include societal values, tradition and belief system; absence or poor state of prerequisite complementary ICT infrastructure leading to inaccurate diagnosis of the actual problems (Maiye & McGrath, 2008), and to a greater extent determine pattern of the public policy (Hai, n.d.). The dilemma of policy process in developing countries symbolizes apparent lack of articulated approach to participatory policy process. For the purpose of guiding our discussion

towards better understanding of participatory policy, it's pertinent to ask what participation is meant to achieve.

Participatory policy is popularly conceptualized as the citizens' involvement in taking decisions affecting them (Agarwal, Mittal,&Rastogi, 2003; Onu&Chiamogu, 2012). It is often mentioned that participation is the essence of democracy (Roberts, 2004) and democracy is a game of number so also the concept of participatory decision at unit of organization. In organizational management, participation is a characteristic of good decision making, presumably, the moreinclusiveness and numbersof the actors involved the better the policy process. The quality, effectiveness and legitimacy of public policy aretherefore measured by the extent to which wide range of policy actors participate in the process (Hai, n.d.). Various contending viewsrolled out to conceptualize effective policy process have failedto withstand the test of counter argument of some sorts.

### **Participation as Access to Public Information**

E-government scholars haveview e-government initiatives comprising of e-democracy, e-administration and e-participation as catalyst to facilitate increase in participation of democratic process (Grant, Hall, Wailes, & Wright, 2006; MacKenie&Wajcman, 1999; Williams & Edge, 1996; Carter & Belanger, 2012). Embedded in this viewpoint, participation is measured by the amount of information accessible to citizens. Accordingly, participation entails related activities of searching and accessing information as well as providing feedback by the policy actors. Hence, technology is considered a viable means to enabling citizens' access public information freely and conveniently (Majekodunmi, 2013).Conceding the idea, Omogbadeguni, Uwadia and Ayo (2010) stressed that provision of high-quality information relevant to the citizens is the ultimate goal for deploying ICT in democratic process .Electronic transactions enable dominant stakeholders to collect clients' information as an input for strategic decision making (Basu, 2004).

A perspective by the advocates of good governance suggests that public participation facilitate better policy formulation and implementation decisions that engender efficient and effective service delivery of the public agency (Beierle&Cayford, 2002, Fagotto& Fung, 2009, Fung, 2004; Roberts, 1997; Sirianni, 2009). De Jong, van Hoof and Gosselt (2007) distinguished four characteristics of quality services delivery e-government is aimed to achieve, thus efficiency, effectiveness, accessibility and accountability.

In view, evidence have shown that e-government and e-democratic literature offered considerable rhetoric on availability and accessibility of information to citizens however with little details concerning ability of the citizens to (freely) identify, process/digest and interpret relevant information. Further, it's inconclusive as provision of high quality information and making the process more accessible can only make citizens more of information consumers rather than rightful stakeholders with ability to legitimately influence and determine policy decision outcome. Information provided by government and its agencies are so restrictive and limited, aim to achieving specific purpose, and therefore insufficient for freedom thirsty minds.

In addition, substituting direct citizen participation with technological device constrict the chances of citizens' participation to technology savvy and people that can afford technological gadget/devices amidst prohibited cost of computers and internet broadband in the developing countries. Technology cannot guarantee collective ownership of the decision outcome for five

reasons :i) Using technology as substitute for traditional participation pacify elitist domination syndrome. ii) In most cases, technology limit citizens option to free information as only pre-planned information are made available iii) Citizens have limited control over the procession of the information collected. iv) In term of building consensus, technology mediated avenue is not as effective as traditional approach of persuasion. v) In the case of technology for democratic decision such as e-voting, e-referendum, etc. there is high risk of hard-to-detect manipulations. Therefore, technology facilitated participation can only increase elite domination and control of policy process than providing avenue for citizen participation. Thomas (1995) highlighted that the quality and acceptability of administrative decisions are essential dimensions for the evaluation of degree of public inclusion.

Deploying technology to the justification of quality participation is another form of millennium campaign by the elites to continue perpetuates dominance over citizens through highly improvised mechanism of manipulation and control (technology). Use of modern technology notwithstanding, restricting participation to inviting citizens opinions, informing them, counting number of the participants portray participation as mere window dressing rituals of the elites to fulfill the requirements ;justify and legitimize the process (Arnstein, 1969).

Collective control of the process of policy is a condition for collective ownership of policy decision outcome. If technology is to be transparent and effective in direct citizens' participation, there must be collective control of the technology. Collective control of the technology can enhance trust in the government and the process, and induce sense of collective ownership of the decision outcome.

### **Participation as Means of Empowerment**

Despite e-government research is full of rhetoric benefits of participation such as transparency, accountability, efficient and effectiveness, the challenges remain lack of conditions for capacity building, awareness-creation as well as clearly defined vision and strategic goals of e-governance implementation (Adesola, 2012), a basis for a seemingly new window for participation. The essence of e-democracy is to empower people and enhance effective participation in the decision-making processes (Omogbadeguni, Uwadia& Ayo, 2010; Majekodunmi, 2013). Nabatchi (2010) distinguished four great values of participation that comprise of (i) intrinsic benefits/value in and of itself regardless of outcomes; (ii) educative and empowerment of citizens' skills and dispositions through increased knowledge of the policy process (iii) capacity building of the entire community; and (iv) instrumental benefits for policy and governance. In this regards, engaging the public in administrative decision making empowers the ability of the citizens to engage in constructive participation, the practice that is considered desirable by the communities (Neshkova&Guo, 2011). Inadequate citizens' empowerment to provide quality input into participatory policy process can lead to misrepresentation of the public interest (Ebdon& Franklin, 2004; Heikkila&Issett, 2007; Landre& Knuth, 1993; Robbins, Simonsen& Feldman, 2008).

This perspective though not very explicit on how citizens can be empowered to actively participate, it cannot be grounded completely as quality participation requires being adequately informed and educated on public issues and interest with clear understanding of the trade-offs associated with participation, which most communities of developing countries are grossly lacking. In which case, participation can be burdensome and propel confusion. Klischewski and Scholl's (2006) conclusion that through investigating the issue of quality in the e-government

research, skills and capacity of the participants to handle complexities of their tasks raise a simple questions of how and to achieve what purpose?

### **Participation to Attain Ownership of the Decision Outcome**

Direct citizens' participation is capable of yielding expected result when the concept adopts substantive, all-encompassing and all inclusive definition that bind together all sorts of citizens. Participation does not exist in vacuum. Failure to delineate the ultimate purpose of participation renders most literature on the concept to sing a mere rhetoric of transparency, efficiency, effectiveness, accountability etc. Shift in perspective of participation towards achieving collective ownership began to emerge in literature for the past two decades.

Having identified lack of collective ownership as the basis for the failure of most policies and program, reform such as the Civil Service Performance Improvement Programme (CSPIP) in Ghana launched in 1995 was aimed to achieving collective ownership and sustainability through more inclusive, consultation and participation. Relatedly, Public Service Reform Sector Strategy Paper 2007-2011: Gambia's Vision 2020 (2007) and Economic Commission for Africa (2010) identified lack of collective ownership as one of the major challenges of deploying innovation in the reformation process in Africa's civil service. Hence, collective ownerships the key to successful policy process.

Collective ownership should be seen as the grand objective of deploying technology to achieving policy decision outcome. With e-government initiatives, e-leadership is very strategic towards realization of citizens' commitment and ownership of decision outcome. Engaging citizens in the decision-making process strengthen bond of trust between government and citizens that can bring about sense of collective ownership of the decision outcomes (Arfeen, & Khan, 2009; Gessi, Ramnarine, & Wilkins, 2007).

Moreover, Majekodunmi (2013) urged that ICT enhanced participatory decision making mechanism embedded in e-democracy that can enhance citizens' ability to determine their socioeconomic fortunes. Majekodunmi added that e-government can help in achieving bottom-up approach to policy process that is a requisite to collective ownership of the policy outcome. Conforming to this idea, Neshkova and Guo (2011) postulated that public agency exist to serve the interest of the public through efficient and effective service delivery and that greater input from citizens participation into public decision making enable resources allocation to reflect the interest of the public.

Empirical studies indicate that psychological variable, ownership has the potential to influence acceptance behavior, for example clinical information (Melas, Zampetakis, Dimopoulou, & Moustakis, 2011; Paré, Sicotte, & Jacques, 2006). Traces of the body of literature is pointing to collective ownership as the ultimate goal of participation however; with limited details. Why collective ownership of decision outcome can be the source for sustainability of public policy and howit can be achieved remain unanswered.

### **DISCUSSION AND WAY FORWARD**

The foregoing discussion has evidently unveiled an existing vacuum and dilemma in the theory and practice of participation in the developing countries. The dilemma arises due to a number of reasons, thus :i) There seems to be huge gap in the evolution and development of theory and practice of participatory policy formulation in the developing countries. ii) There exist missing

links between theories of participatory policy formulation and actual practice in developing countries. iii) There seemingly insufficient literature linkage on the overall objective of participation in the policy formulation and processes of achieving it. iv) Policy formulation literature seems to over heart the strength of the channel of communication while low-keyed the issue of control of the medium. v) There is seemingly absence of clear demarcation between participatory process and outcome.

In view, public policy process in developing countries should be truly participatory and goal oriented that can stress the importance of achieving collective ownership of decision outcome rather than greater volume of participation. Public policy process orientation should be designed to reflect authentic needs and interest of the stakeholders to controlling the process. This is possible by exploring ownership-based policy approach. The approach proposes shift from orthodox perspective of participation that emphasis the channel of participation (e.g. technology to making available public information) to a more holistic citizen's centric approach that emphasized on citizen control of the policy process. The basic assumption of ownership-based policy approach is that collective ownership of decision outcome depends on the degree to which citizens control the policy process, which invariably depends on both quality and volume of stakeholders' participation. Citizens' ability to control policy process and claim the ownership of the decision outcome is a condition for sustainable public policy and democratic decision.

Beyond mere exercises of key stakeholders' engagement, deliberations, problem solving, decision and building consensus ownership-based policy approach is a process of mutual learning and a condition for sustainability. It is a process that builds the capacity of the participants as substantial investment that empowers them to handle potential challenges at both the formulation and implementation stages. In the proposed ownership-based policy approach, citizens are neither passive consumers of public information nor puppets for pseudo compliance of requirements rather drivers, pilots and sailors of the participatory policy processions.

This paper is an ongoing research study that intends to provide new insight to the study of participation that emphasize on the ability of the citizens to thrive beyond pseudo participation in certain areas and stages of policy formulation and implementation. The paper is also an appeal to technology adoption and policy researchers on developing countries to maximize exploration of context specific solution to problems of policy as a departure from the traditional approach that seeks to generalize.

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# KI HADJAR DEWANTARA'S CHARACTER EDUCATION IN THE COMPREHENSION OF TAMAN SISWA TEACHERS: PAUL RICOEUR'S HERMENEUTIC PERSPECTIVE

Sita Acetylena<sup>\*1</sup>

## ABSTRACT

Ki Hadjar Dewantara is the founder of *Perguruan Taman Siswa* and also the Father of Education in Indonesia. The *Perguruan Taman Siswa* gives a high contribution to the Education in Indonesia, especially the character education. But, at present the character education in Taman Siswa has been facing various hindrances in its implementation. The implementation is influenced by among others how teachers understand the character education in Taman Siswa. Therefore, the research is focused on how teachers understand Ki Hadjar Dewantara's character education. It is a qualitative method that used Paul Ricoeur's hermeneutics approach. The Paul Ricoeur's hermeneutics shows that there is a dialectic between meaning and events in texts and contexts. In this research, the dialectic between meanings and events was made namely between the thoughts of Ki Hdjar Dewantara and the present context of the Taman Siswa teachers. The analysis was made through semantic, reflective and existential levels. The sources of data were various writings made by Ki Hadjar Dewantara and any writings related to the thoughts of Ki Hadjar Dewantara on the Character Education at the field of texts. Whereas the field of context was obtained through observations, documents, and in-depth interviews with Taman Siswa Teachers. The results of the research showed that *pamongs* (tutors) as actors that implement the character education consist of materialist and spiritualis ones. Materialistic pamongs are pamongs who are merely oriented into materials, either money, status, positions and self-existence. Whereas pamong spiritualistic are amongs with the spirit of knights or priest that will produce a enlightening generation, real Men. The real Men are the results of making meaning of human beings who have understood, realized, and done the base of Taman Siswa on "tawakal" (resignation) and "manunggaling kawula gusti" (Unity between Men and God) as the ideal of Ki Hadjar Dewantara to establish *Taman Siswa*, namely to educate students in order to become real Men that would be able to face any present challenges and to be persons who are psychologically and bodily autonomous. In the period of this moral decadence and under the shackle of globalisation that results in materialistic attitudes among the *pamongs* and other teachers in each educational institution in Indonesia. This causes the character education at schools cannot be done smoothly. a "Cultural Enlightening Movement" should be made.

**Keywords:** KI Hadjar Dewantara, Character Education, Ricoeur's Hermeneutics

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## INTRODUCTION

Ki Hadjar Dewantara<sup>2</sup> is the Father of Education in Indonesia and also a freedom fighter of Indonesia. He struggled to free Indonesia from colonialism through education namely by establishing *the Perguruan Nasional Taman Siswa* (National Institution of Taman Siswa)<sup>3</sup>. Independence is the ideal of Taman Siswa and is expressed in the *Panca Darma* (Five Duties) principle, *Taman Siswa* principle.<sup>4</sup>

One of the oldest *Perguruan Taman Siswa* in East Java is *Perguruan Taman Siswa Turen*, Malang regency, established on January 1, 1930<sup>5</sup>. it is one of the best elementary schools in this area since this school always has gain either good academic or non-academic achievement.<sup>6</sup> This elementary school *Taman Siswa* is located in Turen sub-district, Malang regency, a small but education town, where there are 54 elementary schools, including *Taman Siswa*<sup>7</sup>.

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<sup>2</sup> Ki Hadjar Dewantara in his childhood was named R.M. Soewardi Surjaningrat, born on Kamis Legi (Javanese almanac) , 02 Puasa Javanese year, or May 2, 1889. His father's name is G.P.H. Surjaningrat son of Kanjeng Hadipati Harjo Surjo Sasraningrat with the title of Sri Paku Alam ke-III. And His mother is a princess of Yogyakarta kingdom, which is famous for the heir of Kadilangu, the direct offspring of Sunan Kalijaga. See Darsiti Suratman, *Ki Hadjar Dewantara*, Jakarta : Departemen Pendidikan dan Kebudayaan Direktorat Sejarah dan Nilai Tradisional Proyek Inventarisasi dan Dokumentasi Sejarah Nasional, 1981, p. 16; Soewardi Surjaningrat first studied in *Europeesche Lagere School*, then continued his study in STOVIA, standing for the *School Tot Opleiding Van Indische Arsten*. He could not complete hi study in STOVIA, but then joined in a teacher school called *Lagere Onderwijs*, then he obtained the diploma in this school. See Irla H.N. Hadi Soewito. *Soewardi Surjaningrat dalam Pengasingan*, Jakarta : Balai Pustaka, 1985, p. 16

<sup>3</sup> In the Dutch country, Soewardi Surjaningrat was interested in the educational and teaching problems, beside the socio-political field. He improved his knowledge in the field of education and in 1915 he got a diploma in teaching. He was familiar with great figures in the field of education, among others J.J. Rousseau, Dr. Frobel, Dr. Montessori, Rabindranath Tagore, John Dewey, and Kerschensteiner. Frobel, a famous expert in education from Germany was the founder of "*Kindergarten*". Montessori, a female scholar from Italia found "*Casa dei Bambini*" and Rabindranath Tagore, a famous poet from India, was the founder of the school "*Santi Niketan*". See Y.B. Suparlan, *Aliran-aliran Baru dalam Pendidikan*, Yogyakarta : Andi Offset, 1984, p. 102; The experiences of Soewardi at al. in the field of the political struggle, through hindrances, prisons, and exile, resulted in new thoughts in finding methods and ways to lead to the Indonesia independence. *Sekolah Taman Siswa* first established on July 3, 1922 was first named *Nationaal Onderwijs Instituut Taman Siswa*, by opening a kindergarten (*Taman Kanak-kanak*) and a course of teachers. A year before, Soewardi was teaching in a private school *Adhi Darma Selama* managed by his elder brother, Raden Mas Soerjopranoto. Some preparation for this period was made to open a new school initiated by *Paguyuban Selasa Kliwon* (*Selasa Kliwon Association*) of which one of its members was Soewardi Surjoningrat atau Ki Hadjar Dewantara. See Muhammad Tauchid, *Perjuangan dan Ajaran Hidup Ki Hadjar Dewantara*, Yogyakarta, 1963, p. 23; According to Pronowidigdo, one of the members, the association or club was established at the late 1921 initiated by Soeriokoesoemo and Ki Ageng Soerjomentaraman, who assembled groups of Javanese Youth who had "revolutionary spirit". The the members of the association held a meeting in each thirty five days namely at Selasa Kliwon in the house belonged to Soerjomentaraman. See Ki Pronowidigdo, "*Lahirnya Taman Siswa*". *Pendidikan dan Pembangunan Taman Siswa*, Yogyakarta, 1976, pp. 305-308; Nine members of this association, besides Ki Ageng Soerjomentaraman and Soetatmo Soeriokoesoemo, were Pronowidigdo, Prawiroiworo, R.M. Gondoatmodjo, B.R.M. Soebono, Soerjoputro dan Soerjoadipoetro, R.Soetopo Wonobojo, Soerjodirdjo, and Soewardi Soerjaningrat. See Information on these members are based on the writing of Tauchid, *Ki Hadjar Dewantara, Pahlawan, dan Pelopor Pendidikan Nasional*, Yogyakarta : Majelis Luhur Taman Siswa, 1968, p. 18 ; The members of the *Paguyuban Selasa Kliwon* had a close relation to the families of Paku Alam and of Budi Utomo. Meanwhile Ki Ageng Soerjomentaraman as the head of the *Paguyuban* was an extraordinary figure born as the prince of Yogyakarta sultanate, but he refused to take a position in the palace, and left the position and lived as a farmer. See Grangsang Soerjomentaraman in Kenji Tsuchiya, *Demokrasi dan Kepemimpinan : Kebangkitan Gerakan Taman Siswa*, Jakarta :Balai Pustaka, 1992, p. 77

<sup>4</sup> Ki Hadjar Dewantara,dkk. *30 Tahun Taman Siswa*, Yogyakarta : Majelis Luhur Taman Siswa, 1952, p 58

<sup>5</sup> Document of the Profile of SD Taman Siswa Turen and in Kenji Tsuchiya. *Demokrasi dan Kepemimpinan*, Jakarta: Balai Pustaka, 1992, p. 370

<sup>6</sup> Document of the Profile SD Taman Siswa Turen

<sup>7</sup> The Document of UPTD Turen sub-district in the year of 2013/2014

Due to the existence of *SD Taman Siswa* with 800 students among the increasing development state and private schools in this area, the researcher was interested in studying this school, even the researcher was one of the alumni of this school and was also doing her master research focused on the implementation of character education in this school. Moreover, the results of the previous researches made by Acetylena<sup>8</sup>, Ayu<sup>9</sup>, Nishimura<sup>10</sup>, and Sukarno<sup>11</sup> showed that *Perguruan Taman Siswa* in the past became the base of the character education during pre- and post independence periods and after the independence period, the implementation of the character education was bias and lost its spirit in the National Education System. The researcher hypothesizes on the condition of education in *Taman Siswa* that this happens because there are different interpretations among the teachers in *Taman Siswa* on the texts of Ki Hadjar Dewantara's character education as expressed in the principle, the *among* (tutorial) system, the character education, the slogan, and all the metaphores that become the realization of the character education. Teachers who are also called *pamongs* as the implementers of the character education in *Taman Siswa* should understand Ki Hadjar Dewantara's Character Education in order to be able to implement it. Therefore, it is necessary to deeply study the dialectic of meanings and events or the texts of thoughts of Ki Hadjar Dewantara and the present contexts of *Taman Siswa* teachers.

Therefore, the objective of this present research is to know and to undertand the interpretation of *Taman Siswa* teachers, especially in *SD Taman Siswa Turen* on the Ki Hadjar Dewantara's character education and the dialectic of meanings and events existing in the interpretation of the *Taman Siswa* teachers. This lead the researcher to choose Paul Ricouer's Hermeneutics as the research method and also the tool for analysis.

## RESEARCH METHOD

It is a qualitative research using Paul Ricoeur's Hermeneutics. In Paul Ricoeur's Hermeneutics, there is a dialectic between "meaning" and "event" that is mirrored in text and context. The research sources were various works by Ki Hadjar Dewantara and books and writings dealing with the thoughts of Ki Hadjar Dewantara on the character education. It will become the source of the fields of "meaning" or text. Meanwhile the fieldof "event"or context was obtained from the results of observations, documents, and in-depth interviews with *Taman Siswa* teachers.

The tool of analysis used is the perspective of Paul Ricoeur's Hermeneutics in order to make the results of analysis give findings from the method to metaphysics with three stages of analysis namely the semantic, reflexive, and existential levels.

In Paul Ricoeur's Hermeneutics interpretation is addressed to "signs, or symbols, considered as texts", meaning, "interpretation of life expressions as linguistically determined." It is because all human lives deal with language, even all forms of arts are visually interpreted through language. "Human beings basically are language, and the language itself is the main requirement for

<sup>8</sup> Sita Acetylena, *Analisis Implementasi Kebijakan Pendidikan Karakter di Perguruan Taman Siswa Kecamatan Turen.*, Master thesis in the Education Policy and Development Departmen, Malang: Universitas Muhammadiyah Malang, 2012, pp. 80-81

<sup>9</sup> Intan Ayu Eko Putri, *Konsep Pendidikan Humanistik Ki Hadjar Dewantara*, Tesis. Pasca Sarjana IAIN Wali Songo, 2012

<sup>10</sup> Shigeo Nishimura, *The Development of Pancasila Moral Education in Indonesia*, Jurnal Southeast Asian Studies Volume 33 No 3, 1995

<sup>11</sup> Makmuri Sukarno. *Perguruan Taman Siswa: Kasus Pendidikan Berbasis Masyarakat menghadapi Negara*, Jakarta :Jurnal Masyarakat Indonesia Jilid XXXIV no.2, 2008, pp. 69-119

human experiences,” said Paul Ricoeur<sup>12</sup>. Therefore, hermeneutics are a new way of “making a relation to” language. As a result, the interpreter is obliged to describe all chains of life and history latent in the language.

According to Paul Ricoeur, interpretation is made by “struggling with culture distance”, namely the interpreter should make distance so that he can do the interpretation well. But what is meant by Paul Ricouer of “Cultural distance” is not sterile from “judgment”. Moreover, “taking distance with historical and cultural events” does not mean that one works with “empty hands”<sup>13</sup>. The position of readers does not work with empty hands, as in the position of the art work itself that is not created in a cultural emptiness. But, the reader or the interpreter still “brings with him something as Heidegger called *vorhabe* (what he owns), *vorsicht* (what he sees) and *vorgrif* (what becomes his concept later). It means that someone in his interpretation does not avoid himself from “prejudices.”<sup>14</sup>

In his perspective as stated in his book *The Interpretation Theory: Discourse and the Surplus of Meaning*, there are three stages from “comprehending fully the symbols” to “thinking from the symbols”. The full stages are as follows: 1) the symbolic stage of comprehension from the symbols; (2) giving meaning by the symbols and accurate “disinterment” of meaning; and (3) philosophical stage, namely thinking using symbols as the point of departure.<sup>15</sup>

The three stages are closely related to the stages of comprehending a language, namely semantic, reflective, and existential or ontological stages. Semantic stage is a comprehension at the level of pure language; reflexive stage is a level higher, approaching an ontological stage; and existential or ontological stage is a comprehension at the level of the existence of the meaning itself. Therefore, Paul Ricouer asserts that the comprehension basically is a mode of being or a mode of becoming. But how his statement can be accepted if such a comprehension may only happen at the knowledge level, and if the comprehension is always made with the help of knowledge. The following is presented a scheme of Paul Ricoeur’s Hermeneutics:

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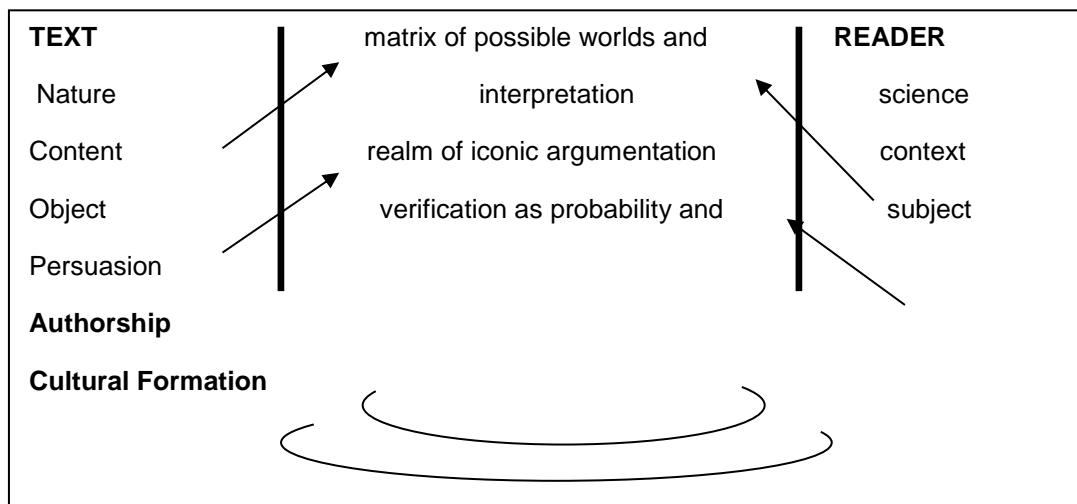
<sup>12</sup> E. Sumaryono, *Hermeneutik Sebuah Metode Filsafat*, Yogyakarta: Kanisius ,1999, hal 107

<sup>13</sup> Ibid, p. 106

<sup>14</sup> Ibid, p. 107

<sup>15</sup> Ricoeur in Permata, *Filsafat Wacana, Membelah Makna dalam Anatomi Bahasa*, Translated by. Musnur Hery, Yogyakarta : Ircisod, 2003, pp. 162-164

Scheme 1  
Paul Ricoeur's Hermeneutics<sup>16</sup>



### **ANALYSIS OF THE INTERPRETATION OF TAMAN SISWA TEACHERS ON THE KI HADJARDEWANTARA'S CHARACTER EDUCATION IN THE PERSPECTIVE OF PAUL RICOUR'S HERMENEUTICS**

The research results gave findings that there are two categories of Taman Siswa Teachers (Tutors) namely:

(a) Metarialistic Pamongs

They are teachers who just think and intend to become material-oriented. Material here means that the teachers are oriented to material either money or anything dealing with material characteristics such as status, position, acknowledgment, and self-existence.

(b) Spiritualitic Pamongs

They are teachers who think and intend to become spiritual-oriented teachers, meaning that it is spiritual matters that they focus on such as human, moral, divine and holiness values.

The two categories of pamong are known from the results of observation, document, and in-depth interviews with 14 Taman Siswa teachers in Turen sub-district, Malang Regency on how the teachers interpret Ki Hadjar Dewantara's Character Education.

The results of analysis on the interpretation of the Character Education by the teachers of Taman Siswa Turen using three stages of analysis of Paul Ricouer's hermeneutics, namely semantic, reflective and existential stages and dialectic of meaning and event in the fields of text and context are as follows:

<sup>16</sup> This scheme was adapted by Fauzi Fashri from chapter Bab III of William Grassie's dissertationon "A Hermeneutical Approach to Modern Science : Extending Paul Ricoeur's to Hermeneutics into Biophysical Sciences," lihat Fauzi Fashri dalam Pierre Bourdieu : Menyingkap Kuasa Simbol,Yogyakarta : Jalasutra, 2014,pp. 40-41

## Pamongs as the Implementers of Character Education in Taman Siswa

Character education in Taman Siswa was based on the spirituality and focused on the actors implementing the education namely the Taman Siswa teachers. In *Sekolah Taman Siswa*, teachers are called "pamongs". This has very deep meaning. In literal meaning, "pamong" is a Javanese root word "among", "momong" and "ngemong."<sup>17</sup> Character education in Taman Siswa was based on the spirituality and focused on the actors implementing the education namely the Taman Siswa teachers. The meanings of the words are respectively to take care of, to teach and to educate. Ki Hadjar in Tauchid<sup>18</sup> explained that teachers are servants of children, of students, instead of the masters of the children's spirits. Each person in Taman Siswa is a participant of the struggle the Taman Siswa does who is aware of and sincere with the devotion for the sake of children, for devoting his life for the sake of the island, the state and human beings to enforce humanity together. The term "pamong" was the thought raised Ki Hadjar Dewantara from a puppet figure "Semar". It is related to the change in name of Soewardi Surjaningrat into Ki Hadjar Dewantara on May 2, 1928 at the age of 40. Soewardi left the title of noblemen, Raden Mas, and had a new name. "Ki" means "Kiyai" as defined by Ki Hadjar himself.<sup>19</sup> Kyai is an honorary term for Javanese old people. This title is also used for respected people since they have found the nature of human beings and religion. This title is also given to village religion leaders and the heads of pesantrens.

Before Soewardi, Ki Ageng Soerjomentaraman, the leader of *Paguyuban Selasa Kliwon*, had used the title "Ki". Born as the son of the king of Yogyakarta kingdom (his father is Sultan Hamengku Buwono VII), Soerjomentaraman extricated his position and left the palace and lived in a village as a farmer. What he wanted was wisdom, he tried to keep away from egoism to reach real happiness and peacefulness of spirit.

"Hadjar", the second element of the new name Soewardi, is equal with *ajar*, a teacher in a dormitory or pondok. While the term "Dewantara" literally means "the mediator of God". "Dewa" can be interpreted the One God that protects all heroes and that determines Sang *Hyang Wenang* or Sang *Hyang Tunggal*. He is the master of the universe, the source of all power, the owner of space and time.

Shortly, the meaning of Ki Hadjar Dewantara shows how he defines himself as the kyai who teaches students like Semar, who tries to convey the God's desire to human beings. And it also means as a teacher who acts as the mediator of God to convey goodness and truth. Dewantara also defines the meaning of his name in the magazine *Wasita* as a real pandita with the character of knight and the protector of the nation and the people.<sup>20</sup>

The change of the name from R.M. Suwardi Surjaningrat into Ki Hadjar Dewantara is also followed by the additional word "KI" for male pamongs, and "Nyi" for married female pamong and "Ni" for single female pamong. So all Pamongs in Taman Siswa with noble titles, omit their noble titles and changed their names with "KI" or "Nyi" and "Ni" in their first names. As a result, hopefully that all pamongs in Taman Siswa become figures like "Semar" who sincerely take care

<sup>17</sup> Mohammad Tauchid, *Perjuangan dan Ajaran Hidup Ki Hadjar Dewantara*, Yogyakarta: Majelis Luhur Persatuan Taman Siswa, 1963., pp. 54-58

<sup>18</sup> Ibid

<sup>19</sup> Ki Hadjar Dewantara, *System Pondok dan Asrama*, Wasita seri Pertama dalam karya Ki Hadjar Dewantara Bagian I Pendidikan, 1962, p. 39

<sup>20</sup> Kenji Tsuchiya, *Demokrasi dan Kepemimpinan : Kebangkitan Gerakan Taman Siswa*, Jakarta :Balai Pustaka, 1992, pp. 116-118

of, teach and educate students as if their students are their own children. The pamongs should have spirit of *pandhita* and also knight as realized in the among system asto become a pamong.

An Among System is the pamong system in Taman Siswa consisting of three guidances for pamongs namely *Ing Ngarsa Sung Tuladha*, *Ing Madya Mangun Karsa*, dan *Tut Wuri Handayani*<sup>21</sup>, with the motto “Dengan Suci Hati Berhamba pada Sang Anak”. (With Holly heart to devote to Children). The Among system and the motto are the self-realization of pamongs, where the pamongs sincerely always give good models to the students, always accompany and guide themin learning science and also chracter. Moreover, giving bodily and mentally freedom, the pamongs always encourage the students' intellectual and spiritual advancement.

Character Education in Taman Siswa is a result of the thaught by Ki Hadjar Dewantara which is based spirituality intended to produce an enlightening generation, real human beings. Therefore, if the pamongs in Taman Siswa merely become materialistic pamongs, they will not be able to apply the Pamong system and cannot become the pamongs that may produce a young generation or students with high intellectuality and spirituality, a young generation that will be able to realize high civilization, as intended by Ki Hadjar Dewantara.

### **Character Education in Taman Siswa**

Character education in Taman Siswa has special characteristics, since it is based on “tawakal” (resignation) and “manunggaling kawula gusti” (union between Men and God). Meanwhile the method of the character education in Taman Siswa has three *Nga*, “Ngerti, Ngrasa, Nglakoni” (Understand, Feel, Apply)<sup>22</sup>. Three stages of character education namely: *syariat* (5-7 years old), *hakikat* (8-12 years old), and *makrifat* (17-20 years old)<sup>23</sup>. So, the character education in Taman Siswa is based on the spiritual education, including its method and stages.

The ideals of the struggle of Taman Siswa are those of the warriors of Indonesia independence as stated in the *PancaDarma* principle based on the spirituality in the Islam syariat. The basis of the *PancaDarma* is *tawakal*<sup>24</sup> and ‘manunggaling kawula gusti’<sup>25</sup>, both of which are Islam values as expressed in the Javanese philosophy. As a Moslem and the offspring of Pangeran Diponegoro<sup>26</sup> and Sunan Kalijaga<sup>27</sup>, Ki Hadjar Dewantara’s character education is influenced by the teachings of Islam and Javanese.

So the explanation of the meaning ‘tawakal’ and ‘manunggaling kawula gusti’ is not the union of human beings and their God, in terms of physical or material union. But, what is meant by Ki

<sup>21</sup> Fudyartantra. *Membangun Kepribadian dan Watak Bangsa Indonesia yang Harmonis dan Integra*,. Yogyakarta: Pustaka Pelajar, 2010, pp. 88 and Mangoensarkoro dalam *Taman Siswa dalam Perspektif Sejarah dan Perubahan : Pokok-pokok Sistem Among Pada Perguruan Taman Siswa*, Jakarta: PBMTS,1990, pp. 31-44

<sup>22</sup> Ki Hadjar Dewantara, *Bagian I Pendidikan*, Yogyakarta : Majelis Luhur Taman Siswa, 1962, pp. 484-485

<sup>23</sup> Ibid, hal 485-490

<sup>24</sup> Ki Hadjar Dewantara, Bagian II Kebudayaan pada Bab Manusia dan Kodrat Alam, Majelis Luhur Taman Siswa, 1977, pp. 10-14

<sup>25</sup> Ibid, pp. 16-17

<sup>26</sup> Pangeran Diponegoro is the son of Sultan Hamengkubuwono III who became a warrior against the imperialist England and the Dutch with the spirit of spiritualism as knights and ulama, Peter Carey, *Takdir: Riwayat Pangeran Diponegoro*, Jakarta :PT. Kompas Media Nusantara, 2014, pp. 3- 20

<sup>27</sup> Sunan Kalijaga is a member of WaliSongo who disseminated Islam and taught Islam through Javanese culture such as *wayang* (puppet) and *tembang* (songs). Its is writen by Munawar Khaelany in *Sunan Kalijaga Guru Orang Jawa*, Yogyakarta : Araska, 2014, pp. 9-12

Hadjar is that total “tawakal” (resignation) to God with good *istiqomah* will make use near to God so that all our physical and mental movement will be under the guidance of God.

The explanation of *tawakal* and *manunggaling kawula gusti* is difficult to be understood by materialistic pamongs, including non-muslim pamongs. What to do is that by making critical-aesthetical arguments as Ki Hadjar Dewantara did through a discourse in a letter answering a question from Mr Jonkman, a Chritian figure asking the meaning of *tawakal* in the struggle for Indonesian independence made by Ki Hadjar Dewantara in Taman Siswa.

In his reply, Ki Hadjar Dewantara gave a critical argument on the meaning of “tawakal” and “manunggaling kawula gusti” to Mr Jonkman. In the letter it was explained that the meaning of “tawakal” is not to surrender without any effort, but to submit one’s fate to the power of God because religious human beings believe that everything is under the power of God. If each Indonesian person in his struggle always submits his fate to God, no despair happens. One will believe that victory and freedom will be gained. Those who believe in greatness of God will also believe that nothing impossible to happen for God if God desires it. And it is the essence of “manunggaling kawula gusti”. Human beings should be in line with God’s omnipotence, in order to make the struggle for independence came true.

It is known that Ki Hadjar Dewantara tried to make a consensus that all parties should understand and might make some struggles together to realize the independence of Indonesia. Therefore, a cultural enlightenment should be made by giving critical-aesthetical arguments, arguments that may make each person think critically so that he will feel responsible for the existing social condition, and he will focus on his self-awareness. In the critical-aesthetic argument, what is mattered is social norms considered to be objective and to have mental substance. This argument should be always be made to the pamongs in Taman Siswa, by among spiritualistic and materialistic pamongs.

Materialistic pamongs have difficulties in understanding the method of character education in Taman Siswa which is also spiritually based with the 3 Ngas-method: “ngerti,ngrasa, nglakoni”, meaning that in the character education, students are taught to understand, to focus, and to implement the values of the character. The materialistic pamongs are merely oriented into the results, instead of the process. They just emphasized numbers to the students so that the students only focus their attention to the school grades. As a result, there are many students who cheat in class and even during the remedy, the materialistic paongs just give remidion without any effort to improve students’ capability. In the 3 Ngas method, students should understand or think about the values of characters that they will do before they do the values. Therefore, they will have good moral values since the values of goodness have fused into the students as their characters. It is in line with the Ki Hadjar’s statement that the success for education is that the knowledge taught has entered in to the students’ characters without any trace, meaning that the knowledge has united into the students to become their characters.

The stages of character education in Taman Siswa, namely *syariat*, *hakikat*, *tarikat* and *makrifat*, semantically refer to stages of worship in Islam, especially in the *tassawuf Islam*. But Ki Hadjar changed the stages. In the stages of the tassawuf Islam, the stages are *syariat*, *hakikat*, *tarikat* and *makrifat*, but in the character education, the stages are *syariat*, *hakikat*, *tarikat* and *makrifat*. This is becayse the object of the charcater education is students where they are ranked according to their ages, namely *syariat* (5 – 8 years old), *hakikat* (9-12 years old), *tarikat* (13-16 years old), and *makrifat* (17- 20 years old). The students’age and psychological conditions are considered in the changes of the character education stages in

Taman Siswa. It is also corelated with the3 Ngas method. Hopefully, the students of Taman Siswa who have completed their study in this institution will be able to understand, to feel and to apply the values of goodness thught in Taman Siswa so that they will have good characters and high spirituality and be able to realize a good civilization.

Dealing with the making the meaning by materialistic pamongs on the stages of character education at the *syariat* and *hakikat* stages, they do not give a priority on the pedagogical capability of the pamongs and the psychological capability of th students, so that the pamongs often show some actions that are contradictory with the values a pamong adopts, namely “*ngemong*” and “*momong*” which are in line with the Among System.

## CONCLUSION

The results of the analysis on the Taman Siswa teachers' interpretation on Ki Hadjar Dewantara's Character Education in the Ricoeur's hermeneutic perspective also showed that there are two categories of pamongs: materialistic and spiritualistic. It is just pamongs with high capability who will be able to become pamongs who have spirits of *pandhita* and also knights that will produce an enlightening generation, real human beings.

Real human beings are the results of making meanings of the human beings that have understood, realized and implemented the basis of Taman Siswa on “*tawakal*” and “*manunggaling kawula gusti*”. The real human beings have had a total resignation to God and have always seriously brought themselves near God so that it is really God that moves their physical and mental activities. If God has moved and wanted someone to do something, He would guide him. Although all human beings try to destroy him, nothing can change him because he has become someone the God loves, he has become His *wali* (religious leader). And the ideal of Ki Hadjar Dewantara when he established the Taman Siswa is to make his students become “*wali*” or real human beings so that they will be able to face the challenges in the era and to become selves who are physically and mentall free and to make Indonesian people reach real freedom and sovereignty, and equal with other nations in the world.

Dealing with the movement of change into civilization, Lyotard<sup>28</sup> states that any changes merely happen if a real political action is made. But Ki Hadjar Dewantara has proved that in the movement into civilization, either a real political action, or a cultural action should be made. Due to the moral decadence today and to the shackles of globalization forming materialistic pamongs and other materialistic teachers in each institution of education in Indonesia, the character education at schools cannot be applied well. Therefore it can be concluded that “Gerakan Cultural Pencerahan” (a cultural enlightening movement) should be made, meaning that there should be a movement through a culture-based education, an education that makes human beings human, namely an education that may produce real human beings with spiritual capability and with multi-power, namely spiritual, intellectual, mental and social powers. Teachers as agents of change of the nation should understand and realize their essence as the base for the activators of changes.

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<sup>28</sup> Lyotard, *Kondisi Postmodern : Suatu Laporan Mengenai Pengetahuan*. Surabaya : Selasar Surabaya Publishing, 2009, pp. 32-34

Technology and science develop and advance because of high culture and civilization of human beings, not on the way around, namely human beings are hegemonized by technology and science. There should be revivals of civilization of human beings, real human beings. It is like what Nietzsche thinks about super human beings<sup>29</sup>, but it is really different. Real human beings mean the human beings that become real human beings, they are strong leaders, and understand all their strengths and weaknesses so that they are able to lead into changes, to face any challenges in the period, and they are strong because they have strong spirituality. They should be aware that in their super power to manage the world, there are more highly super power. All human knowledge is merely a finding, instead of a creation. It is the Great Power that creates, and human beings just find. Human mastery is limited, although human's beings have power and knowledge, but the power and knowledge are limited. Human beings' spiritual power promotes all changes in a civilization.

## RECOMMENDATION

Ki Hadjar Dewantara's Character Education is the real education in Indonesia because it is in line with the supreme cultural values of Indonesian people. But, the diversity of cultures, religions and knowledge makes a difference of interpretation on the Ki Hadjar Dewantara's thoughts on the Character Education, among either the Pamongs, or the elites of Taman Siswa at local and central levels. Whereas to implement the character education, the same reference for the interpretation, including the system of the technical guidance for the implementation should be created.

The character education in Indonesia either that is proposed by Ki Hadjar Dewantara or by the government of Indonesia as stated in the 2010 Policy on the Character Education, no curriculum, system and technical guidance have been made. Therefore, the structured curriculum and its models should be created. One of the recommendations for the model of the character education in Indonesia is that the character education should be done "through a cultural enlightenment" to teachers and students. Teachers in Indonesia will not be able to become pamongs if they are not enlightened yet and they do not understand their own essence in becoming the agents of changes. And students will not be able to become actors of changes if they do not understand their essence as the next generation.

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# PAMPASAN GANTI RUGI BAGI KES-KES KEMALANGAN JALAN RAYA DI MALAYSIA MENURUT UNDANG-UNDANG ISLAM DAN TAKAFUL

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## ABSTRAK

Takaful merupakan suatu institusi yang turut membantu pelaksanaan sistem kewangan Islam di Malaysia. Di antara objektif penulisan ini ialah salah satunya untuk mengkaji konsep *diyah* dan *dhaman* di bawah Undang-undang Islam dan kesesuaian pemakaianya di dalam takaful dalam kes-kes kemalangan jalan raya di Malaysia. Secara umumnya, kajian ini bertujuan untuk menghasilkan satu rumusan yang sesuai dan sewajarnya mengenai kemungkinan pelaksanaan *diyat* secara komprehensif khususnya berhubung kes-kes kemalangan jalan raya di Malaysia bagi menjamin keadilan kesemua pihak yang terlibat. Dalam melaksanakan sistem kewangan Islam, pelaksanaannya haruslah selaras dengan prinsip-prinsip Shariah yang telah digariskan di dalam Al-Quran dan Sunnah daripada segi matlamat dan operasinya. Secara praktikal, takaful masih menggunakan prinsip '*continental skill*' di bawah '*common law*' dalam penilaian dan taksiran ganti rugi bagi ikhtisar kecederaan diri dan kematian akibat kemalangan jalan raya di Malaysia. Bagi pemberian pampasan ganti rugi yang disediakan kepada mangsa yang mengalami kecederaan diri atau kematian akibat kemalangan jalan raya seharusnya berlandaskan prinsip *diyat* (denda ganti nyawa) iaitu sejumlah pampasan ganti rugi daripada pesalah yang akan dibayar oleh 'aqliahnya' iaitu yang datang daripada keluarga pesalah dan *dhaman* di bawah undang-undang Islam. Akan tetapi, bagi penilaian dan kaedah yang digunakan dalam pemberian ganti rugi menerusi operasi takaful masa kini perlu diharmonikan dengan prinsip *diyat* dan *dhaman* sesuai dengan perkembangan ekonomi dan kemajuan negara. Oleh yang demikian, suatu pendekatan yang boleh dibuat adalah bagi mengharmonikan pemakaian prinsip *diyat* dan *dhaman* di dalam pemberian pampasan ganti rugi bagi ikhtisar kecederaan diri atau kematian bagi kes-kes kemalangan jalan raya di Malaysia.

**Kata kunci:** Takaful, *Diyat*, *Dhaman*, Ikhtisar Kecederaan Diri Dan Kematian, Pampasan Ganti Rugi

## PENGENALAN

Seseorang individu itu boleh mengalami kecederaan dan kematian dalam pelbagai cara dan keadaan misalnya terlibat dalam kemalangan jalan raya atau kemalangan di tempat kerja

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dan sebagainya. Seseorang yang terbunuh atau tercedera atau waris mangsa tersebut mempunyai hak untuk membuat tuntutan terhadap pihak pesalah yang cuai dan tidak berhati-hati ketika memandu sehingga menyebabkan berlakunya kemalangan jalan raya yang amat menyedihkan dan mengerikan. Berdasarkan seksyen 28A Akta Undang-undang Sivil 1956 telah menggantikan tuntutan bagi kehilangan jangkaan hayat ini dengan ganti rugi yang dinamakan '*bereavement*' iaitu ganti rugi perkabungan yang membenarkan sejumlah wang yang tetap iaitu sebanyak Ringgit Malaysia 10,000 untuk diawardkan kepada tanggungan. Merujuk kes *Wan Mahmood dan Che Gayah Hashim lwn Abdul Zamri*<sup>1</sup> Mahkamah Persekutuan Notis Usul No.08-108-2006, di mana kedua-dua isteri kepada si mati yang telah meninggal dunia dalam kemalangan jalan raya hanya dibenarkan untuk mendapatkan pampasan ganti rugi kesedihan sebanyak Ringgit Malaysia 10,000 dan hendaklah berkongsi secara sama rata di antara mereka merujuk seksyen 7(3B) Akta Undang-Undang Sivil 1956. Jika dilihat di dalam kes ini, jumlah pampasan bagi ganti rugi kesedihan yang dibenarkan adalah hanya Ringgit Malaysia 10,000. Ianya tidak memadai dan tidak adil kepada ahli keluarga mangsa yang membuat tuntutan tersebut. Dalam konteks Malaysia, tuntutan adalah bagi faedah pasangan si mati dan sekiranya si mati belum mencapai umur dewasa dan tidak pernah berkahwin, maka tuntutan adalah bagi faedah kedua-dua ibu bapanya. Maka, pemberian pampasan ganti rugi dalam kemalangan jalan raya di bawah Undang-undang Sivil adalah sememangnya tidak lengkap dan tidak memadai bagi melindungi dan memelihara hak serta kepentingan mangsa dan ahli keluarga mangsa yang terlibat.

#### **MANFAAT TAKAFUL DI BAWAH SKIM TAKAFUL BAGI KECEDERAAN DIRI ATAU KEMATIAN BERHUBUNG KES-KES KEMALANGAN JALAN RAYA**

Takaful merupakan industri yang berkembang dan pesat membangun. Objektif utama di sebalik pengenalan dan pembangunan takaful adalah untuk menawarkan alternatif yang mematuhi Shariah dan Islamik berbanding insurans konvensional. Takaful direka cipta untuk menyediakan perlindungan dan ganti rugi kepada individu dan badan-badan korporat akibat kerugian atau bahaya kepada diri atau harta benda. Jika merujuk kepada produk takaful am yang ditawarkan di Malaysia termasuk takaful kendaraan bermotor iaitu terdapat tiga jenis utama perlindungan takaful bagi kendaraan bermotor iaitu takaful kendaraan bermotor untuk kereta persendirian, takaful kendaraan bermotor untuk motosikal persendirian dan takaful kendaraan bermotor untuk kendaraan perdagangan. Kebanyakan operator takaful menyediakan tiga skop perlindungan di bawah takaful kendaraan bermotor persendirian iaitu seperti kerosakan sendiri, liabiliti perundangan kepada pihak ketiga dan kemalangan kepada peserta.

Di bawah liabiliti perundangan kepada pihak ketiga, dana takaful akan membayar ganti rugi peserta terhadap semua jumlah termasuk kos dan perbelanjaan penuntut yang mana peserta seharusnya bertanggungjawab mengikut undang-undang untuk membayar dalam hal kematian atau kecederaan kepada seseorang, kerosakan harta selain daripada harta milik peserta atau dipegang di bawah amanah atau dalam jagaan atau kawalan peserta atau mana-mana anggota rumah tangga peserta. Walau bagaimanapun, dana takaful tidak membayar pampasan untuk kerosakan dalam hal keputusan mahkamah yang tidak pada mulanya disampaikan atau diperoleh daripada mahkamah yang mempunyai bidang kuasa kompeten dalam Malaysia, Republik Singapura atau Brunei. Malahan bagi kos perbelanjaan litigasi yang ditebus oleh seseorang penuntut daripada peserta yang tidak ditanggung dan boleh dikembalikan dalam Malaysia, Republik Singapura atau Brunei juga tidak dibayar oleh dana takaful di bawah skop ini.

Jika berlakunya kemalangan jalan raya kepada peserta, maka dana takaful akan menanggung untuk membayar pampasan kecederaan badan yang dialami oleh peserta dalam hubungan langsung dengan kenderaan bermotor itu atau semasa menaiki atau menuruni atau bergerak di dalam sebarang motokar hingga mengakibatkan kematian mangsa sebanyak Ringgit Malaysia 10,000 juga bagi kehilangan penuh dan kekal semua penglihatan kedua mata adalah sebanyak Ringgit Malaysia 10,000 , kehilangan penuh melalui pemutusan fizikal pada atau di atas pergelangan, kedua-kedua tangan atau kedua-dua kaki adalah sebanyak Ringgit Malaysia 10,000. Begitu juga bagi kehilangan penuh melalui pemutusan fizikal pada atau di atas pergelangan, sebelah tangan atau sebelah kaki bersama dengan kehilangan penuh dan kekal penglihatan sebelah mata iaitu sebanyak Ringgit Malaysia 10,000. Manakala bagi kehilangan penuh dan kekal semua penglihatan sebelah mata adalah sebanyak Ringgit Malaysia 5,000 begitu juga bagi kehilangan penuh melalui pemutusan fizikal pada atau di atas pergelangan, sebelah tangan atau sebelah kaki juga adalah sebanyak Ringgit Malaysia 5,000. Menurut Engku Rabiah Adawiah Engku Ali (2012) perlindungan ini sangat serupa dengan polisi insurans motor konvensional dan ianya amat terhad. Di bawah perlindungan takaful kenderaan perdagangan, operator takaful biasanya menawarkan perlindungan untuk kebanyakan jenis kenderaan bermotor kecuali bas awam dan teksi.

Secara pengamalannya di Malaysia, dapat dilihat bahawa operasi dan pengendalian takaful masih menggunakan prinsip '*continental skill*' di bawah '*common law*' berhubung dengan penilaian dan pemberian pampasan ganti rugi bagi ikhtisar kecederaan diri atau kematian akibat kemalangan jalan raya.

Menurut Klaus 25 Ordinan 1984 (Pelaksanaan *Qisas* dan *Diyat*) di Pakistan bagi kes-kes kemalangan jalan raya dikategorikan sebagai kesalahan mencederakan dan membunuh secara tidak sengaja. Oleh yang demikian, Al-Jurjani dan Abu Hassan Ali (2000) menyatakan pihak yang terkilan akan menuntut bayaran *diyat* iaitu sejumlah pampasan ganti rugi daripada pesalah yang akan dibayar oleh '*aqilahnya*'.

*Diyat* pada asasnya dibayar dalam bentuk unta ataupun nilai unta tersebut kerana ia dipengaruhi adat bangsa Arab yang bersandarkan kepada bilangan unta. Walau bagaimanapun, ia tidak terbatas kepada bilangan unta semata-mata. Menurut Abdul Qadir 'Audah (1994), *diyat* juga boleh dibayar dalam bentuk emas, perak, binatang ternakan, kambing biri-biri ataupun persalinan. Kadar *diyat* juga boleh dinilai mengikut kadar mata wang semasa. Misalnya bagi kehilangan nyawa adalah bersamaan 1000 keping dinar. Sekeping dinar adalah seberat  $4.25g \times RM134$  (emas 916)  $\times 1000$  keping dinar bersamaan Ringgit Malaysia 570,000 berdasarkan harga emas semasa Malaysia. Para ulama juga bersetuju bahawa *diyat* boleh dibayar dalam bentuk emas atau perak.

Pengendali takaful seharusnya mengambil dan mengamalkan konsep *diyat* dan *dhaman* berhubung pampasan ganti rugi bagi kecederaan diri dan kematian akibat kemalangan jalan raya seperti mana yang telah digariskan di dalam undang-undang Islam secara menyeluruh. Jika diteliti, kaedah dan nilai bagi ikhtisar kecederaan diri dan kematian berhubung kemalangan jalan raya di Malaysia masih mengaplikasikan dan berpandukan kepada prinsip dan konsep *common law* iaitu '*continental skill*'. Oleh yang demikian, adalah dianjurkan supaya operasi bagi skim takaful berhubung nilai dan kaedah bagi ikhtisar kecederaan diri dan kematian akibat kemalangan jalan raya di Malaysia ini adalah berlandaskan kepada Syariat Islam secara mutlak dan menyeluruh.

Maka, suatu kerangka dan struktur menurut takaful yang dianjurkan khusus bagi pampasan ganti rugi kecederaan diri dan kematian akibat kemalangan jalan raya perlu diharmonikan selaras dengan objektif pengendalian takaful itu sendiri iaitu untuk memartabatkan hukum Syarak secara mutlak dan juga dalam pengamalan semasa.

Berikut adalah kerangka seperti yang dicadangkan menurut undang-undang Islam:

- i. Prinsip berhubung dengan pampasan ganti rugi bagi kecederaan diri, kematian dan sebagainya yang berkaitan dan munasabah akibat kemalangan terhadap diri adalah telah ditentukan berdasarkan prinsip *diyat* dan *dhaman*. Oleh itu dicadangkan supaya pampasan ganti rugi seperti yang diperuntukkan di bawah skim pengendalian takaful bagi kecederaan diri, kehilangan nyawa dan sebagainya yang berhubung dengan ganti rugi pekuniari dinilai dan diberikan berdasarkan prinsip *diyat* dan *dhaman*.
- ii. Bagi kehilangan nyawa akibat kemalangan maut dalam nahtas jalan raya adalah dianggarkan sebanyak satu *diyat* penuh. *Diyat* penuh adalah sebanyak  $4.25g \times RM134$  (emas 916)  $\times 1,000$  keping dinar bersamaan Ringgit Malaysia 570,000. Pampasan bagi kehilangan nyawa ini seharusnya terhad kepada jumlah *diyat* penuh.
- iii. Manakala, bagi kecederaan diri, pampasan ganti rugi seharusnya berpandukan kepada prinsip *diyat*. Walau bagaimanapun, jumlah bagi pampasan kecederaan diri seharusnya diberikan berdasarkan tahap atau merit sesuatu kerosakan yang berlaku ke atas tubuh badan atau organ di dalam tubuh badan mangsa.
- iv. Seterusnya, bagi kehilangan pendapatan adalah dianggarkan dari bermulanya kejadian kemalangan jalan raya sehingga keputusan mahkamah dikeluarkan seharusnya dinilai dengan munasabah dengan berdasarkan kepada prinsip *dhaman*.
- v. Manakala, bagi kehilangan pendapatan pada masa hadapan, seharusnya tidak diberikan atas sebab ianya tidak ditentukan di bawah undang-undang Islam iaitu mengandungi elemen *gharar* (ketaktentuan). Transaksi yang mengandungi elemen *gharar* adalah dilarang sama sekali dalam Islam seperti mana yang terkandung di dalam Surah An-Nisa ayat 29 yang bermaksud:

*“Wahai orang-orang yang beriman, janganlah kamu makan (gunakan) harta-harta kamu sesama kamu dengan jalan yang salah (tipu, judi dan sebagainya), kecuali dengan jalan perniagaan yang dilakukan secara suka-suka di antara kamu, dan janganlah kamu berbunuuh-bunuuh sesama sendiri. Sesungguhnya Allah sentiasa Mengasihani kamu.”*

*(Al-Quran, 4:29)*

Tambahan pula, ianya adalah bertentangan dengan hukum Syarak dalam menentukan jumlah pendapatan masa hadapan seseorang secara ke hadapan. Ini adalah kerana, ianya

telah ditentukan oleh Allah SWT melalui sepotong ayat Al-Quran di dalam Surah Luqman ayat 34 yang bermaksud:

*“Sesungguhnya di sisi Allah pengetahuan yang tepat tentang hari kiamat. Dan Dialah Jua yang menurunkan hujan, dan yang mengetahui dengan sebenar-benarnya tentang apa yang ada dalam Rahim (ibu yang mengandung). Dan tiada seseorang pun yang betul mengetahui apa yang akan diusahakannya esok (sama ada baik atau jahat); dan tiada seorangpun yang dapat mengetahui di bumi negeri manakah ia akan mati. Sesungguhnya Allah Maha Mengetahui lagi Amat Meliputi pengetahuanNya.”*

(Al-Quran, 31:34)

Berdasarkan ayat Al-Quran dan hadis di atas, dapat disimpulkan bahawa tiada justifikasi bagi pengendali Takaful untuk memasukkan kerugian pendapatan masa hadapan di dalam pampasan ganti rugi terhadap kecederaan diri dan kematian dalam kemalangan jalan raya atas sebab terdapatnya elemen *gharar*.

- i. Bagi kos perbelanjaan perubatan dan rawatan terhadap mangsa yang dikeluarkan bermula dari kejadian kemalangan jalan raya sehingga keputusan mahkamah dibuat dan juga dari akhir keputusan mahkamah dibuat sehingga mangsa pulih sepenuhnya seharusnya dinilai secara munasabah dan adil seperti mana yang telah digariskan di bawah prinsip *dhaman* melainkan mangsa tidak hilang keupayaan kekal iaitu lumpuh sepanjang hayatnya yang mana mangsa ini diberikan pampasan menurut prinsip *diyat* dan bukannya di bawah prinsip *dhaman*.
- ii. Pengendali takaful juga seharusnya menyediakan kepada pihak mangsa atau keluarga mangsa yang terlibat dengan pampasan dalam bentuk pekuniari bagi sebarang bentuk perbelanjaan yang munasabah akibat daripada kecederaan diri atau kehilangan nyawa dalam kemalangan jalan raya. Pampasan bagi kategori ini boleh diberikan berdasarkan kepada prinsip *dhaman*. Berhubung dengan perbelanjaan rawatan dan perubatan serta lain-lain perbelanjaan yang berkaitan telah dijelaskan di dalam sebuah hadis Nabi Muhammad SAW di dalam Al-Muwatta yang bermaksud:

*“Jangan memudaratkan diri sendiri dan tidak memudaratkan orang lain.”*  
(Ibn Majah, Al-Daruqutni)

- iii. Selain itu, sumbangan dalam bentuk kewangan boleh disediakan untuk ahli keluarga atau tanggungan si mati atau mangsa yang mengalami kecederaan yang turut menjelaskan kehidupan mereka atas kehilangan seseorang sebagai pencari nafkah yang menyumbang kepada sumber kewangan. Sumbangan ini termasuk juga dalam kategori yang merujuk kepada prinsip *dhaman* yang meluas.

Oleh yang demikian, adalah jelas bahawa prinsip *diyat* di dalam undang-undang Islam hanya terpakai bagi kes-kes kecederaan diri dan kehilangan nyawa. Tujuan pampasan ganti rugi di bawah prinsip ini diberikan adalah untuk menyediakan pampasan ganti rugi atas kehilangan kerosakan yang ditanggung oleh mangsa atau ahli keluarga mangsa akibat daripada kecelakaan jalan raya.

Di dalam masyarakat, Islam telah mengajar supaya tidak melenyapkan dan tidak merosakkan harta seseorang yang lain atau menyebabkan sebarang kerosakan dan kemudaran ke atas nyawa atau harta orang lain. Ini adalah berdasarkan kepada sebuah hadis Nabi Muhammad SAW di dalam Sahih Al-Muslim yang bermaksud:

*“Janganlah kamu berasa iri hati sesama kamu; janganlah kamu menaikkan suatu harga terhadap orang lain; janganlah kamu membenci antara satu sama lain; janganlah kamu berpaling terhadap seseorang..setiap Muslim itu adalah bersaudara..benci-membenci sesama saudara sel-slam itu adalah dilarang termasuklah darah (nyawa) mereka, harta benda mereka serta kehormatan mereka.”*  
(terjemahan Sahih Muslim)

Merujuk kepada hadis di atas, jelas bahawa Allah SAW melarang keras seseorang melakukan kerosakan terhadap harta mahupun nyawa seseorang yang lain. Ini adalah kerana ianya merupakan suatu tindakan yang menyalimi hukum Allah SAW iaitu dengan menyebabkan kerosakan dan kehilangan sama ada nyawa, harta mahupun tubuh badan seseorang yang lain. Jika seseorang itu melakukannya, maka haruslah dia untuk memberikan pampasan ganti rugi yang sewajarnya atas setiap tindakannya. Ini adalah ditegaskan berdasarkan sebuah hadis Nabi Muhammad SAW yang bermaksud:

*“Jangan memudaratkan diri sendiri dan tidak memudaratkan orang lain”*  
(Ibn Majah, Al-Daruqutni)

Oleh yang demikian, jelaslah maksud hadis di atas bahawa Islam tidak membenarkan umatnya melakukan perkara yang boleh membawa kemudaran dan memudaratkan orang lain. Dalam maksud yang lain adalah seseorang tidak boleh menimbulkan bahaaya atau mudarat terhadap seseorang yang lain. Bahaya atau kejahanan yang dimaksudkan di atas dapat dibahagikan kepada dua bahagian iaitu kejahanan atau kebinasaan yang dilakukan dengan sengaja atau kejahanan atau kebinasaan yang dilakukan tanpa sengaja. Namun, harus dibayar ganti rugi akan tetapi pesalah tidak dianggap berdosa kerana melakukannya tanpa sengaja.

Salah satu peraturan yang dinyatakan oleh para ulama Islam adalah tentang kelalaian ketika memandu atau memandu melebihi had laju. Amalan ini ditegah oleh Islam kerana ianya akan membawa kepada kemalangan dan membawa kemudaran terhadap individu dan harta benda orang lain. Maka, peraturan ini boleh digunakan bagi semua jenis salah laku jalan raya seperti melanggar lampu isyarat, memandu melebihi had laju dan sebagainya.

Walaupun pampasan ganti rugi di bawah prinsip *diyat* dan *dhaman* ini boleh diperolehi, ia merupakan suatu hak kepada pihak mangsa atau keluarga mangsa yang mengalami keseksaraan akibat kemalangan jalan raya yang menimpa mereka untuk bertolak ansur dalam mengurangkan atau mengenepikan sama ada sebahagian atau keseluruhan jumlah pampasan ganti rugi tersebut yang sebenarnya dipertanggungjawabkan ke atas pesalah. Undang-undang Islam membenarkannya dan merupakan suatu perbuatan yang baik dalam meringankan beban yang ditanggung oleh seseorang itu. Berdasarkan sebuah hadis yang berkaitan dengan hal ini di dalam Sahih Al-Muslim adalah:

*“Barangsiapa yang meringankan kesulitan duniawi daripada seorang mukmin, maka Allah akan menghapuskan daripadanya salah satu kesulitan hari kemudian. Barangsiapa yang meringankan orang yang miskin, Allah akan meringankan daripadanya di dunia ini dan di hari kemudian.”*

(terjemahan Sahih Muslim, No.6250)

Tanggungjawab berhubung dengan pembayaran pampasan ganti rugi terhadap pihak tertuduh adalah seperti sebuah hutang yang mana ianya boleh sama ada dikurangkan atau diubah jumlahnya oleh pihak mangsa atau ahli waris mangsa seperti mana yang telah digariskan di dalam Al-Quran Surah Al-Baqarah ayat 280 yang bermaksud:

*“Dan jika orang yang berhutang itu sedang mengalami kesempitan hidup, maka berilah tempoh sehingga ia lapang hidupnya. Dan (sebaliknya) bahawa kamu sedekahkan hutang itu (kepadanya) adalah lebih baik untuk kamu, kalau kamu mengetahui (pahalanya yang besar yang kamu akan dapatkan kelak).”*

(Al-Quran, 2:280)

Berdasarkan kepada beberapa prinsip yang telah digariskan di dalam hadis dan ayat-ayat Al-Quran, jelaslah bahawa terdapatnya hak untuk bertolak ansur dalam pemberian pampasan ganti rugi bagi kecederaan diri, kehilangan nyawa atau kerosakan harta benda pihak mangsa yang mengalami kesengsaraan akibat kemalangan jalan raya sama ada untuk mengurangkan atau mengenepikan jumlah pampasan yang sepatutnya adalah dikira sebagai suatu perbuatan yang amat baik. Dengan demikian, peranan takaful sebagai institusi kewangan yang dibenarkan di dalam hukum Syarak berkenaan pemberian ganti rugi bagi kecederaan diri, kehilangan nyawa atau kerosakan harta benda juga dibenarkan untuk bertolak ansur berpandukan prinsip *diyat* dan *dhaman*. Sikap untuk bertolak-ansur dalam hal ini adalah terletak hak dan bergantung kepada mangsa atau keluarga mangsa.

#### **ADAKAH TERDAPAT SEBARANG JUSTIFIKASI BERHUBUNG DISKRIMINASI DALAM ISU PAMPASAN GANTI RUGI (TUNTUTAN PIHAK KETIGA) SEPERTI FAKTOR UMUR, STATUS, JAWATAN ATAU JANTINA PIHAK MANGSA?**

Merujuk seksyen 2 Akta Perkhidmatan Kewangan Islam 2013, takaful bererti suatu perkiraan yang berdasarkan pertolongan secara bersama yang di bawahnya peserta takaful bersetuju untuk menyumbang kepada suatu kumpulan wang yang sama yang menyediakan manfaat kewangan bersama yang kena dibayar kepada peserta takaful itu atau kepada benefisiarinya pada masa berlaku sesuatu kejadian yang telah dipersetujui terdahulu.

Daripada maksud di dalam peruntukan di atas, dapat difahami bahawa takaful di dalam pengendalian dan operasinya seharusnya berlandaskan hukum Syarak secara keseluruhannya serta tiada alasan dan justifikasi bagi pengendali takaful untuk memasukkan elemen yang tidak berlandaskan hukum Syarak.

Oleh yang demikian, isu berkenaan pampasan ganti rugi kemalangan jalan raya yang dikendalikan di bawah skim takaful ini seharusnya ditentukan berdasarkan prinsip di bawah undang-undang Islam yang mana nilai pampasan ganti rugi bagi kecederaan diri, kehilangan nyawa dan kerosakan harta benda adalah tidak ditentukan dengan melihat kepada status atau kedudukan jawatan pihak mangsa yang terbabit, akan tetapi sewajarnya mempertimbangkan tahap kesakitan dan keperitan yang dialami oleh mangsa akibat kemalangan jalan raya.

Dengan erti kata lain, seharusnya tidak wujud elemen diskriminasi atau ketidaksamaan di dalam penentuan nilai dan jumlah pampasan ganti rugi seperti yang telah digariskan di bawah undang-undang Islam berdasarkan sebuah hadis Nabi Muhammad SAW yang bermaksud:

*“Jangan memudaratkan diri sendiri dan tidak memudaratkan orang lain”*  
*(Ibn Majah, Al-Daruqutni)*

Hadis di atas menggariskan beberapa prinsip iaitu semua bahaya yang boleh mendaraskan kemudarat terhadap badan atau harta benda seseorang adalah dilarang dan mesti dielakkan. Pihak mangsa tidak sepautnya mendapatkan ganti rugi dengan mengenakan timbal balik yang tidak setimpal sebagai hukuman balas kepada pihak pesalah. Selain itu, wujudnya unsur liabiliti dan tanggungan di pihak pesalah yang melakukan kemudarat kepada mangsa.

### **KESIMPULAN**

Secara kesimpulannya, dapatlah dirumuskan bahawa terdapatnya pampasan ganti rugi terhadap kecederaan diri atau kehilangan nyawa seperti mana yang telah digariskan di dalam undang-undang Islam dan selain itu dalam masa yang sama terdapat limitasi dalam pemberian pampasan ganti rugi ini iaitu pihak mangsa tidak seharusnya berharap bagi mendapatkan jumlah pampasan ganti rugi yang tidak munasabah dan tidak wajar. Ini bermakna pihak mangsa hanya berhak memperolehi dan menuntut pampasan ganti rugi hanya pada jumlah bagi kehilangan sebenar dan jelas serta yang telah dihadkan di dalam prinsip *diyat* dan *dhaman*.

Pihak mangsa juga tidak dibenarkan untuk menggunakan status dan kedudukannya dalam membuat tuntutan ganti rugi kerana di dalam menentukan nilai bagi kecederaan diri dan kehilangan nyawa hanya ditentukan kepada tahap kesakitan dan penderitaan yang dialami mangsa akibat kemalangan jalan raya. Justeru, di dalam hal ini semua manusia adalah sama kedudukannya dan hanya yang membezakannya adalah sejauh mana tahap kesakitan dan penderitaan mangsa yang terbabit dalam menentukan nilai pampasan ganti rugi.

Oleh yang demikian, pampasan ganti rugi di bawah pengendalian takaful terhadap kecederaan diri dan kehilangan nyawa seharusnya ditentukan tanpa adanya unsur diskriminasi dalam menimbangkan tahap kesakitan dan penderitaan pihak mangsa terbabit serta tidak melihat kepada status, kedudukan jawatan, jantina atau umur mangsa tersebut. Selain itu, ia juga tidak akan memberikan ruang kepada pihak mangsa atau ahli waris untuk membuat tuntutan yang tidak wajar dan melebihi apa yang telah ditetapkan di dalam hukum Syarak tetapi hanya ke atas jumlah pampasan ganti rugi yang munasabah dan adil. Maka, dengan ini diharapkan agar pengendali takaful dapat menimbangkan agar nilai pampasan ganti rugi kemalangan jalan raya dapat diselaraskan menurut prinsip *diyat* dan *dhaman* bagi tuntutan pihak ketiga dalam tuntutan kecederaan diri dan kehilangan nyawa serta kehilangan harta benda dan sehubung dengannya agar memastikan ianya adalah berlandaskan kepada hukum Syarak sepenuhnya.

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# **SOCIAL ACCOUNTABILITY AND ACCESS TO INFORMATION: LESSONS FOR AFRICA FROM SOUTH AFRICA AND ZIMBABWE**

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## **ABSTRACT**

The importance of access to information as an underpinning of democratic participation is a widely acknowledged fundamental democratic principle. For citizens to have a meaningful participation holding governments into account, they require information. Political participation rights cannot be exercised effectively without access to government information, and lack of transparency in governance hobbles the citizen's ability to participate meaningfully. The conventional wisdom about the power of transparency is straightforward: transparency generates accountability.

However, does the availability of information automatically lead to greater transparency and therefore accountability? This paper will argue that the availability of access to information laws, though important, is not a panacea to all accountability challenges. Enabling laws and policies are useful but not sufficient to support social accountability, especially in contexts where the rule of law is lacking. For access to information to be effective, there must be an enabling framework that encourages meaningful participation. To back the argument, the paper will compare two jurisdictions that have access to information laws and show that the availability of such laws have not necessarily led to greater transparency and therefore accountability.

## **INTRODUCTION**

In recent years there has been a steady rise in social accountability initiatives around the world, mainly to encourage accountable governance but also to promote development. Africa has also not been left behind in this wave, essentially because of a myriad of governance challenges faced by the continent, but also endemic poverty, corruption and general poor service delivery. Many ordinary citizens are beginning to hold their governments into account, asking difficult questions and demanding explanations and justifications for government action or inaction.

As social accountability gains prominence in the region, many pertinent issues are asked as social accountability practitioners grapple with questions of how can they can improve their practice and therefore have better impact. One of the main critical issues that have been seen as hindering social accountability is the lack of information or difficulty to access information held by both state and non-state actors in many African countries.

Access to information is seen as a crucial component in ensuring that citizens actively participate in governance matters and thereby promoting social accountability. The notion is that access to information encourages transparency and ultimately accountability. The conventional wisdom about the power of transparency is straightforward: transparency generates accountability (Fox, 2007, 664; McGee, 2010; Halle & Wolfe, 2010).

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The importance of access to information as an underpinning of democratic participation has long been widely acknowledged fundamental democratic principle (Mendel, 2007; Banisar??). It has also been argued that political participation rights cannot be exercised effectively without access to government information (Ansari, 2006; Roberts, 2007, 9; Coglianese et al, 2008) and that lack of transparency in governance thus hobbles the citizen's ability to participate meaningfully (Coronel 2001; Calland, 2002,15; Horsley, 2009; Johnston, 2002; Stiglitz, 1999). Access to information ensures that citizens realize their basic right to participate in the governing of their country, and for citizens to have a meaningful participation holding governments into account, they require information.

The importance of the right of access to information has led to it being recognised by different international and regional bodies as a fundamental human right. It has been argued that there is a basic right to know, to be informed about what the government is doing and why (Bellver& Kaufmann, 2005, 2; Voltmer 2010; Florini, 2007). Access to information as a fundamental human right was recognised as far back as 1946 by UN General Assembly during its first session. This international body adopted Resolution 59(I), which states: "Freedom of information is a fundamental human right and...the touchstone of all the freedoms to which the United Nations is consecrated" (UN General Assembly Resolution 59(I), 1946). Many years later the United Nations reiterated its stance when in 2004 it encouraged nations to enact laws that give effect to the right to access to information. The UN issued a joint Declaration with the African Union that:

"The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions."

Due to the high regard given to access to information, many democracy supporters and campaigners around the world have incorporated the right to access to information in both their strategies and their tactics, with the hope that transparency will empower their efforts to change the behaviour of powerful institutions by holding them accountable in the glare of public eye (Fox, 2007, 663; Oberoi, 2013; Humphreys & Weinstein, 2007). So emphasised is the importance of access to information to an extent that many social accountability practitioners in Africa believe that a crucial part of what hinders their efforts is the fact that there is poor access to information laws on the continent.

It is however important to sit back and reflect on whether the availability of information automatically leads to transparency? Moreover, does transparency result in accountability? This paper will argue that the availability of access to information laws, though important in social accountability, is not a panacea to all accountability challenges. To illustrate this point, the paper will compare two jurisdictions that have access to information regimes and show that the availability of access to information legislation has not necessarily led to greater transparency and ultimately accountability. It will be argued that enabling laws and policies are useful but not sufficient to support social accountability, especially in contexts where the rule of law is lacking. For access to information to be effective, it will be argued, there must be an enabling framework that encourages meaningful participation, as well as mindset shift and political will from those in positions of authority. Moreover, it is argued that for social accountability advocacy to be successful, the information should be targeted in a way that ensures that those who acquire it have the capacity to analyze it and act on it.

### **WHAT IS SOCIAL ACCOUNTABILITY?**

In any democracy, it is important to hold power into account. Unless public officials can be held to account, critical benefits associated with good governance—such as social justice, poverty reduction, and development—remain elusive. It is a fundamental principle of democracy that citizens have both the right and the responsibility to demand accountability and to ensure that government acts in the best interests of the people (Malena and McNeil, 2010, 5; Tembo, 2012; Peng, 2005). Moreover, citizens have the right to know what actions have been taken in their name, and should have the means to enforce corrective actions when the government acts in an illegal, immoral and unjust manner. The World Bank definition of social accountability sums up actions that citizens can use to hold power into account. It defines social accountability as “refers to the broad range of actions and mechanisms beyond voting that citizens can use to hold the state to account, as well as actions on the part of government, civil society, media and other societal actors that promote or facilitate these efforts” (World Bank, 2006).

Traditionally, the accountability of state actors has been a consequence of the implicit social compact between citizens and their delegated representatives and agents in a democracy. The social compact, in turn, derives from notions of human and citizen rights, as enshrined in the General Assembly of the United Nations' Universal Declaration of Human Rights and in many national constitutions (Malena and Mcneil, 2010, 5). The concept of social accountability goes a bit further and underlines both the right and the corresponding responsibility of citizens to expect and ensure that government acts in the best interests of the people. The obligation of government officials to be accountable to citizens also derives from notions of citizens' rights, often enshrined in constitutions, and the broader set of human rights. Social accountability initiatives help citizens understand their civic rights and play a proactive and responsible role in exercising those rights (World Bank, 2006).

Social accountability goes beyond the traditional accountability efforts by citizen or civil society to hold government accountable. The traditional practice of public accountability in most democracies have always emphasised the citizens or the public as final agent to whom all public servants (both elected and appointed) were to be held accountable (Haque, 2007, 442; Manela, Forster & Singh, 2007). Consequently, accountability was limited to actions such as public demonstrations, protests, advocacy campaigns, investigative journalism, and public interest lawsuits, judicial mechanisms; political means by way of voters and elections, legislative committees, parliamentary questions, financial audits, ministerial controls, advisory committees, ombudsmen, anti-corruption agencies, public hearings, opinion polls, and media scrutiny (Callamard, 2010, 1213; Haque, 2007, 438). Social accountability extended these mechanisms to include efforts to enhance citizen knowledge and use of conventional mechanisms of accountability and efforts to improve the effectiveness of internal accountability mechanisms through greater transparency and civic engagement. Social accountability efforts have also concentrated on strengthening legislative oversight and links between parliamentarians, citizens and civil society organizations are also important ways to enhance social accountability (World Bank, 2006). It has also expanded mechanisms to hold government accountable to include the use of participatory data collection and analysis tools combined with enhanced space and opportunity for citizen/civil society engagement with the state. These innovations in accountability have led to a new generation of social accountability practices to include participatory public policy-making, participatory budgeting, public expenditure tracking, and citizen monitoring and evaluation of public services (World Bank, 2006).

### **The Role of Information In Advancing Social Accountability**

A generally accepted fundamental democratic principle that underpins good governance is that public bodies hold information on behalf of the public (Humphrey & Weinstein, 2007) and the public has a right to demand access to that information. The right of access to information is a 'component part' of the other fundamental rights, that it can be used to give effect to and safeguard the other rights, as well as assist with the enforcement of them. While access to information has an important role to play in the smooth functioning and implementation of other human rights, the right in and of itself, gives power and freedom to people who can utilise it (Richter, 2005, 220).

It is clear from the explanation of social accountability above that a major pillar of social accountability is participation. Participation is the process through which stakeholders' influence and share control over priority setting, policy making, resource allocations, and creating access to public services provisioning (Enserink et al, 2006; Nyalunga, 2006). Research shows that successful community-development interventions that have sustained impact generally require a high level of community participation, incorporating community members into the decision-making process and therefore holding power to account (Markell, 2006; Hatura&Radu, 2009).

The main argument backing public participation is that transparency is inextricably linked to accountability (Ahmad, 2008, 12, Oberoi, 2013,43). Building credible evidence that will serve to hold public officials accountable often involves obtaining and analyzing both supply-side information from government and service providers and demand-side information from users of government services, communities and citizens. The transparency of government and its capacity to produce and provide data and accounts are crucial for accessing supply-side information such as policy statements, budget commitments and accounts, records of inputs, outputs and expenditures, and audit findings (World Bank, 2006). Access to information therefore encourages public participation in governance where citizens demand explanations and justifications for state action.

It has been argued that in every democratic society public participation is a fundamental part of democratic processes for numerous reasons. Firstly, public participation is seen as a means of improving both the performance and accountability of a bureaucracy that is outdated, unrepresentative and underperforming (Adesopo, 2011, 143). Secondly, it fosters good governance, promotes transparency, increases social justice by involving the poor and excluded , and helps individuals become better citizens (Moynihan, 58). Thirdly, public participation allows for government scrutiny by the public and opening up government to scrutiny from outside provide a means for identifying and then questioning the government's actions.

The proponents of good governance emphasise that this public participation cannot be exercised effectively without access to government information (Roberts, 2007, 9; Ababio, 2004,286) as information is central to holding governments accountable. Democracy depends on a knowledgeable citizenry whose access to a broad range of information enables them to participate fully in public life (Neuman, 2002, 5). Moreover, access to information allows people to scrutinize the actions of their government and is the basis for informed debate of those actions. Thus, transparency and dissemination of information at each stage is important to allow the public to participate in the decision-making process (Bellver and Kaufmann, 2005,12). Unless citizens are properly informed about what government is doing, how it is spending public funds they cannot ensure that it is acting for

the general public good, or in accordance with its public promises. Furthermore, legislatures, the media and civil society are better able to hold the executive to account when they have information on its policies, practices and expenditures. Increase transparency may also increase faith in government and commitment to policy trade-offs enhancing social cohesion (Bellver and Kaufmann, 2005,14).

Consequently, there have been increasing demands for the government to establish transparency, access to information, and citizen participation mechanisms in its work. This is intended to strengthen their control functions, increase the demand for accountability from public administration and thus enhance the credibility of governmental policies and programs (Nino, 2010, 1). This emphasis on the importance of access to information has, in recent years, led to access to information laws enacted in many countries. To that effect, many democratic societies have enshrined freedom of information and the right to access this information in their constitutions, giving citizens broad access to any information that may impact their lives, including state-held information. In many countries, a legal framework providing for the access to information regime includes a country's constitution, legislation, and public rules and regulations (McNeil and Malena, 2010,190).

Citizens have attempted to use these laws to gain access to records or to learn about resource allocation through social development programs to improve their livelihoods. According to the NGO Article19 over 95 countries globally have enacted such laws to date and many others have these laws in various stages of the parliamentary pipeline. There is strong evidence of benefits of access to information laws in many countries with such laws. Firstly, research shows that access laws play an important role in reducing corruption within government institutions (Roberts, 2007,9). Secondly, these laws also allow citizens to directly interact with public institutions without depending on lawyers, journalist or elected representatives. Thirdly, countries who have adopted these laws have seen citizens enjoying greater voice and accountability within a country (Bellver& Kaufmann, 200, 15). Lastly, evidence shows that countries which provide better information in terms of quantity and quality also govern better for a wide number of governance indicators such as government effectiveness, regulatory burden, control of corruption, voice and accountability, the rule of law, and bureaucratic efficiency.

However, it is crucial to point out that despite the benefits of these laws, for them to work well in practice and to be useful to both government and citizens and their civil society organizations, it should meet a number of key principles. These laws would not be effective if thereis not clear and effective mechanism to enable citizens to use them and if the content and benefits of the law have not been communicated through a broad communication campaign (Bellver& Kaufmann, 2005, 18; Calland, 2002,15).Moreover, political will is critical in ensuring, first, the enactment of such laws but also their effectiveness once enacted. Most governments are accustomed to working in a secretive fashion. The notion of transparency is invariably far beyond the range of experience and therefore a fundamental mind shift is necessary (Neuman&Calland, 2007,10). The government must see passage, implementation and enforcement of a vigorous access to information law as a priority. Effective access to information laws can take an enormous amount of energy and resources (Neuman, 2002, 31). The United States has had the access to information law for over three decades and experience there shows that the early few years after the law has been passed are crucial in determining habits– on both the state and citizens sides. After that, systems are created, and norms established (Calland, 2002, 23).Access to information laws will not be used if citizens are incapable of acting on the information obtained through

access requests and these laws are unlikely to be used extensively unless other steps are taken to build capacity within civil society and increase its influence over the policymaking and administrative processes of government (Roberts, 2007, 14).

Moreover, access to information laws will be ineffective if citizens and non-governmental organizations lack the capacity to exercise their right of access or the resources to pursue complex requests. Similarly, access laws will not be used if elements of civil society are unable of recognizing the potential benefits of the disclosure of certain information or incapable of acting on it afterwards. There is no point in having a law that provides for the right to access to information if there is not clear and effective mechanism to enable citizens to use the law and if the content and benefits of the law have not been communicated through a broad communication campaign (Bellver & Kaufmann, 2005, 18).

This part of this article has shown that a fundamental element of public participation in social accountability is for citizens and CSOs to have access to accurate and relevant information regarding public policies, programs, services, budgets, and expenditures. The transparency of government and its capacity to produce and provide data and accounts are important (McNeil and Malena, 2010, 191; Grimmelikhuijsen, 2012; Murillo, 2012). However, we cannot take lightly that information on its own, though necessary, is not sufficient. Political context, culture and will, where power is decentralized, and basic political and civil rights are guaranteed as well as legal and policy frameworks that promotes or requires public access to that information, as well as consultation and citizen participation and oversight can be essential to enabling and sustaining social accountability (McNeil and Malena, 2010, 186; Tembo 2012). The willingness and ability of politicians and civil servants to account to the people is a critical factor in achieving social accountability. From the perspective of the three building blocks of social accountability—information, voice and negotiation—the willingness and ability of state actors to disclose information but also to listen to and engage with citizens is key (World Bank, 2006).

Therefore, in addition to accessing information, social accountability is strongly influenced by a range of underlying political, legal, social, cultural, and economic factors. Some aspects of the enabling environment are so critical that they can almost be considered prerequisites for social accountability. For example, the opportunities for social accountability initiatives are clearly greater where the political regime is democratic, a multi-party system is in place, and basic political and civil rights are guaranteed. Rule of law and the existence of legal guarantees of the freedom of information, press, expression, association and assembly are crucial (World Bank, 2006). Social accountability initiatives are most effective when these key components are ‘institutionalised’ and when states’ ‘internal’ (horizontal) accountability mechanisms are ‘more transparent and open to civic involvement’.

### **The State of Access To Information In Africa**

Despite the global progression, Africa still lags behind in enacting access to information laws. As a result Africa is the region of the world that experiences the impact of nonresponsive and unaccountable governance the most (Darch and Underwood, 2010). In Africa, there remains much unfinished business and many unfulfilled promises, including stalled legal reform, limited media pluralism, and a lack of political will to move from the rhetoric of transparency to its reality (Callamard, 2010, 1212)

The African Media Barometer reports point to great weaknesses with regard to respecting and implementing the Right to Information on the African continent. Most African countries have neither passed Freedom of Information legislation, nor possess any constitutional

guarantees. The number of African countries with freedom of information laws is tiny, with only a handful of the 53 countries on the continent having enabling laws actually in place. In 2013, there were only 11 countries with FOI laws, with Rwanda becoming the 11th country on the continent to pass an Access to Information law. About 43 countries have not yet passed access to information laws.

It may seem that lack of political will to pass access to information laws is the cause but there are a number of other factors that affect the availability of government information in the continent. Darch and Underwood succinctly sum up some of these causes. First, “the fragility of post-colonial and post-settler state formations in Africa, the linguistic, cultural and ethnic diversity within particular countries, widespread violent conflict, the absence of adequate economic and social infrastructure, and the near-universal replacement of politics-as policy-making by the politics of patronage under the aegis of the Bretton Woods institutions and the World Trade Organization, all mean that demand-driven state compliance with the requirements of transparency and freedom of information is rarely seen” (Darch and Underwoond, 2009).

Secondly, they argue that “in many African countries the post-colonial languages of administration – English, French, Portuguese, Arabic – may make such documents as are available incomprehensible to the majority of the population” (Darch and Underwoond, 2009).

Finally, they contend that “good record-keeping and archival practices – an essential precondition for compliance – are often lacking, and bureaucracies themselves are disorganised and poorly trained” (Darch and Underwoond, 2009).

Despite the slow progress in enacting access to information laws, there are countries in the region that have enacted such laws. South Africa has the longest experience in implementing ATI legislation on the continent, after passing the Promotion of Access to Information Act in 2000. Zimbabwe adopted its law in 2002, with Uganda adopting its access to information law in 2005. Liberia's Freedom of Information (FOI) law, adopted in October 2010, and was followed by Nigeria in 2012. Three French-speaking countries – Guinea-Conakry, Niger and Tunisia – have also adopted ATI laws but implementation has not taken place beyond awareness-raising, with Morocco and the Democratic Republic of the Congo now having draft laws. Ethiopia's ATI law, adopted in 2010, went operational in January 2012. Its oversight body, the Ethiopian Institution of the Ombudsman (EIO), has been preparing supplementary legislation which will include a code of practices, guidelines, manuals and training documents.

In certain countries where there is no access to information legislation social accountability practitioners rely heavily on policy pronouncements and memoranda of agreement between themselves and the relevant public authority. In other instances cabinet directives or decrees are issued pronouncing government's commitment to providing information (Memeza, 2006, 28).

An African regional human rights body, the African Commission on Human and People's Rights has been pushing for greater access to information in the continent. It declared that “the fundamental importance of freedom of expression and information as an individual human right, is a cornerstone of democracy and is a means of ensuring respect for all human rights and freedoms..... “the right of access to information held by public and

private bodies, will lead to greater public transparency and accountability, as well as to good governance and the strengthening of democracy" (ACHPR, 2002).

At the end of February 2013 the African Commission on Human and Peoples' Rights formally adopted the African Union's Model Law on Access to Information for Africa, which is intended to guide countries to adopt and implement Access to Information legislation. The model law not only demonstrates the African Union's (AU) commitment to promoting the right to information in Africa, but will provide guidance for development of ATI laws on the continent.

### **Lessons From South Africa and Zimbabwe**

South Africa and Zimbabwe are part of a handful of countries in Africa to have enacted access to information legislation. Most African countries are party to international treaties that guarantee the right to receive and impart information. Domestic constitutions, with the exception of Swaziland also provide for the right to access information within a cluster of rights under the rubric of the right to freedom of expression. Where a constitution does not guarantee the right to freedom of information, the concept of the right to access publicly held information is given recognition by a government decree or a policy pronouncement (Memeza, 2006,5).

The right to access to information in South Africa is a constitutional right. Section 32 of the South African Constitution guarantees this right and provides for the enactment of a national legislation to give effect to the right of access to information as stipulated in that section. To that effect, the Promotion of Access to Information Act 2 of 2000 (PAIA) was enacted. This legislation was approved by Parliament in February 2000 and came into effect in March 2001. PAIA is intended to "foster a culture of transparency and accountability in public and private bodies by giving effect to the right of access to information" and "Actively promote a society in which the people of South Africa have effective access to information to enable them to fully exercise and protect all of their rights."(PAIA, 2000).It is different from much of freedom of information laws from other parts of the world and is ground-breaking in at least two respects. Firstly, it is based on, and backed up by, a specific constitutional right of access to information, entrenched in the Bill of Rights. Secondly, this right and, as a consequence, the Act is applicable not only to information in government possession but also to information held by the private sector.

In Zimbabwe, the right to access to information is also enshrined in the constitution. The new constitution in Zimbabwe specifically provides for the right to access to information. The provisions in Chapter 4 of the new constitution are similar to the provisions in its South African counterpart and outlines the declaration of rights which includes right to access to information and states that:

"Everyone, including the press and other media of communication, has the right to access to-

- a) Any information held by the state; and
- b) Information held by anyone else in so far as that information is required for the exercise or protection of any person's rights under this constitution or any other law." (Constitution of Zimbabwe, 2013)

Since 2002, the access to information regime in Zimbabwe has been regulated by the Access to Information and Privacy Protection Act (AIPPA) which was signed by President Robert Mugabe in February of that year. However, the main provisions of the law give the government extensive powers to control the media and suppress free speech by requiring the registration of journalists and prohibiting the “abuse of free expression.” On paper, AIPPA sets out rights and procedures for access that are similar to other access to information laws around the world.

A survey conducted by the Open Democracy Advice Centre in 2002 found, “on the whole, PAIA has not been properly or consistently implemented, not only because of the newness of the Act at the time, but because of low levels of awareness and information of the requirements set out in the act” (Tilley and Meyer, 2003). Consequently, ordinary people hardly make use of the provisions of the Act. Similarly, both public and private bodies had not yet embraced and incorporated the precepts of PAIA as part and parcel of their business. The study even argued that “the objectives of PAIA have not yet been fully realised and perfected, primarily because the public has not been properly educated and made aware of the existence of the Act” (Tilley and Meyer, 2003).

The same organisation conducted a further survey into the implementation of PAIA a few years after the initial study to measure the extent of compliance with access to information requests. Of the 100 requests made in the ODAC study, only 23 per cent were granted. The rest were refused: 52 per cent met with mute refusal (which means the request was ignored), 6 per cent with a verbal refusal, and 2 per cent received written refusals (Tilley and Meyer, 2003).

A similar study by OSJ had comparable conclusions to the ODAC findings and found that South Africa had ‘some serious problems with Implementation which it said “need to be addressed if the right of access to information is to be enjoyed in South Africa, and if the South African law is to set standards for the African continent”(OSJI, 2006). The study found that that over one third of requests met with complete silence from the authorities. In terms of these “mute refusals,” South Africa fared the worst compared to other countries studied, with 63 percent of the properly submitted requests completely ignored. As the country report on South Africa comments, “these results are of particular concern given that South Africa’s FOI law, the 2000 Promotion of Access to Information Act (PAIA), the first of its kind in Africa, has been hailed as a model for other African countries” (OSJI, 2006). Though the South African law may be the best drafted and most comprehensive among the five test countries in the study, in terms of compliance with international standards and best practice, only 23 percent of requests were successful, (Nueman&Calland,2007, 4; Richter, 2005, 221).

The implementation challenges do not only relate to lack of education and awareness on the part of ordinary citizenry and public officials, but also the lack of institutional arrangements to dispatch information when it is requested. Enforcement and resource limitations highlight the key challenge to successful realisation of the implementation of access to information process. More often than not, information is delayed primarily because institutions take their own time to respond to requests for information (Mckinley, 2003; Sipondo, 2010). Furthermore, concern has been expressed from various quarters about the ineffectiveness of the Act’s dispute-resolution processes. Litigation is widely recognized as being too inaccessible and cumbersome to be an effective tool of to enforce the freedom of information rights in the Act and in the Constitution (Sipondo, 2010)

The challenges above shown by the South African example displays that enabling laws and policies are useful but not sufficient to support social accountability. Citizens' rights are often protected by law but not necessarily respected in practice. Although an enabling law or policy is always helpful, the lack of an enabling framework does not preclude social accountability activities (McNeil and Malena, 2010,190). Moreover, it is obvious that despite having adopted model legislation under a constitutional guarantee is no answer as the South African experience shows.

Zimbabwe has a Freedom of Information Act, yet it remains the most challenging environment in which to operate (McNeil and Malena, 2010,188). On paper, the legislation also creates a right of access by any citizen or resident to records held by a public body that are generally similar to other freedom of information. AIPPA has the expressions 'access to information' and 'protection of privacy' in its title, and recognises those rights in an extremely limited way in its provisions. Section 5 grants a nominal access right to state information, as well as requiring the state to limit the uses that it can make of personal information collected about citizens.

In reality, AIPPA's overriding objective is to give the government extensive powers to control the media and many see this law as irrelevant and therefore unused by organisations seeking access to information to advance socio- economic rights (Memeza, 2006, 8). This legislation is used in practice only to stifle the free press and independent journalism. The inclusion of Zimbabwe in any list of countries with freedom of information legislation is highly ironic, as Banisar notes, since the law has been used to stifle the free press rather than to encourage any kind of information access right (Banisar, 2006)

The law contains exceptions and exclusions to the right to information that are so comprehensive as to effectively negate the right. The use of the catchall term 'public interest' to justify a refusal to release information is, as the Article 19 organisation notes, an extraordinary inversion of usual practice, which is to use public interest as an overarching reason to make information available. In addition, other exception clauses of AIPPA do not require the state to make any argument regarding possible harm that might result from making information available, a standard practice elsewhere.

Despite the availability of access to information laws in both countries, practice shows that accessing information has been difficult in both contexts, due to a number of reasons to be discussed in this section of the paper. Notwithstanding the fact that the South African legislation as drafted and adopted has been recognised as exemplary and has even been termed the 'gold standard' for freedom of information laws, citizen demand remains relatively low and bureaucratic compliance inadequate: The majority of South Africa's citizens simply do not seem to be making significant use of their right to know (McKinley, 2003). Many have that the Zimbabwe legislation does not give effect to the right of access to information and therefore cannot be classified as access to information legislation. Darch and Underwood strongly argued that "the ideological roots of [AIPPA], despite its title, are deeply embedded, not in the universalising discourse of human rights, but rather in an exclusionary politics that is paramilitary in character – a deformed nationalism that elevates the virtues of discipline and obedience above those of independent analysis" (Darch and underwood, 2009).

## **ANALYSIS**

The examples of Zimbabwe and South Africa offer two things: an example of when an access to information law can be a negative force in society in the case of Zimbabwe, and in the case of South Africa, demonstrates that the mere existence of a law does not always mean that access is possible. In some countries freedom of information laws are that in name only, like the Zimbabwean Protection of Privacy and Access to Information Act that sets strict regulations on journalists and its access provisions are all but unused. In fact the Act is designed to restrict access to information and not promote it (Memeza, 2006, 35).

Social accountability actors need to think about a number of factors that hinder access to information despite the availability of access to information law. There is no point in having a law that provides for the right to access to information if there is not clear and effective mechanism to enable citizens to use the law and if the content and benefits of the law have not been communicated through a broad communication campaign (Bellver& Kaufmann, 2005, 18). Even after knowing about the existence of the law, the complexity of the content of such legislation as well as the procedure needed to request information plays a crucial role in whether that law will be effectively implemented. Moreover, access to information laws will not be used if elements of civil society are unable of recognizing the potential benefits of the disclosure of certain information or incapable of acting on it afterwards. These laws will similarly be ineffective if citizens and civil society lack the capacity to exercise their right of access or the resources to pursue complex requests.

The experience from the countries studied in this paper has proven that passing the legislation itself is the easier task. The subsequent implementation of an open information regime is often the most challenging. Implementation challenges are around the complexity and technicalities of the procedure to access information that has been alluded to in this paper. Some procedural challenges could include "a lack of capacity in relation to record keeping and record making; insufficient resources and infrastructure; inadequate staffing in terms of training, specialization, and seniority; and a lack of capacity building or incentive systems" (Neuman&Calland, 2007, 4). For South Africa, the ODAC pointed out that one of PAIA's greatest weaknesses 'is the absence of an enforcement remedy' that is 'accessible, affordable, specialist and speedy, (Richter, 2005, 229)

Probably the most pressing challenge that stands in the way of access to information revolves around the difficulty in adjusting the mindset of the bureaucracy and people who hold the information. The most significant factor in the proper implementation of the right of access to information is the positive and co-operative attitudes of information officials and others involved in the process of making information available. A fundamental mind shift is necessary, prefaced with political will for a change in approach. The mind-set of opacity is common; it seems that in general, public officials have developed an ingrained sense of ownership about the records for which they are responsible. Releasing them to the public is akin to ceding control and, therefore, power (Neuman&Calland, 2007, 10). Therefore even if the provisions of the law are perfect, "its implementation relies largely on the attitude of the officials who implement it" (Richter, 2005, 228). The negative attitude comes, at least in part, from the suspicion that these officials might have of those requesting the information. In South Africa, Calland attributes this suspicious attitude of officials to the 'bureaucracy lacking the confidence to see that openness is a friend and not a foe' (Calland,2002;).

A further challenge with implementation lies in the information itself, both the quality and relevance of such information to the social accountability cause. Jonathan Fox questions

the very quality of information sometimes provided by the officials. He points out the problem of quality control for official information, that is, the difference between official data and relevant, reliable information (Fox, 2007, 664). The second issue he alludes to is what he terms 'Opaque' information, which is disseminating information that does not reveal how institutions actually behave in practice, whether in terms of how they make decisions (Fox, 2007, 666). He also alludes that even if information is provided, the genuineness of that information may be questionable with some powerful elites respond by offering "some measure of transparency instead" (Fox, 2007, 664)

The challenges pointed above illustrate that the enactment of access to information law is only the beginning. The question of why the law was passed in the first place is a crucial one to ask. Was it a genuine desire to provide citizens with information or was it because of pressure from different stakeholders to pass such legislation? For example, Neuman and Calland point out that if, for example a government has passed the law to satisfy an international financial institution as a "condition" for loan or debt relief or to join an intergovernmental organization, regional trade group, or common market, its true commitment to full implementation may be in question (Neuman&Calland, 2007, 2).

For the access to information law to be of any use it must be implemented as without effective implementation, an access to information law—however well drafted — will fail to meet the public policy objectives of transparency (Neuman&Calland, 2007, 3). Effective implementation will take an effort from a number of stakeholders. The governments will have to change their internal cultures; civil society must test access to information legislation by actually demanding information. Strategies for building political will for social accountability may vary based on whether an individual in the public sector is already supportive or, instead, needs more knowledge or sensitization. In the former case, practitioners of social accountability can actively seek out and nurture social accountability champions within the public sector who genuinely believe in and are willing to support the approach (McNeil and Malena, 2010, 201).

### **CONCLUDING REMARKS**

States are rarely effective at holding themselves accountable. To achieve accountability, citizens must also demand it. Africa is arguably the region where governance failures, underdevelopment, and disempowerment are most pronounced, where the need for enhanced social accountability is most pressing, and where the potential benefits of social accountability are greatest (Malena and McNeil, 2010,12). The pervasive corruption and inefficiency experienced by many African countries in the use of resources appear as a growing citizen concern in these countries (Nino, 2010, 3). Civil society and social accountability practitioners in particular, have a critical role to play in monitoring the exercise of power in democratic regimes, especially in countries characterized by high corruption rates and inefficiency in public management (Nino, 2010, 1).

Transparency and dissemination of information at each stage is critical to allow different social groups to participate in the decision-making process (Bellver and Kaufmann, 2005, 12). Access to information allows people to scrutinize the actions of their government and is the basis for informed debate of those actions. Legislatures, the media and civil society are better able to hold the executive to account when they have information on its policies, practices and expenditures. Increase transparency may also increase faith in government and commitment to policy trade-offs enhancing social cohesion (Bellver and Kaufmann,

2005, 14). Thus, an access to information law can offer a new beginning in the relationship between government and its citizens. Transparency and the freer flow of information that comes with it provides a chance to build confidence and to craft a new covenant of trust between the governed and the governing (Calland, 26).

However, social accountability is strongly influenced by a range of underlying political, legal, social, cultural, and economic factors. Political will is critical for social accountability to be successful. Strategies for building political will for social accountability are crucial and may vary based on a number of factors such as whether an individual in the public sector is already supportive or, instead, needs more knowledge or sensitization. In the former case, social accountability practitioners can actively seek out and nurture champions within the public sector who genuinely believe in government accountability.

More importantly, citizens and those in authority must come to a common ground, and where they intersect will determine the quality of the transparency regime and therefore improved service delivery.

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# **TADBIR URUS MODAL SOSIAL DAN PENCAPAIAN PENDIDIKAN PELAJAR DESA SEKOLAH MENENGAH DI KEDAH**

Noraniza Binti Yusoff<sup>1</sup>

## **ABSTRAK**

Penyertaan dalam tadbir urus merupakan mekanisma hubungan manakala dalam konsep modal sosial penyertaan adalah dimensi modal sosial. Urus tadbir dalam pendidikan telah melalui pembaharuan dan turut melibatkan aspek modal sosial khususnya untuk meningkatkan pencapaian pendidikan pelajar sekolah. Kajian yang dilakukan ke atas 867 orang pelajar sekolah menengah di negeri Kedah ini telah dijalankan bagi tujuan menentukan bagaimana dimensi-dimensi modal sosial mempengaruhi pencapaian pendidikan menggunakan kaedah campuran berurutan kuantitatif dan kualitatif. Hasil kajian mendapati maklumat dan komunikasi mempunyai hubungan dengan pencapaian pendidikan pelajar sekolah menengah yang dikaji di negeri Kedah. Walau bagaimanapun perpaduan dan penyertaan sosial yang merupakan aspek penting dalam tadbir urus tidak mempunyai hubungan dengan pencapaian pendidikan pelajar. Implikasi dari fenomena ini dicadangkan supaya datuk bandar atau pentadbir di kawasan kerajaan tempatan turut terlibat dalam dasar dan program yang bertujuan meningkatkan pencapaian pendidikan. Dalam tempoh sepuluh tahun kebelakangan ini tadbir urus menjadi unsur penting dalam meningkatkan pencapaian pendidikan pelajar sekolah dengan menjadikan datuk bandar sebagai salah satu dari entiti yang mengawal daerah sekolah.

**Katakunci:** Tadbir urus, modal sosial, pencapaian pendidikan, pelajar, sekolah

## **PENGENALAN**

Mundy (2009) menggambarkan bahawa sejak dua puluh yang lalu pembaharuan kepada cara yang sistem pendidikan adalah diurus dan ditadbir telah dicuba merentasi sebahagian besar negara di dunia. Pembaharuan ini biasanya dikeluarkan pada satu agenda tadbir urus “ideal” yang termasuk pemasaran kuasa, penciptaan perkongsian awam-swasta dan kepelbagaian dalam usaha untuk meningkatkan penyertaan dan pengawasan aras-tempatan. Pembaharuan tadbir urus demikian adalah berakar dalam idea bahawa pengawasan aras-tempatan dalam perkhidmatan meningkatkan kecekapan sistem pendidikan dalam mengeluarkan modal manusia berkemahiran terutamanya di kalangan orang paling miskin. Di samping agenda kecekapan pemikir pembangunan kontemporari telah memberikan penekanan tinggi pada perkongsian dan penyertaan untuk pencapaian dalam akauntabiliti awam (tadbir urus yang baik) dan demokrasi. Dalam pendidikan seperti dalam sektor yang lain, kepentingan penglibatan masyarakat civil telah menjadi ciri utama dalam agenda pembaharuan tadbir urus komuniti.

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Laporan Pembangunan Dunia oleh Bank Dunia 2004 "Membuat Perkhidmatan Berkerja Untuk Orang Miskin" dan laporan Pasukan Petugas Projek Milenium Pertubuhan Bangsa-Bangsa Bersatu Tentang Pendidikan (2005), agenda pembaharuan tadbir urus termasuk: pengagihan kuasa dalam kewangan dan pengurusan pendidikan, penglibatan ibu bapa dalam pengurusan berdasarkan sekolah, peruntukan dalam maklumat yang lebih baik ke atas prestasi sekolah dan pencapaian pelajar kepada ibu bapa dan komuniti, pengenalan mekanisma pilihan (termasuk mekanisma berdasarkan permintaan) dan perkembangan peruntukan perkhidmatan awam-swasta dan NGO untuk merangsang persaingan dan capaian sistem. Kebanyakan projek semasa dalam pendidikan asas termasuk dua matlamat pembaharuan: pengagihan kuasa kewangan kepada kerajaan tempatan (80%) dan pengenalan mekanisma pengurusan aras-tempatan (90%) (Mundy, 2009).

Sektor pendidikan bergantung pada fahaman bahawa mekanisma akauntabiliti aras-tempatan dan tadbir urus yang menjalankan pengagihan kuasa akan mengerakkan suara rakyat dalam pencapaian bagi Pendidikan Untuk Semua. Karya-karya menunjukkan tiga "jenis ideal" hubungan antara negara, tatanegara, rejim kewarganegaraan dan bentuk kelayakan pendidikan. Demokrasi sosial yang sangat terancang dan bentuk sekular dalam agensi politik kolektif dan parti berhaluan kiri yang berkembang dengan baik pada peringkat kebangsaan, mempunyai sistem pendidikan yang adalah dengan ekstrem dibiayai dengan baik dan berpusat secara pentadbiran. Negara ini mencapai aras tinggi dalam pencapaian dan kesamaan yang tinggi dalam pencapaian dalam sistem pendidikan mereka dan sedikit pembiayaian untuk peruntukan swasta. Mereka juga mendedikasikan sumber yang besar untuk sistem dalam penyamaan dan perlindungan pendapatan yang menbataskan ketidaksamaan ekonomi dan menjamin satu piawaian kehidupan bersama (Mundy, 2009).

Dalam aspek yang lain modal sosial dan tadbir urus juga dibincangkan seperti dalam tulisan oleh Findlay (2009) yang menunjukkan bahawa tadbir urus diperlukan bagi menangani ketidaksamaan dalam modal sosial. Manakala Bull dan Jones (2006) menggambarkan pertumbuhan semula di United Kingdom cuba menggunakan modal sosial dari rangkaian dan pertubuhan dalam sistem baru tadbir urus menghubungkan agensi kerajaan pusat, majlis tempatan dan sukarelawan tempatan serta kumpulan komuniti. Carey dan Lawson (2011) menyatakan bahawa tadbir urus hubungan menggalakkan pembeli dan pembekal untuk bekerja ke arah manfaat bersama melalui norma-norma fleksibiliti, perpaduan dan perkongsian maklumat.

### **ULASAN KARYA**

Carey dan Lawson (2011), melalui kerangka konseptual berkenaan pengurusan rantaian bekalan dan teori modal sosial (*Social Capital Theory/SCT*). Hasil kajian menunjukkan bahawa tadbir urus hubungan membawa kepada pembentukan modal sosial di bawah keadaan ketidakpastian bekalan tetapi adalah tertakluk kepada sikap pandai mengambil kesempatan apabila permintaan keluaran pengguna ialah tidak menentu. Sebaliknya, dalam keadaan ketidakpastian permintaan tinggi, tadbir urus kontrak ialah berkenaan dengan pembentukan modal sosial. Pengurus perlu menimbang cara pilihan mekanisme tadbir urus (kontrak atau hubungan) yang menyumbang kepada modal sosial dan menonjolkan sifat bergantung dalam mekanisme ini bergantung pada konteks alam sekitar.

Xia (2011), norma subjektif dan rangkaian objektif modal sosial merapatkan meliputi kepercayaan umum dan penyertaan dalam rangkaian sosial inklusif mempunyai satu kesan

penting dan positif ke atas prestasi tadbir urus walaupun selepas mengawal pengaruh lokasi kawasan, jarak ke bandar pasaran, saiz kampung dan aras pembangunan ekonomi kampung. Kampung yang mempunyai modal sosial merapatkan cenderung untuk mengalami tadbir urus yang baik oleh Jawatankuasa Kampung dari segi empat dimensi tadbir urus: tindakbalas Jawatankuasa Kampung, pengurusan pengagihan tanah, percuaian dan perbelanjaan kebajikan sosial dan barang awam. Keputusan kajian menunjukkan bahawa modal sosial merapatkan seperti yang ditunjukkan dalam kepercayaan umum dan rangkaian sosial inklusif secara positif mempengaruhi prestasi tadbir urus setiap kampung yang ditinjau. Modal sosial ikatan seperti yang ditunjukkan dalam kepercayaan khusus dan rangkaian sosial eksklusif memberi kesan secara negatif ke atas prestasi tadbir urus kawasan luar bandar China.

Huppe dan Creech (2012), tadbir urus berangkaian menganjurkan proses-proses pembelajaran interaktif. Apabila masalah mencapai satu aras tertentu dalam kerumitan, ia adalah difikirkan bahawa keupayaan untuk menyelesaikan masalah adalah dengan meluas diagihkan seluruh aktor saling bergantungan dari skala berbeza dan sektor masyarakat. Hanya dengan berinteraksi secara bersama-sama melalui proses-proses tadbir urus berangkaian yang mengalakkan unsur-unsur kepercayaan, sifat timbal balik dan model-model mental dikongsi, persepsi masalah hubungan dan kemahiran hubungan yang aktor dapat menyelaraskan strategi mereka mengikut visi dikongsi berkenaan pembangunan mampan dan mencapai matlamat bersama yang adalah saling memberi manfaat bertamenjadi matlamat secara kolektif. Melalui keadaan ini membolehkan situasi organisasi berkenaan modal sosial dan kognisi kolektif yang boleh merangkaikan inisiatif tadbir urus dan membenarkan penciptaan nilai dikongsi serta tadbir urus refleksif.

Teles (2012), penyelidikan menunjukkan bahawa institusi boleh menggalakkan modal sosial yang menetapkan asas untuk menggalakkan penglibatan rakyat dalam politik tempatan. Rekabentuk institusi yang membuat tadbir urus penyertaan wajar boleh merangkumi keperluan “proses pedagogi” yang mencipta kepercayaan dan menggalakkan kewujudan dalam satu set tertentu nilai tidak formal atau norma dikongsi di kalangan ahli dalam satu kumpulan yang membentarkan kerjasama antara mereka. Satu rekabentuk institusi sesuai dalam kerajaan tempatan yang memperbaiki penyusunan tadbir urus penyertaan mungkin menggalakkan modal sosial dengan demikian menetapkan sinario yang amat diperlukan yang membolehkan menangani pertukaran dari ‘kerajaan ke tadbir urus’ pada peringkat tempatan.

Boon (2010), isu-isu yang berkaitan dengan tadbir urus dalam dasar pendidikan prasekolah di Malaysia termasuk kesinambungan atau kelestarian dalam dasar, inklusif dalam perancangan dan pelaksanaan dasar, perhatian kepada penduduk rentan (lemah), penyebaran dalam dasar dan program, akauntabiliti dalam tadbir urus, penyelarasaran pelaksanaan dan pembiayaan. Manakala Frost & Sullivan (n.d.), perlu ada satu mekanisma tadbir urus yang baik yang benar-benar telus kepada semua *stakeholder* termasuk *Information and Communication Technology (ICT)* dalam pendidikan. Badan tadbir urus harus mengawasi dan mengurus semua inisiatif yang berkaitan dengan ICT dalam pendidikan.

Suhaimi Ismail et al. (n.d.), tadbir urus teknologi maklumat boleh dilaksanakan melalui satu kerangka struktur, proses dan mekanisma hubungan. Struktur merangkumi peranan dan tanggungjawab, struktur organisasi teknologi maklumat, *C/O on Board*, jawatankuasa strategi teknologi maklumat dan jawatankuasa kemudi teknologi maklumat. Proses merujuk pada

Perancangan Sistem Maklumat Strategik, (IT) BSC, Ekonomi Maklumat, SLA, COBIT dan model kematangan tadbir urus atau penjajaran ITIL. Mekanisme hubungan termasuk penyertaan aktif dan kerjasama antara *stakeholder* utama, ganjaran dan insentif perkongsian, Perniagaan/lokasi Bersama Teknologi Maklumat, perniagaan silang-fungsi/ latihan dan putaran Teknologi Maklumat. Secara ringkasnya boleh dikatakan bahawa penyertaan dalam tadbir urus merupakan mekanisma hubungan manakala dalam konsep modal sosial penyertaan adalah dimensi modal sosial.

## METOD KAJIAN

Kajian ini merupakan penyelidikan asas bertujuan untuk menjelaskan kenapa modal sosial mempengaruhi pencapaian pendidikan masyarakat desa. Jenis kajian ini ialah *causal research* iaitu kajian hubungan sebab akibat yang menyiasat kesan satu atau lebih pembolehubah ke atas satu atau lebih pembolehubah akibat. Jenis penyelidikan ini juga menentukan jika wujud satu pembolehubah menyebabkan satu lagi pembolehubah berlaku atau berubah. Dimensi masa dalam kajian ini ialah kajian kes pendekatan kuantitatif dan kualitatif. Kajian secara mendalam dibuat melibatkan empat buah sekolah di negeri Kedah dan jumlah sampel ialah seramai 867 responden. Pendekatan kajian ini ialah pragmatisme di mana menggunakan kaedah campuran urutan untuk mengutip dan menganalisis data. Pendekatan kuantitatif adalah melalui tinjauan menggunakan borang kaji selidik. Persampelan kajian adalah berbentuk persampelan bertujuan merupakan satu teknik persampelan bukan kebarangkalian di mana penyelidik memilih unit yang akan disampel berdasarkan pertimbangan pengetahuan dan profesional. Kajian ini cuba mencapai objektif iaitu menentukan bagaimana dimensi-dimensi modal sosial mempengaruhi pencapaian pendidikan.  $H_0$  ialah tidak terdapat hubungan antara pembolehubah modal sosial (maklumat dan komunikasi, serta perpaduan dan penyertaan sosial) dengan pencapaian/kecemerlangan pelajar. Maklumat dan komunikasi serta perpaduan dan penyertaan sosial adalah dimensi modal sosial. Manakala pencapaian pendidikan pula dilihat berdasarkan keputusan peperiksaan terkini pelajar. Analisis kajian melibatkan kekerapan, peratusan dan korelasi Kendall's tau\_b.

## HASIL KAJIAN DAN PERBINCANGAN

### Latar Belakang Responden

Jadual 1 menunjukkan jantina perempuan ialah 466 orang iaitu 53.7 peratus daripada jumlah bilangan pelajar sekolah. Oleh itu, responden dikalangan pelajar perempuan adalah melebihi responden dikalangan pelajar lelaki. Jadual 2 menunjukkan pelajar Melayu ialah 777 orang iaitu 89.6 peratus daripada jumlah bilangan pelajar sekolah. Terdapat empat orang pelajar Siam iaitu 0.5 peratus daripada jumlah bilangan pelajar sekolah. Pelajar Melayu merupakan responden yang paling ramai berbanding dengan responden dari bangsa atau ras yang lain. Dalam Jadual 3 menunjukkan terdapat 787 orang pelajar beragama Islam dalam sampel iaitu 90.8 peratus daripada jumlah bilangan pelajar sekolah. Terdapat dua orang pelajar yang tidak menganuti agama iaitu 0.2 peratus daripada jumlah bilangan pelajar sekolah. Oleh itu, responden kajian adalah lebih ramai dikalangan pelajar sekolah yang beragama Islam berbanding dengan pelajar sekolah yang menganuti agama lain.

Jadual 1: Jantina pelajar sekolah kajian

Jantina	Kekerapan (n)	Peratusan (%)
Lelaki	368	42.4
Perempuan	466	53.7
Tidak Ditentukan	33	3.8
Jumlah	867	100

Jadual 2: Kategori bangsa pelajar sekolah kajian

Bangsa	Kekerapan (n)	Peratusan (%)
Melayu	777	89.6
Cina	48	5.5
India	3	0.3
Siam	4	0.5
Tidak Ditentukan	35	4.0
Jumlah	867	100

Jadual 3: Kategori agama pelajar sekolah kajian

Agama	Kekerapan (n)	Peratusan (%)
Islam	787	90.8
Kristian	4	0.5
Buddha	53	6.1
Tiada	2	0.2
Tidak Ditentukan	21	2.4
Jumlah	867	100

#### **Hubungan Tadbir Urus Modal Sosial Dengan Pencapaian Pendidikan**

Pencapaian atau kecemerlangan pelajar dengan perpaduan dan penyertaan sosial mempunyai Kendall's tau\_b ( $\tau_b$ ) 0.043, aras signifikan ( $p$ ) ialah 0.05, lebih daripada 0.05 ( $p > 0.05$ ) ( $p = 0.087$ ). Hipotesis null tidak boleh ditolak dan tidak ada perkaitan antara pencapaian kecemerlangan pelajar dengan perpaduan dan penyertaan sosial. Jadual 5 menunjukkan hasil analisis Kendall's tau\_b. Pencapaian atau kecemerlangan pelajar dengan perpaduan dan penyertaan sosial mendapati tidak ada perkaitan antara pencapaian kecemerlangan pelajar dengan perpaduan dan penyertaan sosial. Berbeza dengan Seethamraju dan Borman (2009), hasil kajian menunjukkan bahawa prestasi akademik dipengaruhi oleh kemahiran dan pengetahuan ahli-ahli individu, perpaduan sosial berpotensi di kalangan ahli-ahli kumpulan dan keupayaan pengurusan tugas dipertimbangkan di peringkat pembentukan kumpulan. Manakala Warwick (1964) mendapati perpaduan adalah berkait secara negatif dengan peningkatan. Sel indeks-tinggi/perpaduan-rendah menunjukkan peningkatan lebih baik daripada sel indeks-tinggi/perpaduan-rendah. Wong dan Shen (2013) menggambarkan bahawa dalam membuat perbandingan dengan purata seluruh negeri telah diakui bahawa daerah yang sebahagian besarnya dikawal datuk bandar mesti mendidik pelajar yang berhadapan dengan keperluan yang lebih besar daripada rakan sebaya mereka di tempat lain dalam negeri mereka. Daerah yang

dipimpin oleh datuk bandar adalah terlibat dalam peruntukan sumber strategik menggunakan data yang merangkumi tempoh 15 tahun yang menghasilkan penemuan bahawa daerah yang lebih besar kemungkinan melabur dalam aspek yang berkenaan dengan guru dan menghabiskan lebih peruntukan ke atas arahan serta mempunyai nisbah guru-murid yang lebih kecil. Peruntukan dalam peratusan yang lebih besar dalam sumber untuk perkhidmatan sokongan pelajar dan mempunyai peratusan pendapatan yang lebih besar daripada sumber negara serta sebaliknya peratusan yang lebih kecil dalam pendapatan daripada sumber tempatan. Fenomena ini didapati menyokong pengajaran dan pembelajaran.

Jadual 5: Matriks koefisien korelasi (hubungan) Kendall's tau\_b ( $\tau_b$ )

			Pencapaian/ kecemerlangan pelajar	Perpaduan dan Penyertaan Sosial
<b>Kendall's tau_b</b>	Pencapaian/ kecemerlangan pelajar	Koefisien korelasi <i>Sig. (1-tailed)</i> n	1.000  867	0.043  0.087 867
	Perpaduan dan Penyertaan Sosial	Koefisien korelasi <i>Sig. (1-tailed)</i> n	0.043  0.087 867	1.000  867

\* Korelasi adalah signifikan pada aras 0.05 (1-tailed)

\*\* Korelasi adalah signifikan pada aras 0.01 (1-tailed)

Jadual 6: Matriks koefisien korelasi (hubungan) Kendall's tau\_b ( $\tau_b$ )

			Pencapaian/ kecemerlangan pelajar	Maklumat dan Komunikasi
<b>Kendall's tau_b</b>	Pencapaian/ kecemerlangan pelajar	Koefisien korelasi <i>Sig. (1-tailed)</i> n	1.000  867	0.054*  0.043 867
	Maklumat dan Komunikasi	Koefisien korelasi <i>Sig. (1-tailed)</i> n	0.054*  0.043 867	1.000  867

\* Korelasi adalah signifikan pada aras 0.05 (1-tailed)

\*\* Korelasi adalah signifikan pada aras 0.01 (1-tailed)

Pencapaian dan kecemerlangan pelajar dengan pembolehubah maklumat dan komunikasi adalah pada aras signifikan 0.05 ( $p = 0.05$ ) ( $p = 0.043$ ) dan bilangan responden

bagi pembolehubah pencapaian atau kecemerlangan pelajar dengan maklumat dan komunikasi ialah 867. Jadual 6 menunjukkan hasil analisis Kendall's tau\_b. Hipotesis null boleh ditolak dan terdapat perkaitan antara pencapaian kecemerlangan pelajar dengan maklumat dan komunikasi. Keputusan pencapaian dan kecemerlangan pelajar dengan pembolehubah maklumat dan komunikasi menunjukkan terdapat perkaitan antara pencapaian kecemerlangan pelajar dengan maklumat dan komunikasi. Hasil kajian ini mempunyai persamaan dengan kajian Chandra dan Lloyd (2008) yang menunjukkan ICT, melalui campurtangan *e-learning* boleh meningkatkan prestasi pelajar sebagaimana diukur dalam skor ujian. Secara kritikal, perbaikan ini adalah bukan global, dan sesetengah pelajar menunjukkan pengurangan hasil berangka walaupun keseronokan dilaporkan dari persekitaran diubah. Sementara beberapa orang pelajar tidak dapat menyesuaikan diri dengan mudah dalam persekitaran *e-learning*, yang lain dikenal pasti bebas dan berperaturan sendiri sebagaimana perubahan dialu-alukan dan penting kepada pembelajaran mereka. Jankaukas dan Seputiene (2007) dalam tulisan berkenaan prestasi ekonomi menggambarkan modal sosial boleh meningkatkan hasil ekonomi secara tidak langsung melalui saluran politik di mana keputusan kajian menunjukkan indikator modal sosial dan kerajaan adalah berkaitan dengan prestasi ekonomi. Xia (2011) mengemukakan bahawa kepercayaan umum dan penyertaan dalam rangkaian sosial inklusif mempunyai kesan yang signifikan dan positif terhadap prestasi kerajaan walaupun selepas mengawal pengaruh lokasi kawasan, jarak ke pekan pasaran, saiz kampung dan aras pembangunan ekonomi kampung. Manakala, Hofman et al. (2002) mendapati bahawa perpaduan antara gabenor sekolah, pemimpin sekolah, guru dan komuniti sekolah (ibu bapa) mengeluarkan satu rasa kemasyarakatan yang akan dapat membentuk keadaan dalam sekolah dan memberikan kesan positif kepada pencapaian murid.

## CADANGAN DAN RUMUSAN

Responden dari pelajar perempuan adalah lebih daripada responden dari kalangan pelajar lelaki. Hampir semua responden adalah beragama Islam dan dari kalangan pelajar Melayu. Maklumat dan komunikasi merupakan unsur modal sosial yang dapat membantu meningkatkan pencapaian pendidikan di kalangan pelajar. Dalam aspek perpaduan dan penyertaan sosial sepertimana yang dikemukakan oleh Wong dan Shen (2013) berkenaan dengan penglibatan datuk bandar untuk meningkatkan pencapaian pendidikan pelajar melalui menyediakan peruntukan kepada guru dan perkhidmatan sokongan pelajar boleh membantu meningkatkan modal sosial pelajar dan pihak yang terlibat dalam urus tadbir bandar. Daerah yang mempunyai kawalan datuk bandar ke atas sekolah secara umumnya dapat memperbaiki prestasi akademik seluruh daerah berbanding dengan negara. Kawalan datuk bandar mempunyai kesan positif penting ke atas pencapaian pelajar khususnya bandaraya besar dan golongan minoriti juga mempunyai peluang untuk mendapat faedah dari dasar ini. Perbaikan dalam pencapaian adalah sangat besar hasil dari penglibatan datuk bandar dan bagi mengatasi kekurangan dalam kawalan datuk bandar di sekolah, telah muncul keperluan kepada menyambungkan sekolah dengan institusi sosial dan awam yang lain. Datuk bandar juga perlu sangat menggalakkan kerjasama merentasi sektor berbeza untuk memperbaiki keseluruhan kualiti hidup dalam kawasan kejiranan bandar. Oleh itu, langkah ini juga perlu dijalankan di kawasan luar bandar di mana melibatkan pentadbir di kawasan untuk turut terlibat dalam dasar yang bertujuan meningkatkan pencapaian pendidikan pelajar sekolah. Dalam tempoh sepuluh tahun kebelakangan ini, tadbir urus menjadi salah satu aspek penting untuk meningkatkan pencapaian pendidikan pelajar sekolah. Bagi kajian masa depan, dicadangkan pengkaji seterusnya menggunakan kaedah persampelan kebarangkalian bagi tujuan generalisasi. Entiti-entiti seperti persatuan,

kumpulan dan kelab adalah berguna sebagai satu ruang yang membolehkan sambungan antara pelajar-pelajar dengan ibu bapa, sekolah dan rakan sebaya. Pihak sekolah dan ibu bapa perlu mengambil fungsi untuk membantu pelajar-pelajar sekolah untuk menjadikan modal sosial pelajar berkesan dalam meningkatkan pencapaian pendidikan. Aktiviti-aktiviti pelajar yang melibatkan kawan rapat atau kenalan juga perlu dijalankan di samping aktiviti-aktiviti yang dijalankan melalui ikatan kuat.

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# **THE IMPACT OF INTERNATIONAL TERRORISM ON THE RIGHT TO LIFE IN IRAQ AFTER 2003**

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## **ABSTRACT**

Terrorism is a cancer and it is not in the interest of the nations, because it takes away their right to live freely. Following the event of September 11, there have been violations of international conventions and usages, human rights and freedoms, which prompted countries globally to come up with laws to protect civil freedoms. In the context of Iraq, the Government came up with the Iraqi Anti-Terrorism Act No.13 of 2005 and the Iraqi Constitution of 2005 to address the issue of terrorism. The aim of this paper is to address the impact of international terrorism on the right to life in Iraq after 2003. The methodology adopted in this paper is a doctrinal legal research, namely library-based research, depending on books, articles, legal diaries and Internet resources. This paper concludes that international terrorism has indeed affected Iraqis right to life after 2003. Hence, there is a need to protect this fundamental right by relooking into the Iraqi Constitution of 2005 and the Iraqi Anti-Terrorism Act No.13 of 2005. For instance under the Iraqi Anti-Terrorism Act No.13 of 2005 there is no clear definition of the terms "terrorism" and "terrorist acts."

**Keywords:** International terrorism, Iraqi Constitution of 2005, Iraqi Anti-Terrorism Act No.13 of 2005, right to life

## **INTRODUCTION**

Terrorist attacks violate many well-established international norms, including intentional attacks on civil freedoms such as the right to life, which can be violated as a result of the attacks. Terrorist attacks may even implicate the prohibition on genocide if there is intent to destroy a group of people, thus terrorist attacks may imply a violation of peremptory international norms and thus it can be considered a crime against humanity. In addition, increasing perpetrators of those crimes led to an increase in terrorism at all levels, which has become the most serious threats confronting the international community(Hickman & Daniel, 2011).

Furthermore, following the events of September 11, there have been violations of international conventions and usages, human rights and freedoms, which prompted countries globally to come up with laws to protect civil freedoms i.e. the right to life. For example, in Iraq the government came up with the Constitution of 2005 were Article 7 stipulates that the state will fight terrorism in all its forms and this has also prompted the government to come up with the Iraqi Anti-Terrorism Act No. 13 of 2005. Although the government of Iraq had a good intention to come up with the Anti-Terrorism Act No. 13 of

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2005, the United Nation (UN) has detected a lot of loopholes in this Act thus making it more difficult to protect Iraq's right to life. Three months after 9/11 attack, the UN has formed a special Committee to help combat terrorism by strengthening the capacities of member states to prevent terrorist's internal and external attacks. For over twelve years, this Committee has played its role in promoting international cooperation to combat terrorism and imposed the third item of resolution 1373 of 2001(Bahar, 2013, Report UN Security Council Committees, 2004).

Following the efforts made by the Committee, the UN has shown its concern by submitting an anti-terrorism report to the Committee. In this report, one of the issues raised was what terrorism-related legislations have been taken or to be taken into consideration within the framework of the international campaign against terrorism? According to an initial evaluation of the Chairman of the Committee of the Security Council to combat terrorism over Iraq's application of Resolution 1373/2001 stated that: "Iraq Review Anti-Terrorism Act No. 13 of 2005 and the establishment of a mechanism in domestic law to combat terrorism and to reconsider the unclear law, by proposing accurate provisions and precise definitions of terrorist acts, to clarify what is international terrorism and who are the terrorists. According to the preliminary assessment of this law, there are provisions in most of its Articles that provide wide legal interpretations and would threaten the right to life in Iraq" (Bahar, 2013).

From the above statement, it is clear that under the Iraq Constitution of 2005 and the Iraqi Anti-Terrorism Act No. 13 of 2005 has far reaching effects on the right to life for the Iraqi people. This is due to the fact that under this law there are no precise definitions of the terms terrorist acts, terrorism, who are the terrorists, etc.

The aim of this paper is to address the impact of international terrorism on the right to life in Iraq after 2003. This paper is composed of three sections. The first section presents the definitions of international terrorism and the right to life. The second section focuses on the impact of international terrorism on the right to life in Iraq after 2003. The third section addresses the conclusion and some recommendations in order to confront the threat of international terrorism on the right to life in the context of Iraq. It is the contention of the authors that the recommendations put forward in this paper could be used as a source of information by the academic community who are interested in the subject of international terrorism and its effect on the right to life.

## **DEFINITIONSOF INTERNATIONAL TERRORISM AND THE RIGHT TO LIFE**

Terrorism is a global phenomenon which affects citizens all over the world. It is therefore pertinent to look into the definitions of "international terrorism" and the "right to life" in order to have a clear picture from the very beginning before addressing in-depth the impact of international terrorism on the right to life in Iraq after 2003. It is important therefore to make reference to the following definitions:

### **a) Definition(s) of International Terrorism**

Alexander (2006) has explained the concept of terrorism as being one of the most disputed terms in the social sciences. The problem of defining the term 'terrorism' is well known and has been examined extensively. The authors believe that a comprehensive definition of terrorism does not exist nor will it be found in the foreseeable future. Furthermore, he has

identified that there are 212 different types of definitions on terrorism, which are in practice throughout the world, with 90 of the selected definitions are practiced by institutions and other governments (Alexander, 2006). Thus, in one of the most rigorous attempts to define terrorism, Alexander examined 109 different definitions of international terrorism, identified 22 elements in these definitions, calculated the frequency of their occurrence and a consensus was reached on a lengthy definition incorporating most of these 22 elements.

Having said that, Alexander (2006, p. 3) went on to define terrorism as: "an anxiety inspired method of repeated violent action, employed by semi-clandestine individuals, groups, or state actors, for idiosyncratic, criminal, or political reasons, whereby in contrast to assassination, the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population and serve as message generators. Threat and violence-based communication processes between terrorists (organization), (imperiled) victims and the main targets are used to manipulate the minor target (audience), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought".

Under Public International Law, terrorism has been described as: a range of illegal acts that their sanctity violated both international and national laws(Hoffman,1997).According to Hoffman (1997), he suggested that it is better to define terrorism by nature of the act rather than by identity or socio-demographics of the perpetrators. In this respect,the International Convention for Suppression of Financing of Terrorism 1999, provides that terrorists are those who commit or contribute or by any means, directly or indirectly involved in a project unlawfully and willfully, provided or collected money with the aim of using work constituting an offense within the scope of the treaties or caused the death of a civilian or serious wound to force the government or an international organization to do or to refrain from acts commanded by terrorists" (Article 2 of the Convention for the Suppression of Financing of Terrorism 1999; Ghonaimi, 2005).

Looking at the position in Iraq, Article 1 of the Iraqi Anti-Terrorism Act No. 13 of 2005 defines terrorism as: "Every criminal act committed by an individual or an organized group that targeted an individual or a group of individuals or groups or official or unofficial institutions and caused damage to public or private properties, with the aim to disturb the peace, stability and national unity or to bring about horror and fear among people and to create chaos to achieve terrorist goals". According to Alchukrawi (2012), it seems that the text of Article 1 is not a direct definition of the term or the concept of terrorism, but it rather describes acts constituting terrorism. The authors are of the opinion that the Iraqi government should adopt a comprehensive description of terrorist crime distinguishing it from other crimes according to the principles of international law and international conventions.

According to Amnesty International, the Iraqi Anti-Terrorism Act No.13 of 2005 has raised some controversial and significant concerns i.e. non-compliance with the Articles of the Iraqi Constitution of 2005 on the issue of the right to life. This is by virtue of Article 4 of the Iraqi Anti-Terrorism Act No. 13 of 2005, which provides that:

1. anyone who obligates, as a main perpetrator or a participant, any of the terrorist acts as mentioned in Articles (2) and (3) of this Act, shall be sentenced to death. In addition, if an individual who provokes, assists, plans, finances and elevates terrorist

- to commit the crimes mentioned in this Act will face the same punishment or charges as the main committer.
2. anyone who intentionally covers up any terrorist act or harbors a terrorist with the purpose of concealment, shall be sentenced to life imprisonment (Gianluca, 2005).

**b) Definition(s) of the Right to Life**

In the provisions of the UN Charter, the Universal Declaration of Human Rights (UDHR) 1948, the International Covenant on Civil and Political Rights(ICCPR) 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 include items and directives to enhance the status of international law of human rights and civil freedoms i.e. the right to life in all countries of the world. For example, Article 1 of the UDHR has outlined rights for all human beings to acquire their full potential and to live with freedom. Article 1 explains human freedom as: "All human beings are born free and equal in dignity and rights". On the other hand, Article 3 explains that the cornerstone of the declaration proclaims the right to life, liberty and security of human right which is useful to provide the basic rights to people (Glenn, 2011).

Furthermore, Kofi Annan (2009, p.37), former Secretary General of the UN expressed the meaning of civil freedom i.e. right to life, in a report on 21 March 2005, as being "fundamental to the poor as to the rich, their protection is as important to the security and prosperity of the developed world as it is to that of the developing world. It would be wrong to treat civil freedom as though there was a trade-off to be made between freedom and such goals as security or life. We only weaken our hand in fighting the horrors of extreme poverty or terrorism if, in our efforts to do so, we deny the very human rights that these scourges take away from citizens. Strategies based on the protection of the right to life are vital for both our moral standing and the practical effectiveness of our actions".

In this respect, according to the meaning of the right to life in Iraq, the Constitution of Iraq of 2005 consists of 144 Articles. Article 15 outlines that civil and political rights i.e. the right to life. This right to life is to be enjoyed by every individual Iraqi, which shows that everyone has the right to life, security and freedom, and cannot be deprived of this right or restrictions except according to law or based on a decision issued by a competent judicial authority. In addition, Article 46 provides that: "Restricting or limiting the practice of any of the rights or freedoms stipulated in this Constitution is prohibited, except by a law on the basis that limitation or restriction does not violate the essence of the right or freedom." Hence, the authorities in the Iraqi government must respect the right to life of the persons and not compromise their lives, protect them against any threats from international terrorism by placing a clear legal legislation criminalizing terrorist acts and protecting their rights and freedoms, according to international standards of human rights (Majed, 2012).In addition, Majed found that one of the significant elements for the establishment of democracy is to treat all people equally i.e. by promoting and protecting peoples' right to life. According to him, it (i.e. the right to life) has become a compulsory right of every individual and it is provided in the Iraqi Constitution of 2005 in Article 14 (Majed, 2012).

**IMPACT OF INTERNATIONAL TERRORISM ON THE RIGHT TO LIFE IN IRAQ AFTER 2003**

In addressing the impact of international terrorism on the right to life in Iraq after 2003, it becomes vital to point out that reference must be made to the Iraqi Anti-Terrorism Act No. 13 of 2005 and the Iraqi Constitution of 2005. Making reference to the former Act is vital since it was passed with the intention of fighting terrorism. As to the Iraqi Constitution, it is

viewed as the cornerstone of the right to life. Hence, the Anti-Terrorism Act No. 13 of 2005 came into force on 9 November 2005 to define the meaning of international terrorism and to develop measures to combat it (Al-Tamimi, 2013). Unfortunately, in 2006 and the years that followed, the Counter-Terrorism Committee of the UN Security Council of resolution 1373 has reported that: "A preliminary assessment of the President of the Security Council Committee for the fight against terrorism on the application of Iraq resolution 1373/2001 has told the UN Security Council that Iraqi government procedures from 2006 until now has not taken clear procedures, but merely the formation of committees porticoes in vain" and in each of the previous years, UN Commission confirms the following terms:

"On Iraq Review of the Anti-Terrorism Act No. 13 of 2005 and the establishment of a mechanism to combat terrorism seriously in domestic law to reconsider the law to get rid of not clear definitions, propose accurate provisions and precise definitions of international terrorism and terrorist acts in order not to slip in the future political trials. Through a preliminary assessment of this law, it was found that there are loose provisions, especially in Article 4 which allows for wide interpretations and would threaten public freedoms because the signed law was formulated in a way that allows the trial of every person who contravenes the government system". (Al-Tamimi, 2013; Bahar, 2013).

In this respect, Al-Tamimi conducted a study on the effects of the Iraqi Anti-Terrorism Act No.13 of 2005, he stated that since the entry into force of the Act and even now, many of the positive and negative feedbacks between supporters and opponents of the Act have been witnessed. The Iraqi government found that in dealing with terrorism the law is not much beneficial to the Iraqi people, so they pass a new Bill i.e. the Emergency Line-Bill. With the help of this Bill if it becomes law, the State and law enforcement agencies by all means will be in position to fight terrorism (Al-Tamimi, 2013). Thus, it would suffice to note that because of the blurring definitions of 'international terrorism' and 'terrorist acts' under the Iraqi Anti-Terrorism Act No. 13 of 2005, the country has witnessed the violation of the right to life in the guise of fighting terrorism by way of invoking the Act. According to Bnar (2013), terrorist violence continued on civilians in Iraq and its effect on the right to life, because of the weakness of the Iraqi Anti-Terrorism Act No. 13 of 2005.

In order to address the impact of international terrorism on the right to life in Iraq after 2003, it becomes vital to make reference to the following statistics. These statistics include killings of Iraqis, Iraqis civilians martyred and Iraqis civilians injured from 2012 up to 2014.

#### ***Iraqi Statistic Killings, Civilians Martyred and Injured (Bnar, 2013).***

Dates	Killed Iraqis	Wounded Iraqis	Iraqis Civilians Martyred	Iraqis Civilians Injured
1 April, 2012	712	1,633	1,704	6,651
1 May, 2012	1,045	2,397	3,102	12,146

<b>Juneto</b>				
<b>December</b>	3,545	4,167	1,892	6,719
<b>2012</b>				

**Statistics of Iraqis Killed and Injured in March 2014**(Mladenov, 2014).

Governorate	Iraqis Killed	Iraqis Injured
Baghdad	180	477
Salahuddine	95	205
Babel	63	175
Ninewa	67	83
Diyala	48	64
Anbar	80	448
Anbar (Fallujah)	76	293

**Statistics of Killed and Wounded Iraqis in 2014 by UNIMA** (Mladenov, 2014)

Date	Iraqis Killed	Iraqis Wounded
January 2014	733	1,229
February 2014	703	1,381
March 2014	609	1,745

By analyzing these statistics above, it could be argued that after 2003 Iraq has witnessed a lot of suicide attacks in recent years. Hence, the impact of terrorism is far reaching on civilians and thus set to increase in the near future if nothing is done in addressing this issue of terrorism. There is no doubt that terrorists and armed groups continued to favor asymmetric tactics that deliberately target civilians. Today, Iraq is still witnessing violence and terrorist activities that are aimed mainly at civilians and civilian infrastructure, resulting in loss of innocent lives (Bnar, 2013). Having said that, it is important to note that terrorist attacks constitute serious violations of the rules of international humanitarian law, the UDHR and far reaching impact on Iraqi society. There is no doubt that the Iraqi security environment remained volatile. This is because of the political instability and security in the country (Bnar, 2013).

## **CONCLUSION**

In view of the foregoing discussions above, the authors are of the opinion that international terrorism is an international crime contravening the parameters of international law in several aspects i.e. the provisions of international custom, international treaties and declarations, and international law of human rights. Hence, it is possible to punish the perpetrator of this crime, according to the international custom or international treaties. On this basis, it could therefore be argued that international terrorism in the world, especially in Iraq, is related to the international character by receiving support from other countries (Wojciechowski, 2005; Hassan, 2011). It is the contention of the authors that there is an urgent need to find solution to this problem whereby the terrorists receive their support from other countries.

It must be acknowledged that the impact of international terrorism on the right life not only in Iraq requires commitment from members of the international community, the world will continue to witness the loss of life as a result of these terrorist attacks if concrete measures are not put in place to address the root cause of terrorism. It is a sad state of affair that there is no comprehensive agreement at the international level among the states on the definition of international terrorism. The international community has to seriously address this issue if the fight against terrorism is to be a reality rather than a myth.

In addition, it is equally important to point out there is no clear definition of the terms "terrorism" and "terrorist acts" under the Iraqi Anti-Terrorism Act No.13 of 2005. This has further made it difficult to protect the right to life of the Iraqis since the Iraqi Anti-Terrorism Act No. 13 of 2005 blatantly deprives them of the right to life under the guise of fighting terrorism. It could be argued that if there were to be a clear definition of the terms "terrorism" and "terrorist acts" under the said Act, perhaps the Iraqi government would be able to reduce and counter-terrorism activities without infringing on the right to life of the Iraqi citizens. Thus, the Iraqi citizens have suffered after 2003 as far as their right to life is concerned i.e. being arrested or even killed on the basis of their involvement in terrorist acts, which is not clearly defined under the Iraqi Anti-Terrorism Act No. 13 of 2005. Furthermore, the Iraqi Anti-Terrorism Act No. 13 of 2005 has many complications as the Counter Terrorism Committee in UN has reservation over its operation. This is due to the fact that the Anti-Terrorism Act No. 13 of 2005 is seen as a piece of legislation, which is not in line with other international conventions.

Apart from the Iraqi Anti-Terrorism Act No. 13 of 2005, it also becomes inevitable to make reference to the Iraqi Constitution of 2005. There is no doubt that the Iraqi Constitution expressly respects rights and civil freedoms i.e. the right to life as mentioned earlier. However, the same Iraqi Constitution of 2005 by virtue of Article 7 stipulates that the state will fight terrorism in all its forms and this has also prompted the government to come up with the Anti-Terrorism Act No. 13 of 2005 (Hassan, 2011). It is the contention of the authors that since Iraq is part and parcel of the international community, it becomes vital that Iraqi laws must be in line with the international standards i.e. safeguarding, protecting and promoting the right to life.

All in all, there is still room for improvement especially in the context of safeguarding Iraqis right to life regardless of the fight against terrorism. Hence, the role of the legislative authority in Iraq is of paramount importance in balancing the two conflicting interests i.e. the right to life and the fight against terrorism. The time has come for the Iraqi government to

look into the Iraqi Anti-Terrorism Act No. 13 of 2005 especially in the context of redefining the terms “international terrorism” and “terrorist acts”. Apart from that, there is also a need for all countries to give their full commitment in supporting the UN efforts to strengthen its role in combating international terrorism and to respect human rights i.e. the right to life as provided under the international human rights instruments. Furthermore, in order to fight terrorism both at home and abroad, there is a need for increased participation of states to formulate special rules i.e. in terms of laws, legislations, etc., in dealing with threats posed by terrorists. However, these special rules must balance the two conflicting interests in an amicable manner. There is also a need to educate people about the dangers of terrorism. This awareness can be created by educating the Iraqi citizens and make them become aware of the seriousness of global terrorism (Ahmed, 2010).

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# **HEALTH POLICY IMPLEMENTATION: THE MISSING LINK**

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## **ABSTRACT**

The paper examined the performance of Nigeria's health policies in the last three decades. The objectives of the paper are to: determine the approaches used in the policy formulation and implementation, the role of the beneficiaries in determining the success or otherwise of a policy, and factors responsible for the non-realization of the health targets sets despite government commitments. The paper reviewed various studies carried out in Nigeria and indeed other developing Nations on health policies formulation and implementation. The findings indicate that the traditional top-down approach based on the Elite model (i.e. where perceptions and experiences of the beneficiaries were ignored) is one of the major contributory factors contributing to policy failure during implementation, health policies are formulated based on epidemiological approach to the study of health, thus ignoring environmental and social factors affecting health etc. The paper recommends change of approach to policy formulation and implementation based on Network approach, formulation of National health policies based on peculiarities of each UN member states (i.e. not merely on UN conventions), and more proactive approach to tackling health issues on the basis of collectively oriented social and environmental approach rather than the traditional biomedical epidemiological.

**Keywords:** Health policy, Health targets, Health policy implementation, Elite model, Network approach model, pro-active approach.

## **INTRODUCTION**

Over the last three decades, Nigeria has in response to various UN conventions formulated and implemented a number of health policies Eniekwe, (2005). One of such policy was the Revised 2004 Health policy to tackle high maternal mortality and wide prevalence of Vesico vaginal fistulae (VVF). Unfortunately, however ten years into its implementation, the health targets of the Revised 2004 health policy have not been fully met, as maternal mortality decreased only by less than 1% in most UN member states including Nigeria Mairiga et al (2005).

Thus millions women still die globally due to pregnancy and pregnancy related complications. The highest Maternal mortality rate of 430 per 1000 live births are found in developing Nations of Africa and Asia, while Europe has 27 per 1000 live birth (Nimi Briggs, et al 2008). Nigeria has the highest maternal mortality ratio of 1100 maternal deaths per 100,000 live births (CIA World fact book, 2011). Similarly, about 2 million women suffer

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obstetric fistulae globally and that 1.5million of these cases occurs in developing Nations(UNDFA 2003). In Nigeria, about 400,000-300,000 live with VVF(Nursing World Nigeria,2013), and that Nigeria accounts for 40% of the global burden of VVF. The Guardian, (2007)

Various studies on health policy implementations, reported numerous factors such as managerial, insufficient funds, insufficient institutional framework, insufficient health personnel etc., that contributed to non- achievement of the health targets from the perceptions of the government officials responsible for policy formulation and implementation(see Asuzu,2004;Stefanie,2011;Piroska et al 2007; Abdulraheem,2011; Anindita,2003;Roa,2000; Agritiotri, 2000 etc.).

The paper examines: the top-down approach/model to health policy formulation and implementation, implementation challenges reported by past studies, identify the important missing link in the successful policy formulation and implementation and recommends alternative approach where the perceptions, views and experiences of all relevant stakeholders including the beneficiaries are taken into consideration during policy formulation and implementation.

#### **LITERATURE REVIEW AND THEORETICAL FRAMEWORK**

Health has been described as a condition of well-being from disease and a basic universal right (Sarracci,1997). Consequently governments around the globe developed health policies to promote the well-being of their citizens.

Health policy is simply a document that outlines decisions, plans and actions of government to achieve specific health care goals within a society. It outlines the vision of the future priorities and the expected roles of different stakeholders/actors WHO, (2011). The study and analysis of policy formulation and implementation is important, as it provides explanations with regards to success/failures of past policies and the opportunities to review existing policy or draw up a future plan Baldock (1999).

The traditional top- down approach used for policy formulation and implementation based on the heuristic and Elite models have been used byUnited Nations and its member states in formulating and implementation of most of their health policies over the years.These models maintained that,public policies are formulated by top government officials (i.e. Élites)based on their beliefs, experiences and interest without taken into considerations the perceptions, beliefs and experiences of the citizens(beneficiaries)Dye, (2000).Furthermore, most health policies are formulated by health professional based on epidemiological/biomedical approach to the study of health, rather than based on collectively oriented social and environmental approach, where the perceptionsand experiences of the beneficiaries as well as environmental,social and genetic factors are taken into consideration during policy implementation.These approaches alienate the citizens (beneficiaries) as only top government officials and middle level bureaucrats (street level bureaucrats) are saddled with the responsibilities of policy formulation, implementation and evaluation. Thusmaking the citizens to become uninterested and uninformed about the policies (Dye, 2000; Lasswell, 1956; Brewer and Deleon,1983). The consequences being the formulation of policy that were not comprehensive in both their contents and processes, and in the end becoming simplyadministrative plans that are designed to be unsuccessful right from the formulation stage Aneikwu,(2005).

No wonder therefore, policies formulated and implemented based on the above approaches/models have been besieged with various implementation challenges as reported by many studies. These included poorly conceived health policies that are utero-centric and gender biased that promotes only family planning, lack of serious political will by the government, insufficient funding, insufficient health systems, insufficient health personnel etc (Asuzu,(2004); Stefaine, (2011); Piroska et al 2007; Abdulraheem, 2011; Anindata, (2003), Roa, 2000; Agnihotri, 2000; Mairiga et al 2005; and WHO, 2010).

Therefore, in order to have a sound (i.e. health policies) which could produce the expected health targets during implementation, an entirely different approach/model must be adopted where the views, perceptions and experiences of the citizens (beneficiaries) are not only taken into consideration but respected. This is what this paper regards as the “missing link”.

Various Sociological theories have provided explanations on why health policies failed to achieve their said targets. System theories of Robert K. Merton and Talcott Parsons explained policy implementation failures from the structural point of view, insisting that social systems such as hospitals have boundaries, goals and systems of rules and regulations as means to achieve the organisational goals. They also recognised the existence of various actors carrying out various roles within the system in order to achieve its goalsRitzer (2011).Charles Cooley on the other hand postulated the existence of Looking Glass Self theory, which provide the means through which members of the public evaluates the performance of the various actors within the social systemsRitzer (2011).It is against this background that this theories are considered most appropriate in assessing the effectiveness or otherwise of health policy implementation, particularly from the beneficiaries point of views (who are the missing link) are often side lined in policy formulation and implementation.

## **CONCLUSION**

The perceptions, views and experiences of the beneficiary women are important for successful implementation of any government policy, particularly health policy. Top government officials and other stakeholders responsible for policy formulation and implementation must as a matter of necessity and not a choice listen to beneficiary women if they desire success while formulating and implementation of future health policies.

## **RECOMMENDATIONS:**

1. To integrate the traditional top down approach model (based on Elite model and heuristic models) with the network approach model, so that a synergy could be achieved between the various actors within the social system.
2. Health policies should not be based solely on the biomedical/epidemiological model but other models such as the behavioural oriented multi-risk factor model(which emphasises the interaction between life style risk factors and the biological/genetic factors in the causation of diseases) and the collectively oriented social and the environmental approach (which emphasises the social patterning of disease and its determinants from social, economic and environmental perspectives should be used in conjunction with the epidemiological approach) should be used collectively. This is because past health initiatives based on epidemiological approach, especially with regards to fighting malaria in developing nations through the provision of malaria drugs and the mosquito nets have largely failed to reduce mortality due to malaria. Clearly, the collective oriented social and environmental approach could have addressed the problems of high mortality due to malaria by tackling the

environmental factors such as open gutters/open drainages that provides breeding places for the mosquitos.

3.In assessing/evaluating health policy implementation, the beneficiaries of such policies i.e. The pregnant and women living with VVF scourge should be given ample opportunities to state their views, perceptions and experiences about the policy itself(its contents and processes), institutional framework within which the policy is being executed as well as the roles played by the various actors in charge of the implementation this what Cooley referred to as Looking Glass Self. The views of what is referred to as the missing link would provide the basis for policy analysis and review by the government.

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# THE SECURITY CHALLENGES AND IRAQI PARLIAMENTARY INSTITUTIONS

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## ABSTRACT

More than ten years after the invasion of Iraq by the U.S force, the country is still in total shambles. One major factor to this situation is the lack of security which is considered as an indispensable factor to the political system of Iraq as well as to the effective functioning of the Iraqi parliament. As a result, this study therefore, examined the security challenges and the effective functioning of the Iraqi parliament particularly after the Saddam's era. It undertakes an in-depth study of face-to-face interview to examine how the security issues affect the Iraqi parliamentary institution functions. The finding revealed that the parliament was unable to effectively discharge their functions due to the security challenges such as terrorism and sectarian violence.

**Keyword:** Security challenges, terrorism, violence, Parliamentary, Iraq

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## INTRODUCTION

The term security has become very popular in the recent times particularly in the Middle-East. This is due to the political uprising that greeted the regional in 2011. Since then, the security situation in the region has become very fragile that the extent that other aspects of the economy life are also badly affected.

In Iraq for instance, security is a term that required very serious attention as it has virtually paralyzed all the economic and political activities of the country. For instance, the lack electricity, sewage, clean water and performance of the Iraq parliament are good example of the political situation in Iraq. The major focus of this study is to explore the security challenges in Iraq and it affects the oversight function of the Iraqi parliament.

More than ten years after the invasion, and following three rounds of elections, Iraq is now one of the most dangerous countries in the world due to the lack of security. Currently, the

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country is face the hardest security challenge of its life which seems to avoid all solutions. The challenge is such that even the coalition that formed the government in 2010 after a delay of eight months has no defense, interior or national security ministers and all these bureaus are currently run by the prime minister himself. For security challenges and their impact on the functional role of the Iraqi parliament, UNDP (2009: 4) indicates that the lack of security was an important factor that played a role in blocking representative democracy. On the one hand, members of parliament are prevented from freely traveling within Iraq or from speaking to ordinary citizens. On the other hand, ordinary citizens are often too concerned with security concerns to involve themselves in the democratic process. As a result, the parliament's performance of its duties is inconsistent.

In another challenge to the Iraqi parliament, Al-Jawahiri (2008:55) argues that despite the security and political difficulties facing the civil society organizations (CSOs) in Iraq, but they try, hard on heels, to cooperate with governmental authorities, enhanced by transparency and the right to access information, and the partnership, with the cabinet, to form the national policies of the state, their execution, evaluation, so as to get together the participative model of democracy, which merges the citizens on all official levels, legislative and executive; for endorsing the organizations' engagement in the decision-making process, which guarantee the freedom and the independence of the organizations work as stated in the Iraqi Constitution.

#### **IRAQI SECURITY CHALLENGES AND PARLIAMENT FUNCTIONS**

Generally, the term in security is described as the state of being free from danger or threat. It is the extent of resistance to, or protection from, harm. It is also applicable to any vulnerable asset, such as a person, dwelling, community, nation, or organization. The Institute for Security and Open Methodologies ([ISECOM](#)) in the OSSTMM 3 described security in this manner "a form of protection where a separation is created between the assets and the threat." These separations can be commonly referred to as "controls," which can also cover changes to the asset or the threat.

The security challenges in Iraq have nothing to write home about. It is affecting every aspect of Iraqi economy including the life of its citizens. It has culminated to act of violence, killing, militants, extremists etc. For instance, the violence in Iraq is perceived to the ugliest and the most widespread in human history. Many of Iraqis are victimized by violent acts every day. Violence affects the political process and frequently damages the reputation of the Iraqi government. This in a way could lead to the ousting of the present regime. Therefore, Iraqi government officials sought to prepare a campaign against armed violence and terrorism as part of the priorities of their government programs (Al-Fatlawi, 2006: 1-29). The violence in Iraq has continued to increase due to many reasons such as:

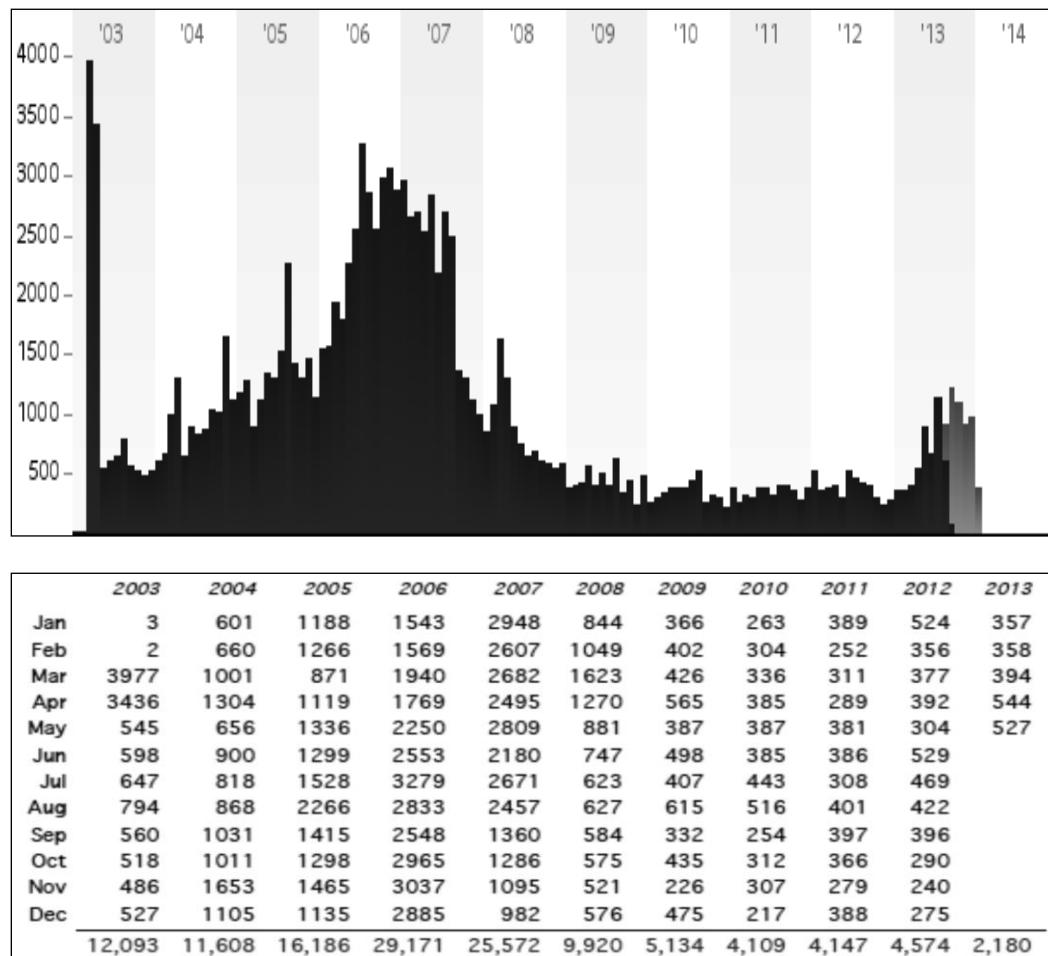
- a. The former regime of Saddam set up a plan that aimed to mobilize and train the affiliates of the Baath Party to prepare them for attacks against U.S. and Iraqi forces. These clusters were then transformed into resistance groups after receiving support from their areas. These groups mostly include Arab Sunnis.
- b. Phenomenon of the proliferation of weapons in Iraq after the removal of Saddam's regime is one of the reasons for increased armed violence that led to the emergence

of mafia-like groups. Incidents of murder, assassination, and abduction have considerably increased in Iraq in an unprecedented manner (Al-Fatlawi, 2006, 1-29).

- c. A sectarian conflict between Sunnis and Shiites has been incited by external actors, whereby the Sunnis are accusing the Shiites of using their preponderant presence in the emerging security forces and also using their party-based militias to commit atrocities against Sunnis. On the other hand, the Shiites are equally accusing the Sunnis of attacking Shiite civilians (Katzman, 2006:30).
- d. The conducted of several military operations by the U.S forces within Iraqi territories during their occupation of the country (Dlamoni, 2012).

Accordingly, Figure 6.1 and Table 6.1 provide clearer pictures of the security situations in Iraq from 2003 to 2013 and from 2007 to July 2010 (Cordesman et al, 2013:26).

Figure 6.1: Iraqi body Count Estimate Trends in casualties: 2003-2013



Source: Cordesman, 2013:26.

After the fall of Saddam in 2003, the authoritative power was transferred to an interim Iraq government in June 2004 (Carlson, 2013:3), the government struggled to enforce order among insurgents (with Al-Qaeda in Iraq among the most violent) that targeted civilians including the security forces.

The security situation in Iraq has also created sectarian conflicts among the citizens particularly between the Shiites and Sunnis tribes. For instance, it was noted the lack of security brought about sectarian conflict between Shiites and Sunnis which later turned into warfare between 2006 and 2007 when the organization called Al-Qaeda bombed a holy site of Shiite Muslim, the al-Askari Mosque in the province of Samarra. However, the violence between these two sects subsided after the civil war in 2006 and 2007, yet the brutality never disappeared from the country as the Al-Qaeda continued to stage multiple bombings in different parts of Iraq, especially in places populated by Shiites. Their aim for doing this is to reignite a civil war within the country. Several Shiite militias resorted to abuse and remobilized their forces during the civil war to protect their sect (Arando, 2013).

In the midst of the sectarian violence, the security conditions of Iraq completely particularly in 2006 and 2007. The security challenges negatively affected the performance of other state institutions, particularly the legislative institution (parliament) function as a government observer. The role of the Council as a protector of freedom and rights was also significantly affected (Al-Anbugi, 2012). This led to the government declaration of a state of emergency. At first, the declaration a state of emergency was viewed as an obstacle in achieving oversight function of the parliament considering the reservation of several security ministers when answering questions from the parliament based on the principle of confidentiality of information and the protection of national security (Born, 2003:222). Therefore, MPs could not decide whether the government neglected their duties or not, due to limited access to information. Security concerns also hindered MPs from moving freely within the country and thus prevented them from identifying the citizens' problems and from meeting their needs (Al-Haidary, 2011).

The poor security also facilitated the several kidnapping and the assassination of MPs in Iraq. These assassinations and bombings include the abduction of MP Taysir al-Mashhadani from the Iraq Concord Front in 2006 .Also, assassination of MP Mohammad Reda from the Kurdistan Alliance in 2006. More so, death of MP Mohammed Awad because of a bomb blast in the Iraqi parliament building in 2007. Accordingly, the assassination of MP Saleh al-Ugaili from the Sadrists bloc in 2008; MP Qassem Sahlani from the Da'wa Party in 2009; MP Harith al-Obeidi from the Iraqi Accordance Front in 2009; and the bombing of the home of independent MP Mithal al-Alusi (who was unharmed) in 2008. It was due to these assassinations and bombings that many of the MPs boycotted parliament sessions in protest of the violence that they endured and thus obstructed the work of the parliament (Al-Janabi, 2013:171–174).

Apart from the above, the military campaigns waged by the Iraqi forces to eliminate terrorism in some parts of Iraq have been identified as one of the key factors that affect the functional role of the parliament. For example, it is noted that more than 44 deputies from the "united" block in the Iraqi parliament announced their resignations in protest of the Iraqi military operations in December 2013, which aimed to break up the sit-ins for the Sunni tribes in Anbar province on the basis of a supposition that these sit-ins were a safe haven for Al-Qaeda terrorists (Al-Nabaa News Channel, 2013).

From the ongoing, Al-Masalah News, (2014), observed that due to the deteriorating security situation in Iraq, the parliament was unable to effectively discharge their functions. For example, the voting laws of the parliament was revealed to be very ineffective in 2012 with voting on (117) law, followed in 2013 with voting on (49) law and in 2010 - 2011 with voting on (43) law (Al-Masalah News, 2014: see Figure 6.2).

### **Research methodology**

Our study adopts a qualitative research technique with a face-to-face interview approach to elucidate information from the key informants. Ahmad and Seet (2009); Salkind (2009); Sekaran & Bourgie (2009) argued that the use of qualitative approach would provide better insight in understanding the way people think about issues. Ahmad & Seet (2009) noted that the use of the quantitative survey approach for a study of this nature drives dissonant responses. Therefore, toeing the same line, this study opted for a qualitative research technique with a face-to-face structured interview approach. The need for a face-to-face interview is to have first-hand knowledge of the respondents on why Iraqi people chose a consensual democracy (Salkind, 2009). The essence of the structured questionnaire was to have a clear and apparent focus and call for an explicit answer (Salkind, 2009). In all, four people were interviewed comprising of diplomats and 2 parliament members. The interviews were conducted once and only for 30 minutes for each interview and these were then transcribed, coded and analyzed to ascertain the extent on which the security challenges have affected the role of the Iraqi parliament.

**Operationalization of security challenges:** The working definition for security challenges adopted for this study is the absence of danger or threat as noted by The Institute for Security and Open Methodologies (ISECOM).

### **RESULTS AND DISCUSSIONS: THE EFFECT OF SECURITY CHALLENGES ON THE PARLIAMENT FUNCTION ROLES**

The main purpose of this study is to examine the effect of security challenges on the legislative and oversight role of the Iraqi parliament. The interviews conducted by this study demonstrate that security challenges are crucial to the effective performance of the Iraqi parliament oversight functions. The respondents concur that the major problem of the Iraqi parliament is the lack of security which has strongly hindered their parliament functions.

According to Al-Janabi (2013:171–174), the security challenges in Iraq has become so worse to the extent that many of the MPs boycotted the parliament sessions and this has obstructed the work of the parliament which consequently affected their some of their functions. Also, Al-Haidary (2011) noted that security concerns also hindered MPs from moving freely within the country and thus prevented them from identifying the citizens' problems and from meeting their needs

The interview (on Feb 5, 2014) with the Iraqi MP Azhar Abdul Karim al-Shaykhli indicates that: security issues are certainly one of the crucial challenges affecting the parliament functions. In fact, they are the most crucial challenges facing the political process. I believe that the existence of a healthy environment represents stability, attracts

investment and then is guarantee the freedom of movement from one place to another in the country. Politically, the deteriorating security situation in Iraq has definitely led to chaos in all institutional works including the parliamentary institution that has hampered their parliament oversight functions.

Al- Masalah News (2014) reported that the security situation in Iraq is fast deteriorating to the extent that the parliament was unable to effectively discharge their functions. For example, the voting laws of the parliament was revealed to be very ineffective in 2012 with voting on (117) law, followed in 2013 with voting on (49) law and in 2010 - 2011 with voting on (43) law.

In a telephone interview (on the 15th of January 2014) with the former parliament Speaker Dr. Mahmoud al-Mashhadani. He revealed that: the security challenges have impacted heavily on the political process in terms of threats to personal security of the members of the parliament. These security threats which came in form of terrorism , detect corruption cases, party struggles etc. are part of the deteriorating security situation affecting the activity of the government as well as that of the parliament, making them not to properly perform their duties such as legislation and oversight the laws.

Furthermore, many of the politicians including the parliament members have been accused of supporting terrorism and violence as a result of the security challenges in Iraq. According to Al-Fatlawi (2006: 1-29), Iraqi government officials made several attempts to fight against armed violence and terrorism as part of the priorities of their government programs yet many of them are still being suspected to be supporting violence and terrorism.

In responding to the above, the Iraqi MP Humam Hamoudi on the interview of Feb18, 2014 revealed as follows: The security challenges no doubt poses a threat to the deputy or one of his relatives in the case if the deputy tried to reveal the corrupt files. Apart from criticizing the government, the deputy is also sometimes accused of supporting terrorism which he shall be punished in accordance with the article (4) of the Iraqi law relating to the terrorist operations under the pretext of maintaining national security.

Accordingly, Al-Janabi (2013:171–174) reported that the security challenges greatly affected the political lives of the parliament members. For instance, the poor security has facilitated the several kidnapping and the assassination of MPs in Iraq such as the assassination of MP Mohammad Reda from the Kurdistan Alliance in 2006 and many others of such.

With respect to the above, Dr Hussein Alwan Al-Beige (in the interview on Feb 3, 2014) revealed that: the security challenges in Iraq have heavily affected the political life of the politicians as well as the activities of the parliament especially the inability to perform their roles due to the security issues leading to threats to the lives of the MPs. For me, the security challenges have become so worse that it has made the

parliament unable to perform their duties smoothly and properly at all levels ...., and consequently make them unable to meet the demands of the popular forces in the legislation of laws and control".

### **CONCLUSION AND IMPLICATION**

The major objective of the study is to ascertain the effect of security challenges on the functional role of the Iraqi parliament. Due to this, an in-depth study was conducted and the findings of the in-depth study revealed that the security challenges in Iraq effect heavily on the political life of the politicians as well as the activities of the parliament especially the inability to perform their roles due to the security issues leading to threats to the lives of the MPs. The finding also shows that the poor performance of the Iraqi parliament is due to the security challenges which have assumed many forms such as terrorism, violence, militants and sectarian conflicts among tribes. For example, many members of the parliament feel very insecure and as such do not adequately attend the parliament sessions. Even when they attend the parliamentary sessions, they failed to contribute significantly to the issues being raised. The parliament was unable to pass many laws due to the security challenges.

The finding obtained in this study suggests that economy activities as well as economy development would not be attained if the security challenges are not resolved. Also, it suggests that the parliament functions and roles would continue to suffer if the issue of security challenges is not properly addressed.

The major implication of this study is on both the politicians and the member of the Iraqi parliament. The finding provided by this study would be a guide for both politicians and the member of the Iraqi parliament to re-think on the present security situation or challenges in Iraq. It would also help them to reshape and modify the existing security policies and laws for effective security system so as to suit their present security need. Researchers in this area of study would equally find this study very useful since it would stir up further research in this domain.

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# THE IMPACT OF NIGERIA's CORPORATE AFFAIRS COMMISSION REFORM AND RE-ORGANIZATION ON CORPORATE GOVERNANCE AND SERVICE DELIVERY

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Idris, Saidu<sup>2</sup>

## ABSTRACT

The pre-reforms period of the Nigeria's Corporate Affairs Commission (CAC) was characterized by lack of standing system of tracking of companies' compliance and general gross inefficiency in the delivery of services by the Commission. In 2001 CAC experienced reform and re-organization processes; meant to make it more responsive to discharging its regulatory role and achieving good corporate governance practices and efficiency in service delivery. The question is, has these processes strengthened the quality of services delivered by the Commission? The objectives of this paper are to highlight the components of the re-organization exercise of CAC and see how the reform has impacted on the Commissions' performance. To achieve these, the paper employs the use of both empirical and secondary sources of data for analysis. The Service Quality Model was used as theoretical guide to the study. It was observed that the Commissions' reform and re-organization has impacted in computerization of company registration process, improved human resource quality and even the introduction of new services. The paper, therefore, recommends that for good corporate governance practices to be achieved in Nigeria, the CAC should continue to strengthen its compliance and enforcement processes and procedures and also ensures that all the registered companies are continually monitored and sanctions enforced on defaulters. When compliance and enforcement mechanisms are reinforced, the Nigeria's CAC would raise the confidence of investors and general public.

**Keywords:** Corporate governance, reform and re-organization, regulatory bodies, and service delivery

## INTRODUCTION

In today's competitive business world, issues of corporate governance have gained increased prominence in countries around the globe. The soundness of corporate governance in any nation depends on its regulatory frameworks being put in place. In theory and in practice, regulatory bodies exercise their duties by imposing requirements, restrictions and conditions; setting standards of performance and securing of compliance, or enforcement amongst other functions. To carry out such regulatory functions in Nigeria, the Corporate Affairs Commission (CAC) was established by the Companies and Allied Matters Act (CAMA), which was

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promulgated in 1990 to regulate the formation and management of companies (CAC, 2005). Prior to the 2001 reform however, the operations of CAC was characterized by lack of standing system of tracking of companies' compliance with the Commission's standards. Hence, non-registered companies operating in the economy on one hand, and the concentration of authority to approve names on the other; making service delivery difficult to achieve. Investors lost confidence on investments in companies operating in Nigeria and if the situation allowed continuing, Nigeria's economy will dismally loose investment opportunities and economic progress would continue to be slow. Given this reality, the need for reform in the CAC became an absolute necessity.

Whether in public or private sector, reform efforts are specifically made to promote institutional capacity for improved performance. Reforms especially in regulatory agency like the Nigeria's CAC are geared towards promoting organizational effectiveness through eliminating the cumbersome procedures that cause delays in operational activities. Caiden (1978, 1991) and Turner & Hulme (1997) have often described such process as de-bureaucratization. The concern of the paper is: has the 2001 re-organization process strengthened the quality of services delivered by the Corporate Affairs Commission in Nigeria?

The paper has the objectives of highlighting the components of the re-organization exercise of C.A.C and same see how they impact on the Commissions' performance in the delivery of services. The paper drew inferences from both theory and practice of service quality and service delivery in the public sector organizations. Structurally, the paper is separated into four major divisions. First is the introductory, the second conceptually highlights corporate governance, regulatory bodies and service delivery and ends with framework of analysis. While the third section highlights reform components and discuss the paper, section four concludes it.

#### **CONCEPTUAL REVIEW AND FRAMEWORK OF ANALYSIS**

The idea of corporate governance is associated with classical economic theory that laid much emphasis on the ways through which economic growth and development in an economy can be stimulated by individual and corporate investments. Corporate governance as rightly put by Demb & Neubauer (1992a), "is the process by which corporations are responsible to the rights and wishes of stakeholders." As opined by Monks & Minow (1995), "it takes care of the relationship involving various stakeholders in determining the direction and general performance of the corporation." It addresses the general issues facing the managers of corporations, which includes; the interaction of the top corporation's management with major stakeholders and others relevant partners in the industry" (Tricker, 1994). This is further recognized by the American Law Institute (1992) which states that, "modern corporations naturally, create a synergy and series of interdependences with a various stakeholders that made up the corporation; with whom it has a legitimate concern about." In the stewardship model, however, managers are good stewards of the corporations and ensure the attainment of maximum corporate returns and profit to shareholders (Donaldson & Davis, 1994). However, the standard definition of corporate governance amongst scholars refers to the defense of shareholders' interest. Corporate governance as it relates to regulatory bodies is aptly captured by Cadbury (1992) as "the system that directs and controlled the corporations."

The growing need for government to intervene in regulating the activities of corporate bodies arises due to the deficiencies in the information, power and will to correct such deficiencies. Hence, stakeholder participation in governance process to reducing those deficiencies. Also, the government intervention and regulation can be important in protecting the interest of the host

society and general public as against the participating stakeholders' interest. However, stakeholder participation may also be required in government bureaucracies to allow policies to be mediated to suit local conditions and performance standards established and evaluated by those affected Turnbull (1994d, 1995b).

In order to achieve good corporate practices, regulatory bodies are established in any country. Examples of such regulatory bodies in Nigeria are- Nigeria Deposit Insurance Corporation (NDIC), National Electricity Regulatory Commission (NERC), Nigerian Communication Commission (NCC), Federal Board of Internal Revenue (FBIR), Teachers Registration Council of Nigeria (TRC), Standard Organization of Nigeria (SON), Security and Exchange Commission (SEC), Nigerian Investment Promotion Commission (NIPC), and Corporate Affairs Commission (C.A.C) to mention but these. In spite of these regulatory bodies, many Nigerian citizens have come to believe that services especially in public sector organizations cannot be improved due to strict adherence to bureaucratic procedures. For example, within governmental institutions, the occasion of staff hierarchy and chain of authority has not been particularly helpful as the system is still very much focused on command and control as against devolution of authority to front line managers who face practical service delivery situation on a day-to-day basis (SERVICOM, 2007). Service delivery as expressed by Stockton (2011) "is concerns about effective delivery of services, to the satisfaction of the customers".

Franzini (2009) tried to establish a relationship between corporate governance regulations and levels of investment and growth rates. Franzini's data spanned the years 1989-2008 and he looked at Central and Eastern Europe for comparison. The study established amongst other things that, there is a strong relationship between more extensive corporate governance and higher levels of aggregate investment; a relationship also exists between and corporate governance and higher growth levels. The study emphasizes the need for ensuring effective corporate governance framework applicable in contemporary world. Although Franzini's findings is applied to Central and Eastern Europe because of their economic stability and sound regulatory frameworks, his findings may not apply to the situations in the less developed economies like Nigeria where regulatory bodies lack the ability to enforce compliance perhaps due to political interference which could in turn, affect their outputs in terms of quality of both staff and service delivery. In an attempt to contribute to knowledge, this paper attempts to examine the internal re-organizations to see how the reforms impact on Commission's service delivery.

In a related study, Kirfi, Abdullahi & Idris (2013) conducted a survey on reforms in regulatory bureaucracy and service delivery in Nigeria using the Nigeria's CAC experience. Using a sample of questionnaires of Nine Hundred and Six (906) respondents, the study established that the reforms expressed in computerization of operations, human resource management adjustment and adoption of a number of capacity building techniques in addition to strengthening the process of enforcement of compliance. The study concludes that enforcement of compliance arrangement in the CAC plays a significant role in ensuring the practice of corporate governance and service improvement. The study amongst others recommends that a new tracking system (electronic or manual) capable of identifying corporate concerns that do not comply with the Commission's expectation should be put in place by adopting external intelligence or Corporate Citizen's Monitoring Unit (CCMU) and that the Companies and Allied Matters Act of 1990 must address both power and sanctions of the Unit. Although the study sought to report how compliance arrangement in the C.A.C affects corporate citizen's behaviour more than other aspects of services of the Commission, it did not examine the impact of the 2001 re-organization on corporate governance using service quality model. Therefore, this

paper seeks to extend the frontier of knowledge by examining the impacts of the reform on corporate governance and quality services delivered by the Nigerian CAC.

This paper hinges on Service Quality (SERVQUAL) Model. According to Parasuraman, Zeithaml, & Berry (1988), this model deals with the overall judgment towards the service delivery. SERVQUAL model emphasize on organization's ability to provide services efficiently and effectively. This model is applicable to all the type of organization. It proposes five (5) distinct assumptions on how the customer evaluates the services been rendered to him/her: reliability, responsiveness, assurance, empathy, and tangibles. Assurance- ability to instill confidence in customers; investors feel safe in their transactions; Reliability- provides services at the time promised; maintaining error-free records; Tangibles- have up-to-date equipment; Responsiveness-notifies customers on the actual time a services will be performed; offers prompt services to customers, and Empathy- employees given personal attention to all; employees having investor' best interest.

The SERVQUAL model proposes that customers (investors and the general public) can evaluate the quality of services rendered by organizations. In relation to this paper, the link between the quality of service citizens enjoy, and the level of competence the regulatory bodies are very significant hence on one hand, the model can be used to explain re-organization reforms in regulatory bodies and on the other hand, measures the nature of service quality that is been provided to the customers. Accordingly, with the re-organization exercise, services rendered by the Commission become more reliable, responsive and assured. This is judged by the Commission's ability to conduct its business in the most efficient and effective manner.

#### **HIGHLIGHTS OF THE CAC REFORMS AND DISCUSSION**

The essential features of the 2001 reform in the Nigeria's CAC were aimed at strengthening the quality of the services delivered by Commission. In terms of company registration, the hitherto manually paper-based procedures were replaced with electronically based system. Customers now simply make payments for incorporation through e-payment system called Smart Card Technology (SCT). With this development, customers do receive the Commission's services from anywhere in Nigeria and the services are available Twenty-four (24) hours daily. This reduces the cost of incorporation including other logistics. Prior to the 2001 reorganization process, records were stored manually; the new allows for generating data of all the registered companies in Nigeria. Available records showed that the CAC had over 600,000 registered companies and has converted all the manually records to the electronically based system. Simply put, the Commission's Information Management System greatly improved and this has provided foreign investors, the opportunities to conduct searches in their business concerns from anywhere around the globe. Contrary to the hitherto five-day term for registration, the reform also made CAC to introduce a Twenty-four (24) hours delivery service, a special registration for individuals or corporate bodies that require the special service. These amongst other aspects of the reform greatly improved the quality of services delivered by Commission.

From the foregoing reform highlights of Nigeria's CAC, the following summary appeared more glaring: first, the reforms in the CAC resulted in the introduction of computer-based incorporation. Secondly, the reforms also provide an opportunity for investors (locally and internationally), more investment opportunities. Thirdly, another positive aspect of the reforms is Commission's ability to conduct its business more transparently as investors and the general public can access easily, Commission's major operations through the Internet services.

Empirical evidence also reveals that the reform efforts led to significant improvement in the delivery of services through effective monitoring and enforcement of compliance. Commission's action (de-listing) of Fifteen Thousand Four Hundred and Nine (15,409) companies that have not complied with the Commission's requirements is an indication of Commission's strive to meet up with international standards of best practice (Kirfi, 2011). Fourthly and finally, it is observed that the CAC-Online Project is geared towards improving efficiency; enhancing quality of service delivery and global best practices. Through the reform, customers pay and obtain the Commission's services through the internet. This is accessible using an e-cash Payment System based on Smart Card Technology such as the CAC e-payment Card and Credit Card. It is worthy of note that the hitherto complex and cumbersome procedures associated with company registration have been overcome. After the re-organization, incorporation of company may take three (3) days or less to complete. To further create faster opportunities for business, Commission has introduced Same Day Incorporation Service for customers who wish to get express services within one day at a fee. Also, the process of registering incorporated trustees has changed from what was obtainable as trustee declaration form was introduced to supersede the former requirement of obtaining a letter from State Security Service which encourages corruption as well as taking longer time to accomplish.

## **CONCLUSION**

It is evident that in 2001, re-organization process had taken place in the Nigeria's Corporate Affairs Commission, which ushered in a regime change in the delivery of services. The paper submits that this institutional reform has dramatically heightened the standard of the Commission. To further confirm the above statement, the reform effort has in many regards engrossed commendations locally and internationally. For instance, locally, the House of Representatives Committee on Commerce highly praised the untiring efforts in transforming the CAC for better services in the country; internationally, the CAC has received award for International Organization for Standardization, ISO 9001:2000 for Quality Management System, making the Commission one of the first government institutions in the country to obtain ISO Certification (CAC, 2013). More so, the World Bank in its 2008 Publication on Doing Business also commended CAC's computerized registry amongst others. The paper, therefore, offered the following recommendations:

First, partnership with registered and incorporated business on compliance arrangement should be re-enforced. This can be achieved by encouraging such companies to form leagues while the CAC exploits such leagues in monitoring all companies under the leagues. For meeting performance requirements, foreign investors be made registered with the Nigerian Investment Promotion Commission (NIPC), for incorporation (private or public), as usual, companies should register with the Nigeria's CAC, and for procurement of appropriate business permits, companies be made to register with the Nigerian Securities and Exchange Commission (SEC). When this arrangement is strengthen, enforcement of compliance would be easier, regulations guaranteed and improved service delivery by the CAC is ensured.

Lastly, the paper, therefore, submits that for good corporate governance practices to be achieved in Nigeria, the CAC should continue to strengthen its compliance and enforcement processes and procedures and also ensures that all the registered companies are continually monitored and sanctions enforced on defaulters. When compliance and enforcement mechanisms are reinforced, Nigeria's CAC will raise the confidence of investors and the general public. To prosecute these therefore, more autonomy be granted to the Commission in discharging its mandates.

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# UPHOLDING THE RULE OF LAW IN GOVERNANCE PROCESS: A STUDY OF THE MALAYSIAN FEDERAL CONSTITUTION

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## ABSTRACT

The rule of law is an ideal of good government and just constitutional arrangements. It is one of the fundamental concepts of the constitution. It represents one of the most challenging concepts of the constitution. Aristotle reiterated that where laws do not rule, there is no constitution. Constitutions are not ends in themselves. They exist to secure some purposes and to promote some ideals and values. One such ideal is that of the "rule of law." At the heart of the rule of law is the powerful idea that it is law that should govern society and not the arbitrary will of particular persons- a government of laws, not persons. The rule of law is a concept which is growing in importance and more developing countries seek to establish permanent non-totalitarian, pluralistic, principles of government including Malaysia. The aim of this paper is to examine the concept of the rule of law as opposed to rule by law in governance process by looking at the Malaysian Federal Constitution as a case study. The methodology adopted in this paper is a legal library based research focusing mainly on primary and secondary legal sources. To conclude, it is submitted that although the concept of the rule of law is not expressly stated under the Malaysian Federal Constitution, its spirit can be seen in Article 4(1). However, there is still room for improvement as far as the concept of the rule of law is concerned in the context of governance process in Malaysia.

**Keywords:** Constitution, governance, rule of law, rule by law, non-totalitarian

## INTRODUCTION

For many centuries it has been recognised that the possession by the state of coercive power that may be used to oppress individuals presents a fundamental problem both for legal and political theory (Bradley & Ewing, 2010). Since the days of the Greek philosophers there has been recourse to the notion of law as a primary means of subjecting governmental power to control (Bradley & Ewing, 2010). Aristotle argued that government by laws was superior to government by men (d'Entreves, 1967; Tan & Li-Ann, 2010). It would thus suffice to note from the very beginning that the rule of law requires that a society must be governed by a government of laws and not a regime of arbitrary powers (Faruqi, 2008). There must be supremacy of laws. In other words, the essence of the rule of law is that of the sovereignty or supremacy of law over man. The rule of law underlies the entire constitution and, in one sense, all constitutional law is concerned with the rule of law. Hence, it cannot be denied that the deficiency of constitution can be a gauge for the absence of the rule of law as a constitution is generally used as a tool to convey the concept of the rule of law (Panikabutara, 2008). This actually happens to be the case in Malaysia by virtue of Article 4(1) of the Federal Constitution advocating for the supremacy of the constitution. The purpose of Article 4(1) of the Federal Constitution is to establish the constitution as the basis of the 'rule of law'. However, it should be noted that the presence of the constitution is not a

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guarantee of the advocacy of the rule of law. This is especially true where the constitution lacks the spirit of constitutionalism.

The aim of this paper is to examine the concept of the rule of law as opposed to rule by law in governance process by looking at the Malaysian Federal Constitution as a case study. The paper is divided into four parts. The first part addresses the definition or meaning of the term rule of law. This part of the discussion is of paramount importance especially in the context of this study. This is due to the fact that the rule of law is a concept which is capable of different interpretations by different people, and it is this feature which renders an understanding of the doctrine elusive. The second part deals with the constitutional position of the concept of the rule of law under the Malaysian Federal Constitution. Under this part, the discussion will revolve on the constitutional position of the rule of law. The third part turns attention to the practise of the rule of law under the Malaysian Federal Constitution in the context of governance process. Here the focus of attention is on establishing that the existence of the rule of law can be proved through the existence of a number of institutional provisions such constitutional supremacy, the separation of powers, judicial review and the prohibition of retroactive legislation, etc. The fourth part shall focus on the conclusion. This part will embrace some recommendations bearing in mind that in Malaysia, there is a rule of law, but an imperfect one.

#### **DEFINITION/MEANING OF THE RULE OF LAW**

Definitions of rule of law are notoriously diverse. The concept is used as a catchword serving widely differing and often conflicting interests. The rule of law may be defined either as a philosophy or political theory which lays down fundamental requirements for law, or as a procedural device by which those with power rule under the law (Barnett, 2012). Furthermore, the rule of law cannot be viewed in isolation from political society (Barnett, 2012). The emphasis on the rule of law as a yardstick for measuring both the extent to which government acts under the law and the extent to which individual rights are recognised and protected by law, is inextricably linked with Western democratic liberalism (Fine, 1984; Neumann, 1986). In this respect, it is only meaningful to speak of the rule of law in a society which exhibits the features of a democratically elected, responsible and responsive government and a separation of powers, which will result in a judiciary which is independent of government (Barnett, 2012). In liberal democracies, therefore, the concept of the rule of law implies an acceptance that the law itself represents a 'good'; that law and its governance is a demonstrable asset to society (Barnett, 2012).

Looking at the rule of law as a philosophical theory, the argument here is based on the notion that the rule of law is an aspect of ancient and modern natural law thought. For example, Aristotle (1962, p.16) stated that 'the rule of law is preferable to that of any individual'. In other words, Aristotle argued that it was preferable to have government by laws rather than government by men (Tan & Li-Ann, 2010). What Aristotle really meant was that in any state or community, law and order is preferred over anarchy and mayhem. In that sense, government must be conducted according to law, and not according to the arbitrary whims and fancies of the government. The appeal to law as a control over naked power has been apparent throughout history. Indeed, the calls to governments to adhere to the rule of law have been most noticeable in oppressive regimes (Tan & Li-Ann, 2010).

Apart from viewing the rule of law as a philosophical theory, it is equally important to point out that as mentioned earlier that the rule of law has also been viewed as a political theory.

As a political theory, reference should be made to Joseph Raz and Albert Venn Dicey. According to Joseph Raz (1977), the rule of law is a political ideal which a legal system may lack or may possess to a greater or lesser degree. It would suffice to note that Joseph Raz defines the rule of law at two levels. At one level, the rule of law is the axiom that "people should obey the law and be ruled by it" (Raz, 1979, p. 212). At the higher level, it denotes the principle that "the government shall be ruled by the law and subject to it" (Raz, 1979, p. 212). The rule of law at the first level is not different from what scholars often describe as "rule by law". Rule by law is defined as rule by known rules rather than mere fiat or arbitrary dictates (Clark, 1999).

In addition, it is without doubt that in addressing the notion of the rule of law as a political theory we have to pay attention to the work of Albert Venn Dicey since it was him who brought the topic into open discussion in 1885 with the publication of his major work, *An Introduction to the Study of the Law of the Constitution* (Yatim, 1995). According to Dicey, the rule of law which forms a fundamental principle of the constitution, has three meanings, or may be regarded from three different points of view. Firstly, it means the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, or prerogative, or even of wide discretionary authority on the part of the government (Dicey, 1959). In other words, no person should be punished or made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts. Secondly, it means equality before the law, or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts (Dicey, 1959). In other words, no man is above the law; every man and woman, whatever be his or her rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals. Thirdly, the rule of law may be used as a formula for expressing the fact that with us the law of the constitution, the rules which in foreign countries naturally form part of a constitutional code, are not the source but the consequence of the rights of individuals, as defined and enforced by the courts (Dicey, 1959). This implies that the general principles of the constitution (as, for example, the right to personal liberty, or the right of public meeting) are, with us, the result of judicial decisions determining the rights of private persons in particular cases before the courts.

Regardless of the different definitions accorded to the rule of law above, what is important in the study of the rule of law is to recognise and appreciate the many rich and varied interpretations which have been given to it, and to recognise the potential of the rule of law for ensuring limited governmental power and the protection of individual rights, than to be able to offer an authoritative, definitive explanation of the concept. In the context of this study, what is important is to look at how we can uphold the rule of law in governance process i.e. talking of limited government where all powers must be subject to limits. For example, there must be controls on executive discretion so that discretionary authority does not degenerate into arbitrariness (Faruqi, 2008).

#### **THE POSITION OF THE RULE OF LAW UNDER THE MALAYSIAN FEDERAL CONSTITUTION**

The Malaysian Federal Constitution is a unique expression of the country's varied culture and history. In Malaysia, the constitution is the fundamental law from which the validity of all other laws derives, and is superior to all other forms of law; thus the judiciary has the power to strike down a law as being contrary to the constitution. In other words, the highest law of the land is the Federal Constitution i.e. the constitution takes precedence over all other laws. It could therefore be argued that Article 4(1) of the Federal Constitution is the

backbone of the concept of the rule of law. This is due to the fact that the purpose of Article 4 is obviously to establish the constitution as the basis of the rule of law. Furthermore, the Malaysian Federal Constitution itself clearly embodies, expressly in many of its provisions, the principles outlined by Albert Venn Dicey above (Harding, 1996).

As matter of caution, it is of paramount importance to take note of the theoretical versus the practical arguments while addressing the constitutional position of the rule of law under the Federal Constitution. In theory, there is no doubt that the rule of law is part and parcel of the constitutional arrangement. Take for instance one of the postulates of the rule of law put forward by Dicey stating that the rule of law requires that no one be punished except for a conduct which represents a clear breach of law. This requirement would imply that all laws must be prospective, open and clear. There is no doubt that formal legality is one of the formal versions of the rule of law. The formal legality requires the law to be general, clear and hold the temporal dimension providing the public with the protection against the retroactive law (Craig, 1997). The Malaysian Federal Constitution has continuously and vigorously upheld the principle that law must be prospective. Hence, in *PP v Muhamed Ismail* ((1984) 2 MLJ 219) the court held that the amendment could not apply to the defendant's case as it was enacted after the offence was committed. However, putting the theoretical arguments aside, it would appear that Article 4(1) which is viewed as the cornerstone to the discussion of the rule of law could be said to be diluted by some features in the Constitution itself such as: the amending power conferred on Parliament in respect of the Constitution under Art 159 and law-making power confided in the executive (on whose advice the *Yang di-Pertuan Agong* is bound to act) under Article 150 (Harding, 1996; Faruqi, 2008; Tan & Li-Ann, 2010). Hence, it would suffice to note that the Malaysian Government and Parliament have made extensive use of emergency powers sanctioned by the Constitution (Harding, 1996).

Despite the theoretical versus practical arguments on the constitutional position of the rule of law under the Malaysian Federal Constitution, it could still be argued that the operation of the rule of law in the context of this study should be understood to serve a limiting function, namely to ensure that government is conducted in accordance with accepted democratic norms. It is the very antithesis of arbitrary government. It cannot be totally denied that the rule of law represents one of the most challenging concepts of the constitution. It is true that Article 4(1) of the Federal Constitution could be diluted by some features of the constitution itself as mentioned earlier, but the fact still remains that to a certain extent we do have some checks and balances in place that could be viewed as a sign of respect or even victory of the concept of the rule of law (Masum, 2009).

### **THE PRACTISE OF THE RULE OF LAW IN GOVERNANCE PROCESS**

The existence of a supreme constitution, the safeguards for an independent judiciary on the notion of separation of powers and the constitutional power of judicial review, are clear proof that the Federal Constitution was built to protect the rule of law. For example, the constitution itself subjects government to certain principles which cannot be ignored. It not only disperses power among the federal and state governments, and between the legislative, executive and judicial branches: it also provides fundamental liberties as criteria for the treatment of individual citizens. There is no doubt that the practise of the rule of law in governance process can be seen from the following constitutional arrangements:

### **1.1. Constitutional Supremacy**

The notion of a super statute i.e. a fundamental law superior to ordinary law is central to the rule of law doctrine since the discretion attached to lower ranked laws is curbed by declaring those laws unenforceable if they are contrary to the constitution (Howard, 2007). As mentioned earlier, the rule of constitutional supremacy is clearly stated in Article 4(1) of the Federal Constitution. The implication of the phrase “supreme law” in Article 4(1) is that, the norms of the constitution have higher legal validity than any other rule in society whether federal or state, enacted by Parliament or the States, of a primary or secondary status, of peace-time or emergency status and of secular or theocratic nature (Faruqi, 2008). In a country with a supreme constitution all courts and administrators are required to interpret legal, moral and social norms in the light of the constitution. Perhaps it is vital here to make reference to the case of *Ah Thian v Government of Malaysia* ((1976) 2 MLJ 112 at p. 113) focusing on the observation made by Suffian L.P. His lordship observed: “The doctrine of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and State legislatures in Malaysia is limited by the Constitution, and they cannot pass any law as they please. Under our Constitution, written law may be invalid on one of these grounds: (1) Art 74; (2) in the case of both Federal and State written law, because it is inconsistent with the Constitution; (3) Art 75”.

### **1.2. Separation of Powers**

Though the doctrine of separation of powers is nowhere mentioned explicitly in the Federal Constitution, it is implicit in the constitutional scheme of things at least as far as the position of the superior courts is concerned (Faruqi, 2008). The Federal Constitution speaks of three branches: the executive, the legislative and the judiciary. Perhaps in a Malaysian context, it would be vital to make a cross-reference to the sentiment echoed by Justice Raja Azlan Shah (as His Highness then was) in the case of *Loh Kooi Choon v Government of Malaysia* ((1977) 2 MLJ 187 at p. 188). He had this to say of the Federal Constitution: “The Constitution is not just a mere collection of pious platitudes. It is the supreme law of the land embodying three basic concepts: One of them is that the individual has certain fundamental rights upon which not even the power of the State may encroach. The second in the distribution of sovereign power between the States and the Federation... The third is that no single man or body shall exercise complete sovereign power, but that it shall be distributed among the Executive, Legislative and Judicial branches of government, compendiously expressed in modern terms that we are a government of laws, not men”.

Based on this noble doctrine of separation of powers, all Constitutions seek to divide, disperse and limit the powers of each organ of state. In Malaysia, our governing bodies are the Executive (Government), the Legislature (Parliament) and the Judiciary. They each intend to have very specific powers, that of enforcing the law, making the law and interpreting and applying the law. Each organ is in some manner answerable to the others. For example, the legislative power of the various legislative bodies in the country must be exercised subject to the constraints of the constitution. The judicial power of the courts must be exercised subject to the constraints of the constitution. The power of His Majesty as head of the three branches of Government (the legislative, the judicial and the executive) must be exercised subject to the constraints of the constitution. In order to appreciate the existence of separation powers under the Federal Constitution, reference must be made to the case of *Lim Kit Siang v Dato Seri Dr Mahathir Mohamad* ((1987) 1 MLJ 383 at p. 386) where Tun Salleh observed:

"When we speak of government it must be remembered that this comprises three branches, namely, the legislature, the executive and the judiciary. The courts have a constitutional function to perform and they are the guardian of the Constitution within the terms and structure of the Constitution itself; they not only have the power of construction and interpretation of legislation but also the power of judicial review- a concept that pumps through the arteries of every constitutional adjudication and which does not imply the superiority of judges over legislators but of the Constitution over both. The courts are the final arbiter between the individual and the State and between individuals inter se, and in performing their constitutional role they must of necessity and strictly in accordance with the Constitution and the law be the ultimate bulwark against unconstitutional legislation or excesses in administrative action. If that role of the judiciary is appreciated then it will be seen that the courts have a duty to perform in accordance with the oath taken by judges to uphold the Constitution and act within the provisions of and in accordance with the law".

From the above observation made by Tun Salleh, it could be argued that the Federal Constitution provides for separation of powers consisting the executive (Article 39), the legislature (Article 44) and the judiciary (Article 121). However, it has to be acknowledged wholeheartedly that there also conflicting decisions by the courts regarding the existence of the doctrine of separation of powers under the Federal Constitution. For instance the Federal Court in *PP v Kok Wah Kuan* ((2008) 1 MLJ 1 at p. 3), Abdul Hamid Mohamad (as he was then) speaking for the majority held that "no provision of the law may be struck out as unconstitutional... even though it may be inconsistent with the doctrine of separation of powers. The doctrine is not a provision of the Malaysian Constitution even though it influenced the framers of the Malaysian Constitution". In this case, the majority rejected the separation of powers as an 'integral' feature of the constitutional order while the sole dissenting judge defended the principle as fundamental to democracy and the rule of law.

### **1.3. Judicial Review**

Although the concept of judicial review is not expressly stated in the Federal Constitution, it is of paramount importance to note that just as Parliament is subject to the Constitution, all executive officials, from the *Yang di-Pertuan Agong* down to the ordinary public servant, are bound by the Constitution (Faruqi, 2008). Constitutional supremacy would ring hollow unless it is enforced. Articles 4(3), 4(4), 162(6), 128(1) and 128(2) confer power on the superior courts to determine the constitutional validity of federal and state laws and to invalidate them on the ground of unconstitutionality (Faruqi, 2008). It is important to note that hundreds of executive actions have been invalidated by the courts for violation of the requirements of the Constitution. For example, a notable case to cite here is that of *Tan Boon Liat* ((1977) 2 MLJ 108) where a preventive detainee made representations to the Advisory Board. The Board failed to consider the representations and to make recommendations thereon to His Majesty within the time limit of three months as required by Article 151(1)(b). The Federal Court ordered the detainee's release notwithstanding that the Board had by then already made recommendations to the *Yang di-Pertuan Agong* and His Majesty had confirmed the order of detention. The Federal Court found that the King's decision was *ultra vires*. Apart from this case reference can also be made to numerous cases under Article 135(2) of the Federal Constitution dealing with public servants who have been reinstated for wrongful dismissal. For instance in *Government of Malaysia v Iznan bin Osman* ((1977) 2 MLJ 1), where the Police Force Commission delegated to the Chief Police Officer (CPO) of Perak power to dismiss a constable, and the C.P.O dismissed a constable who had been convicted of operating a pirate taxi. There was no evidence that the C.P.O had the power to appoint a

constable. The Federal Court held that as at the time of the dismissal only the Commission had power to appoint a constable and the C.P.O was subordinate to the Commission, the dismissal by the C.P.O contravened the prohibition in clause (1) of Art 135 & was therefore void.

Apart from the cases cited above, reference can also be made to the case of *Pengarah Tanah dan Galian Wilayah Persekutuan, Kuala Lumpur v Sri Lempah Enterprise Sdn Bhd* ((1979) 1 MLJ 135 at p. 148), where Raja Azlan Shah FJ (as His Highness then was) stressed that "[e]very legal power must have legal limits, otherwise there is dictatorship...the courts are the only defence of the liberty of the subject against departmental aggression". From the decision of the Federal Court, it could be argued that judicial review plays an important role as an aspect of the rule of law in governance process.

In addressing the concept of judicial review, perhaps it is vital to take note of the fact that from a practical point of view there is a hindrance in the operation of the concept. This hindrance is caused by the Ouster Clauses. The language of these Ouster Clauses i.e. Articles 4(2), (3) and (4) seem to be very clear enough to put a stop to judicial review. However, it should be noted that judicial review as a concept is considered as one of the ingredients or indicators of the operation of the rule of law in any given legal system (Masum, 2009, 2012). In other words, the efficacy of judicial review is the litmus test for the existence of rule of law in the country (Faruqi, 2001a). Hence in a country with a supreme Constitution, questions of unconstitutionality can never be removed from judicial review. It is important to note that it is part of the judicial tradition in rule of law states to interpret ouster clauses restrictively and to hold that if a decision or action is declared to be "final and conclusive," it is non-reviewable only if it is within the law. It has to be pointed out that the word "decision" refers to valid decision. Thus, an invalid decision is a nullity (Faruqi, 2001a).

#### **1.4. Independence of the Judiciary**

Judicial independence is an important aspect of the rule of law. We cannot address the concept of the rule of law in an environment where the notion of judicial independence is not practised in its entirety. In other words, to enforce the rule of law, there must be an independent judiciary with the power to enforce its verdicts without fear or favour (Faruqi, 2008; Bari, 2003). The judiciary must be independent and free from extraneous pressures. It must be invested with all the necessary powers to interpret and enforce the law and to keep public authorities within the limits of their competence (Faruqi, 2008; Bari 2003). In all democratic systems the judiciary occupies a central place in the constitutional set-up of the land. Judges are an essential part of the system of checks and balances that is put in place to prevent abuse of power. Under the Malaysian Federal Constitution, it is important to note that several safeguards have been incorporated in order to ensure judicial independence. Among the safeguards are: method of appointment (Article 123); security of tenure- superior court judges have permanency in their tenure (Article 125(3)); terms of service- superior court judges enjoy terms of service that are more favourable than those of civil servants (Article 125(1)); insulation from politics (Article 127); contempt of court (Article 126); judicial immunity; and court system- where the existence of courts, the judicial hierarchy, and the jurisdiction and composition of the courts are prescribed by the law and are not open to tampering by the executive (Articles 122, 122A and 122AA).

Regardless of the constitutional safeguards mentioned above, it is inevitable to point out that there are still weaknesses in place hindering the notion of judicial independence. For

example, Article 145(3A) of the Federal Constitution which gives power to the Attorney General to choose the venue at which judicial proceedings will commence or be transferred to, does arose some discomfort while faced with the notion of independence of the judiciary. Furthermore, it cannot be wholly denied that the constitutional role of the judiciary has been severely restricted by the enactment of Constitutional (Amendment) Act, 1988 to Article 121. Before it was amended in 1988, Article 121 vested the judicial power of the Federation in the High Courts and such inferior courts as might be provided by federal law. After the amendment to Article 121, judicial power is no longer "vested" in the courts and their jurisdictions and powers are defined by laws enacted by Parliament. Despite the amendment, it is vital to note that a look at case law since 1988 indicates that the amendment to Article 121(1) to clip judicial wings did not deter many judges from performing their constitutional role (Faruqi, 2008). Issues of *ultra vires*, natural justice, unreasonableness and proportionality are still looked into by the judges in the process of adjudication. Take for instance the cases of *Shamsiah bte Ahmad Sham v Public Services Commission, Malaysia & Anor* ((1990) 3 MLJ 364) and *Raja Abdul Malek Muzaffar Shah bin Raja Shahruzzaman v Setiausaha Suruhanjaya Pasukan Police & Ors* ((1995) 1 MLJ 308). These two cases explain the importance of the right of public servants to have access to materials considered by the authority (Bari & Shuaib, 2006). The courts held that their rights were breached. It would thus suffice to note that if a public servant was dismissed or reduced in rank, then Article 135(2) provides that he or she must be given reasonable opportunity of being heard. This requirement is part and parcel of the element of the rules of natural justice, which is a procedural safeguard against improper exercise of power by a public authority. Also, in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* ((1996) 1 MLJ 261), the court held that in addressing the issue of the right to be heard, it is important to consider issues such as procedural fairness, irrationality and proportionality.

## **CONCLUSION AND RECOMMENDATIONS**

It is evident from the foregoing discussions above that the rule of law plays an important role in governance process especially in the context of having accountable, responsible and answerable institutions in place. In Malaysia, we have a written constitution serving as a set of express rules, stipulating the distribution of powers of various governing bodies as well as their modes of operation. The rule of law in Malaysia therefore embodies the supremacy of the constitution which confers authority and makes provisions for men acting on behalf of the state. However, it is important to note that by having a written constitution operating on the notion of supremacy of the constitution is not a guarantee to show that there is respect and recognition of the rule of law in a given legal system (Masum, 2009, 2012). In Malaysia, one of the unusual features of the Federal Constitution is that of the special powers to deal with crises being bifurcated into two- the authority to deal with subversion under Article 149 and the power to combat emergency under Article 150 (Faruqi, 2001a). These two Articles have been viewed as a hindrance to the spirit of the rule of law. Being aware of some of our constitutional provisions operating as a hindrance to the concept of the rule of law, it becomes inevitable to advocate for some recommendations in order to inculcate the spirit of upholding the rule of law in governance process.

In order to give real meaning to the concept of the rule of law, judges or the judiciary must be assertive enough. Judicial creativity is an important aspect in giving real meaning to the implication of Article 4(1) of the Federal Constitution. By adopting judicial creativity, it is unlikely that we would come across reasoning such as: "The law may be harsh but the role of the courts is only to administer the law as it stands" (*AG, Malaysia v Chiow Thiam Guan*

(1983) 1 MLJ 51 at p. 52) or “The question whether the impugned Act is harsh and unjust is a question of policy to be debated and decided by Parliament, and therefore not fit for judicial determination” (*Looh Kooi Choon v Government of Malaysia* (1977) 2 MLJ 187 at p. 188). We have to remember that the concept of the rule of law does not advocate for unjust law. Recently, we have seen some positive development regarding judges creativity e.g. administrative law relating to remedies is now richer because the superior courts broke new ground in a heartening and innovative decision (Faruqi, 2008; *Minister of Finance, Government of Sabah v Petrojasa Sdn Bhd* (2008) 4 MLJ 641). The judiciary needs to play a proactive role especially in enforcing limited government towards achieving the objectives of constitutionalism and rule of law. Thus, as parliamentary control over the administration diminishes, judicial control must be proportionally strengthened. In a country with a written and supreme Constitution, the courts have the momentous power and duty to review legislative and executive actions on the ground of “unconstitutionality” (Faruqi, 2001b). Judges are required to interpret “static” clauses of the Constitution and statutes in such a way as to give them life and meaning (Faruqi, 2001b). If the law has gaps, as it often does, the judge has to fill them by reaching out beyond rules and principles, presumptions, doctrines and standards that are part of the majestic network of law (Faruqi, 2001b). If the law has conflicts, as it invariably does, the judge has to set out on the task of bringing harmony and consistency where none existed (Faruqi, 2001b).

Another area of concern is regarding the amending powers of Parliament, which may be viewed as a threat to the concept of the rule of law in governance process. Although procedural limits on the power of Parliament to amend the Constitution are undeniable legal reality, perhaps in the context of this study it is important to look into the issue of whether there is any substantive limit on the power of the legislature to constitute or deconstitute the fundamental provisions of the basic law (Faruqi, 2001c). Some have argued that the ability of Parliament to amend the Constitution needs to be seen in the light of the requirements laid down by the Constitution i.e. two-thirds majority. On the basis of this analysis, few questions may be raised like: Is there any safeguard against such extreme use or abuse of amending power? Are there any implied limits on Parliament’s power to destroy “the basic structure” of the Constitution (Faruqi, 2001c)? It is submitted that the “basic structure” argument needs to be viewed as part and parcel of an implied limit while dealing with the amending powers of Parliament (Masum, 2009, 2012). By adopting this approach, it would mean that it is unacceptable to say that Parliament has the power to pass legislation so long as the power is exercised constitutionally and thus it can pass and may pass any law it likes, no matter how unreasonable and ridiculous it may be (Masum, 2009, 2012).

As a concluding remark, the principle of constitutional supremacy under Art 4(1) which is the cornerstone of the rule of law could only be achieved and maintained provided we have in place some form of judicial creativity while interpreting constitutional provisions which are viewed as a hindrance to the spirit of the rule of law. Although the Malaysian courts have generally protected the Constitution, there is still room for improvement to uphold and protect the spirit of the rule of law by invalidating parliamentary legislation or even challenging executive actions on the ground of unconstitutionality. We must inculcate the spirit of the rule of law in governance process in order to deter abuse of power by ensuring that our society is governed by a government of laws and not by a regime of arbitrary powers.

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# **MANAGING ELECTIONS – WHO DOES IT BETTER? A COMPARATIVE ANALYSIS OF ELECTION REGULATORS IN MALAYSIA AND THE UNITED KINGDOM**

Arwyn Singh<sup>1</sup>

## **ABSTRACT**

This paper reviews the management of elections in Malaysia and the United Kingdom by the countries' respective election regulators. In examining the fairness of the current framework in Malaysia, the role of the election regulator, its independence and impartiality will be scrutinized. The author will review the relevant provisions of the Federal Constitution and the electoral laws together with media resources (print and electronic) in analyzing the management of elections in Malaysia. The author will also compare the election regulator of Malaysia with that of the United Kingdom, and conclude with recommendations towards a new structure for the management of elections in Malaysia.

**Keywords:** Election Commission, Election Regulator, Management of Elections

## **INTRODUCTION**

The election regulator in Malaysia is the Election Commission (hereinafter referred to as EC)<sup>1</sup>. It is an important body of the democratic process in regulating elections in the country. Open, free and fair elections are the essence of democracy and are perceived as an indispensable condition.<sup>1</sup> In a democracy, it is of fundamental constitutional importance that the EC, as the guardian of a fair electoral system, discharges its duties in an impartial manner by conducting the electoral process in a way that is seen as fair to all competing political parties. A partial EC is akin to a situation where a judge presides over a case involving a party which he supports. Eventually, its work will be undermined by a lack of public trust because of its alleged alignment with a particular political party. The EC must therefore not only be independent, it must be seen to be independent.

Lessons could be learned from countries that have successfully managed their elections in a credible manner. The accountability of election regulators vary in many respects between countries. In mature democracies, such bodies are answerable to their respective legislative bodies. In developing countries however, the position of the election regulators is less transparent.<sup>1</sup> A comparison with the Electoral Commission of the United Kingdom will be made in order to understand acceptable international standards and good practices in the management of elections. The basic principles of democracy in Malaysia can be upheld by adopting such standards and practices.

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## **COMPOSITION, APPOINTMENT AND ROLE**

### **A. Position in Malaysia**

In Malaysia, the EC was set up on Sept 4, 1957 under Article 114 of the Federal Constitution (FC). It comprises of a chairman, deputy chairman and five other members.<sup>1</sup> It was established with the aim to supervise and preserve the democratic process in the country through free and fair elections. There are provisions under the FC and the Election Act 1958 for the employment of officers to aid in the functions of the EC. The EC is served by the EC secretary<sup>1</sup> and has appointed a secretariat to assist it in its administrative functions.<sup>1</sup> The King<sup>1</sup> appoints the EC members after consultation with the Conference of Rulers. In appointing members of the EC, the King shall have regard to the importance of securing an EC which enjoys public confidence.<sup>1</sup>

Besides the FC, the EC is furthered empowered and regulated by the Election Offences Act 1954, the Election Commission Act 1957, the Elections Act 1958, the Elections (Conduct of Elections) Regulations 1981 and the Elections (Registration of Electors) Regulations 2002. The Elections Act 1958 stipulates the functions of the EC and the manner in which these functions are to be carried out in accordance with the requirements set out in the Federal Constitution of Malaysia. The function of the EC is to review and re-delineate the boundaries of parliamentary and state constituencies, to undertake the registration exercise, to update the electoral roll and to conduct general and by-elections.<sup>1</sup>

### **B. Position in the United Kingdom**

In the United Kingdom, the Political Parties, Elections and Referendums Act 2000 came into force on 16th February 2001 following the Neill Committee's recommendations in 1998. The 2000 Act regulates British political finance, provides a good regulatory framework for the management of elections and establishes the Electoral Commission comprising not fewer than five but not more than nine members. The Act also establishes the Speaker's Committee and the Parliamentary Panel.<sup>1</sup> The Electoral Commissioners are appointed by Her Majesty on the presentation of an Address from the House of Commons. Such appointments require consultations with the leaders of each registered political party and two or more sitting Members of the House.<sup>1</sup> The Electoral Commission is a body independent of any government department and reports directly to Parliament.<sup>1</sup> The Electoral Commission is answerable to Parliament through the Speaker's Committee. The Speaker of the House of Commons chairs this Committee and is empowered to appoint five members whilst a sixth member is appointed by the Prime Minister.<sup>1</sup> The Speaker's Committee, assisted by the Comptroller and Auditor General, will oversee the appointment of the Electoral Commission and examine its five-year plans.<sup>1</sup> The committee also plays an important role in relation to the funding and financial accountability of the Electoral Commission.<sup>1</sup> The Parliamentary Parties Panel is made up of representatives from the various political parties and submits representations and other necessary information to the Electoral Commission on matters affecting the political parties.<sup>1</sup> The Commissioners enjoy substantial security of tenure.<sup>1</sup> A Commissioner can only be removed from office on an Address of the Lower House of Parliament. Such an Address may be moved only on the recommendation of the Speaker's Committee. Detailed provisions of the Commission's terms of office are laid down in Schedule 1 of the 2000 Act. The Act gives the Commission wide ranging powers and permits it to regulate its own procedures. The Act also empowers the Commission with the discretion to appoint the necessary staff to function effectively.<sup>1</sup> The Commission maintains a register of political parties and monitors donations to such parties.<sup>1</sup> The Commission generally submits quarterly donation reports but during general

elections, will submit weekly reports.<sup>1</sup> In the event of a dispute, the courts may exercise their discretionary powers to partially forfeit, rather than to forfeit completely unauthorised donations.<sup>1</sup> Campaign expenditure is regulated by Part V of the 2000 Act. The Electoral Commission operates in line with its aim that is found on its website, *viz*, integrity and public confidence in the democratic process.<sup>1</sup>

The 2000 Act is not flawless as can be seen from the conduct of the United Kingdom's general elections in 2010. Besides complaints of insufficient ballot papers, there were allegations of fraudulent postal voting and the prevention of thousands of voters from casting their ballot which resulted in a sit-in protest.<sup>1</sup> Such allegations of irregularities and electoral fraud were viewed as stumbling blocks in the securing of a democracy desired by the electorate. Questions were raised as to whether the Electoral Commission had adequate power to hold clean and fair elections. Returning officers had the power to manage voting arrangements, such as deciding on the number of polling stations in their constituencies, of voters per polling station and of ballot papers allocated to each polling station.<sup>1</sup> Jenny Watson, the chairman of the Electoral Commission reported that the institution does not have the power to instruct returning officers.<sup>1</sup>

The 2000 Act was amended by the Electoral Administration Act 2006<sup>1</sup> and the Political Parties and Elections Act 2009<sup>1</sup> in order to address some of its deficiencies.<sup>1</sup> Changes were necessary to ensure public confidence in the democratic system and to guarantee that the voice of the people is not neglected. The Electoral Administration Act 2006 was passed subsequent to the "cash-for-peerages" scandal,<sup>1</sup> and addressed deficiencies relating to loans obtained by political parties, the reporting requirements and the submission of reports on the reviews of polling stations.<sup>1</sup>

The Political Parties and Elections Act 2009 was passed following the Government's White Paper (*Party Finance and Expenditure in the United Kingdom, the Government's proposals*, Cm 7329 [The Stationery Office, 2008]).<sup>1</sup> The 2009 Act has made further changes to the regulatory framework and strengthened the role of the Electoral Commission by conferring on it a broader range of investigatory and supervisory powers. The 2009 Act allows for four Commissioners to be appointed by the larger political parties. At the same time, the Act increases the maximum number of Commissioners from nine to ten and the minimum number from five to nine, in order to ensure that the nominated members are in the minority.<sup>1</sup>

#### **THE NEED FOR AN IMPARTIAL ELECTION REGULATOR IN MALAYSIA**

Unlike its counterpart in the United Kingdom, the role of the election regulator in Malaysia as an impartial referee is in doubt as the institution and its administrative machinery comprises mainly of retired civil servants who may be seen as supporting the government agenda. Several allegations of polls irregularities and electoral misconduct have been leveled against the EC in the 13<sup>th</sup> General Election (hereinafter referred to as GE13). The competence of the EC in conducting GE13 remains questionable.<sup>1</sup> Allegations of multiple voting by registered electors, the switching of ballot papers and boxes, the manipulation of postal votes, the incidents of power blackouts at polling stations and the indelible ink fiasco,<sup>1</sup> have tarnished the reputation of the election regulator. A record number of election petitions were filed post GE13 to challenge the election results in various constituencies. Prior to GE13, some disgruntled overseas Malaysian citizens also challenged the EC in the courts to compel the institution to register them as absent voters.<sup>1</sup> The EC has also been pressured to

answer allegations of electoral fraud by the Sabah Royal Commission of Inquiry on illegal immigrants in Sabah.<sup>1</sup>

Soon after GE13, two independent observer groups, the Centre for Public Policy Studies (CPPS) and the Institute for Democracy and Economic Affairs (IDEAS), jointly described the polls as "partially free, but not fair".<sup>1</sup> The 'People's Tribunal' was set up post-GE13 to investigate allegations of electoral fraud in GE13.<sup>1</sup> The Tribunal recommended radical changes to the EC in order to restore public confidence in Malaysian elections and suggested an amendment of the laws to make the EC genuinely independent from the government in its operations.<sup>1</sup> Prior to GE13, a nine member panel of the Parliamentary Select Committee<sup>1</sup> submitted its report to Parliament which was adopted by the Dewan Rakyat on April 3, 2012. The Parliamentary Select Committee Report on Electoral Reform also recommended that the EC be made directly responsible to Parliament. The EC is currently listed as an entity under the Prime Minister's Department. Although the Federal Constitution does not expressly require a consultation with the Prime Minister on the appointment of EC members, it can be argued that by convention, the King must act on the advice of the Prime Minister. The electoral laws and the Federal Constitution do not adequately guarantee independence of the EC from the government in its operations. Independence of the EC is further undermined by the appointment criteria and the reporting process.

#### **INTERNATIONAL LAWS AND STANDARDS:**

International laws and standards based on democratic principles that are just and fair should be adopted in providing a level playing field for all political parties. International practices and conventions should be considered as a commitment not only towards the implementation of fair electoral legislation but also in the professional management of elections and in the enforcement of the law.<sup>1</sup>

It is submitted that the Political Parties, Elections and Referendums Act 2000 provides a good regulatory framework in managing elections effectively in the United Kingdom. The Act enables the Electoral Commission to act as an independent overseer of the democratic process and contains provisions to ensure the independence of the institution from political parties. Restrictions are placed on the membership of the Electoral Commission to ensure that it remains impartial. In contrast to Malaysia, the 2000 Act does not allow any person to be appointed as an Electoral Commissioner if he is a member of a registered political party or has been an employee of a party in the last 10 years or has donated to a political party.<sup>1</sup>

In the UK, the electoral laws, processes and guidelines for candidates and agents are constantly reviewed to meet the challenges of the 21<sup>st</sup> century. At the time of writing, the UK's electoral laws are being reviewed by the Law Commissions of England, Wales, Scotland and Northern Ireland and recommendations for change will soon be made.<sup>1</sup> The project is aimed, firstly, at consolidating the many existing sources of electoral laws, and secondly, at simplifying and improving the electoral laws and processes, making them relevant to future elections. The Law Commissions are currently in the process of engaging the electorate in improving the electoral laws and processes. The new voter information website<sup>1</sup> will soon be unveiled this year. The improved look and feel of the site will make it easier to navigate and to use on mobile devices.

## **RECOMMENDATIONS**

The recommendations relate to an amendment of the electoral laws and the Federal Constitution of Malaysia (the primary source of law and the supreme law of the land), in order to conceive the EC as a truly effective and independent institution. It is recommended that consideration be given to bring the EC under the purview of Parliament. This can be achieved by amending Article 114 of the Federal Constitution to include clear and effective provisions to make the EC answerable to Parliament. The recommendations of the Parliamentary Select Committee's Report on Electoral Reform should be adopted to ensure the independence and impartiality of the EC as it plays a major role in enforcing the legal provisions. Legal provisions would be meaningless if enforcement is entrusted completely into the hands of those who may be seen as supporting the government agenda. Making the EC accountable to Parliament would necessitate provisions to ensure that its annual report is discussed in Parliament.<sup>1</sup> This form of accountability and public scrutiny is necessary in order to restore public confidence in the EC. The composition and selection process of EC members must also be made transparent. Restrictions on membership of the EC and its administrative machinery, similar to those in the United Kingdom<sup>1</sup>, are necessary to ensure that the institution remains impartial and is not aligned to any particular political party. It is important to ensure that only credible and impartial staff are allowed to register voters, conduct elections and redraw constituency boundaries.

More can be done to improve the management of elections in Malaysia. No country has adopted an ideal formula for electoral laws and processes. However, every attempt must be made to ensure a fair framework for the conduct of free and fair elections in line with acceptable international practices. The EC and the government will have to engage with all interested parties and rectify the constitutional deficiencies and flaws pertaining to the electoral laws and processes. Reforming the EC in Malaysia and enhancing its accountability mechanisms will be a step forward in restoring public confidence in the institution.

# **DECENTRALIZATION AND ENVIRONMENTAL GOVERNANCE: EXPERIENCES ON ENVIRONMENTAL POLICY IMPLEMENTATION IN LAKESHORE COMMUNITIES IN MINDANAO, PHILIPPINES**

Eliseo F. Huesca, Jr.<sup>1</sup>

## **ABSTRACT**

As democracy became attractive and embraced in many countries, it appeared in several variants – two of which are: decentralization and participatory development. Both decentralization and participatory development have been at the core of governance and development debates in the past few decades. Just at the height of popular appeal of these two concepts, environmental sustainability also became a major theme in the world of development and governance discourses. Since Philippines had been at the forefront in the operationalization of decentralization and participatory development, it is then interesting to provide a picture as to how these concepts impacted the environment. The objective of this paper is to examine and understand the current trend on shifting centralized powers to local authorities. This paper departs from experiences of municipal governments in Philippine countryside as to how they carried out their devolved functions and responsibilities, particularly in governing inland fisheries and aquatic resources. Results revealed that municipal governments are still struggling in terms of technical, financial, and institutional capabilities. While there have been initial gains in broadening public participation, there are still major drawbacks that need for careful corrective mechanisms. It concludes that decentralization and participatory development have demonstrated potential success in relation to environmental governance. Nevertheless, local government units as well as the general public have to hurdle some identified challenges and have to take advantage of the initial gains to maximize the potentials in ensuring the sustainability of the fragile inland coastal environments.

**Keywords:** decentralization; environmental governance, policy implementation

## **BACKGROUND OF THE STUDY**

In governance discourses and development debates in the past few decades, decentralization may probably standout. The increasing interests of policy makers and the general public to shift from centralized to decentralized governance could have been credited to the widely perceived value of decentralization that it offers an alternative approach for better accountability, efficiency, and responsiveness of the government (de Oliveira, 2008; Wu and Wang, 2007; Ribot, 2004; Cheema & Rondinelli, 1983). Cheema & Rondinelli (1983, p. 18) defined decentralization as the “transfer of planning, decision-making, or administrative authority from the central government to its field organizations, local governments, or nongovernment organizations.” The World Resources Institute (2003) similarly defined decentralization as the process of transferring powers and responsibilities of the central government to the lower-level governments, local communities, or local

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authorities. Decentralization has always been associated to democracy, responsiveness, and efficiency (de Oliveira, 2008; Wu & Wang, 2007; Ribot, 2004; Cheema & Rondinelli, 1983). If the decentralization is properly managed (WRI, 2003), it promises to bring good outcomes, such as: (1) better opportunities for local people to participate in decision-makings, (2) greater efficiency in the delivery of public services, (3) sensitivity of public services in meeting the local needs, (4) reliance on local knowledge which will enhance social and economic development, (5) greater political representation, (6) better transparency and accountability, (7) attractive grounds for new ideas, and (8) political stability and foster sense of community ownership on public decisions.

Environmental governance is defined as “the exercise of authority over natural resources and the environment” (WRI, 2003, p.2). It can also be defined as “wielding of power, authority, resources, and expertise to redress the problems of environmental degradation” (Catacutan, et al., 2004, p.7). In the past few years, there had been growing body of literatures linking governance and the environment (Goria, et al., 2010; Kutting and Lipschutz, 2009; Gollin & Kho, 2008; Breton, et. al., 2007; Jasanoft & Martello, 2004; Kanie & Haas, 2004; Adeel, 2003; Badenoch, 2002; May, et al, 1996). In Asia, a substantial number of scholars had written about decentralization and environmental management, loosely referred to as decentralized environmental governance, for the past 10 years (Ribot, 2004; Dupar & Badenoch, 2002; Skinner, et al., 2002; Ribot, 2002; Kurauchi, et al., n.d.). Decentralization in the region is currently in operation but it invites both enthusiasms and apprehensions (World Bank, 2005). In the experiences of mainland Southeast Asia, governments were motivated to embrace decentralization (Dupar & Banedoch, 2002) for a number of reasons. Firstly, there is the desire to improve efficiency of government administration and public service delivery. Secondly, there is this belief that central government can cut on the costs and may improve efficiency by downsizing central bureaucracy. Thirdly, competition increases between local government and the private service providers. Fourthly, donor institutions, i.e. World Bank and ADB, required decentralization as necessary reforms in developing countries. Lastly, governments desire for popular involvement in development planning and implementation process in order to enhance legitimacy of a political system.

As described above, decentralization seems appealing; however, it does not come free from possible flaws. Because of the variations of political systems among Asian states, decentralization obviously practiced in different forms and substance which resulted into a great deal of implementation dynamics and, often times, complicated outcomes. The analysis drawn from Southeast Asian countries, Dupar & Badenoch (2002) warned that there are two risks in decentralization. The first risk is that local decision-makers empowered by decentralization reforms may not place a priority on environmental sustainability. The second risk is that decentralization may reinforce local inequalities due to the widening political clout of few local elites when accountability mechanism is lacking or absent.

The World Resources Institute (2003) identified the potential obstacles to successful decentralization. First, there is difficulty on the process of meaningful power transfer for local institutions may only be given limited powers and authority while the central government retains the lucrative powers like revenue collection. Local capacities to perform the functions undermine the objectives of decentralization. Second, the representation mechanics is sometimes problematic thereby endangers accountability. Third, some societies have inadequate democratic institutions that may downplay transparency and legitimacy. Fourth, the new functions and responsibilities of local authorities are oftentimes challenged by

technical and administrative capacities – things that are hard to come by. The last is the absence of democratic institutions which poses possible hijacking of new delegated powers by local elites thus defeating the purpose and intent of introduced reforms.

In tackling environmental issues, decentralization has changed the terrain of environmental governance of various countries around the world. Just like in other parts of Southeast Asia, Philippines has substantial studies linking decentralization and natural resource governance, primarily on the forestry sector (Pulhin, et al., 2009; Gollin & Kho, 2008; Balooni, et al., 2008; Catacutan, et al., 2004). However, academic or scholarly attention towards freshwater resources, inland fishery and aquatic resources in particular, is seriously lacking. The inland fishery subsector in the Philippines is considered as a major economic and food base for rural communities where majority of the people live way below the poverty threshold (Israel, 2006). Although not as huge as the forestry, agriculture, or marine fishery sectors, nevertheless, inland fishery subsector should be given proper and appropriate attention since the lives of rural people are directly dependent on this natural resource. Hence, the importance of governing this subsector does not simply hinge on environmental sustainability but it is largely about economic and food security among rural folks.

### **OBJECTIVES AND METHODOLOGY**

It is widely acknowledged that local governments have indispensable roles in designing and implementing policies (de Oliveira, 2008). These local authorities are subordinates of central government and the former take charge to ensure the implementation rules and norms from the latter (Andersen, 2007). Lower levels of government in contemporary China, for instance, are becoming the most important entities in local regulatory process including environment matters (Skinner, et al, 2003). The same trend has been observed in Thailand where implementation of tourism policies is largely left to the local governments (Krutwaysho & Bramwell, 2010). Even international environmental policies, as in the case of EU countries, regional and subregional governments are fundamentally vital in to the implementation process and to the success of international efforts in general (Catenacci, 2010).

Studies on environmental policy implementation in the Philippines have barely scratched the surface on this subject matter, particularly on inland fisheries and aquatic resources subsector. For the past two decades after the adoption of Local Government Code, there have been a dearth of empirical studies on environmental policy implementation processes under decentralized set up. Knowledge and informed understanding on the prevailing practices, processes, and approaches on decentralized environmental policy implementation at the local levels are almost non existent. Thus, addressing this knowledge gap is the overall goal of this research. To achieve this goal, the specific research objectives are as follows: (1) find out the policy reforms undertaken towards decentralized environmental governance; and (2) identify the major challenges and prospects on the current trends of environmental policy implementation at the selected lakeshore municipalities in the context of decentralization.

This study covers a total of seven lakeshore municipalities of Lake Mainit, Lake Buluan, and Lake Sebu – all are among the most economically important inland waters in Mindanao, Southern Philippines. Data were gathered using mainly qualitative methods, namely: semi-structured interviews, focus group discussions, participant observations, and document collection. Reports and relevant information available in websites of various national

government agencies were also utilized. An analytical framework, patterned on *logic model*, was developed to serve as a guide in analyzing and interpreting the data collected. Pattern-matching, cross-case analysis, and triangulation were utilized as tools in doing the analysis and interpretation.

### **THE ANALYTICAL FRAMEWORK**

Implementation is typically understood as a phase in policy cycle where decisions are translated into action. For Wu, et al. (2010), policy implementation is not linear but a dynamic process. Because of this dynamism, it is considered as the most difficult and critical part of policy process. The general form of implementation, according to Howlett et al.(2009), is “command-and control” although “collaborative”form emerged recently as a complementary approach.

There are two vantage points to understand policy implementation: (1) high-level viewpoint and (2) operational-level viewpoint (Wu, et al. (2010). They argue that the first one sits on the perspectives of policy-makers while the second one is more on the perspective of the street-level bureaucrats and this research is utilizing the latter in understanding the implementation of environmental policies in the Philippines.

Additionally, implementation can be classified into two types: structured approach and adaptive approach (Andersen, 2007). Structured approach may come in the form of national legislations that regulate the behaviour of the local authorities by establishing binding standards, deadlines, and procedures. This approach is typically found in federal type of governments where environmental laws are enacted by local governments. Because these laws oftentimes very detailed, chances for politicalization and deviation from the detailed procedures are slim. Therefore, the nature of structured approach resembles the so called “top-down” model. The adaptive approach , on the other hand, may consist of national legislations that simply provide frameworks for local authorities’ activities, leaving the details as the responsibility of the local bodies to figure out. This is common among unitary states where national governments have difficulty to address varied problems in local areas. Thus, national government provide a “half-empty” policy instruments and allowing the other half be filled up by local authorities to their local needs and conditions. In effect, policies have substantial spaces for discretions from local regulatory authorities which is a character of the “bottom-up” model. Therefore, adaptive approach is vulnerable to political manipulations from different policy actors and interest groups(Andersen, 2007). Because Philippines is a unitary state, it is best then to analyze the current environmental policy implementation from the lenses of this approach.

Figure 1. The Framework of

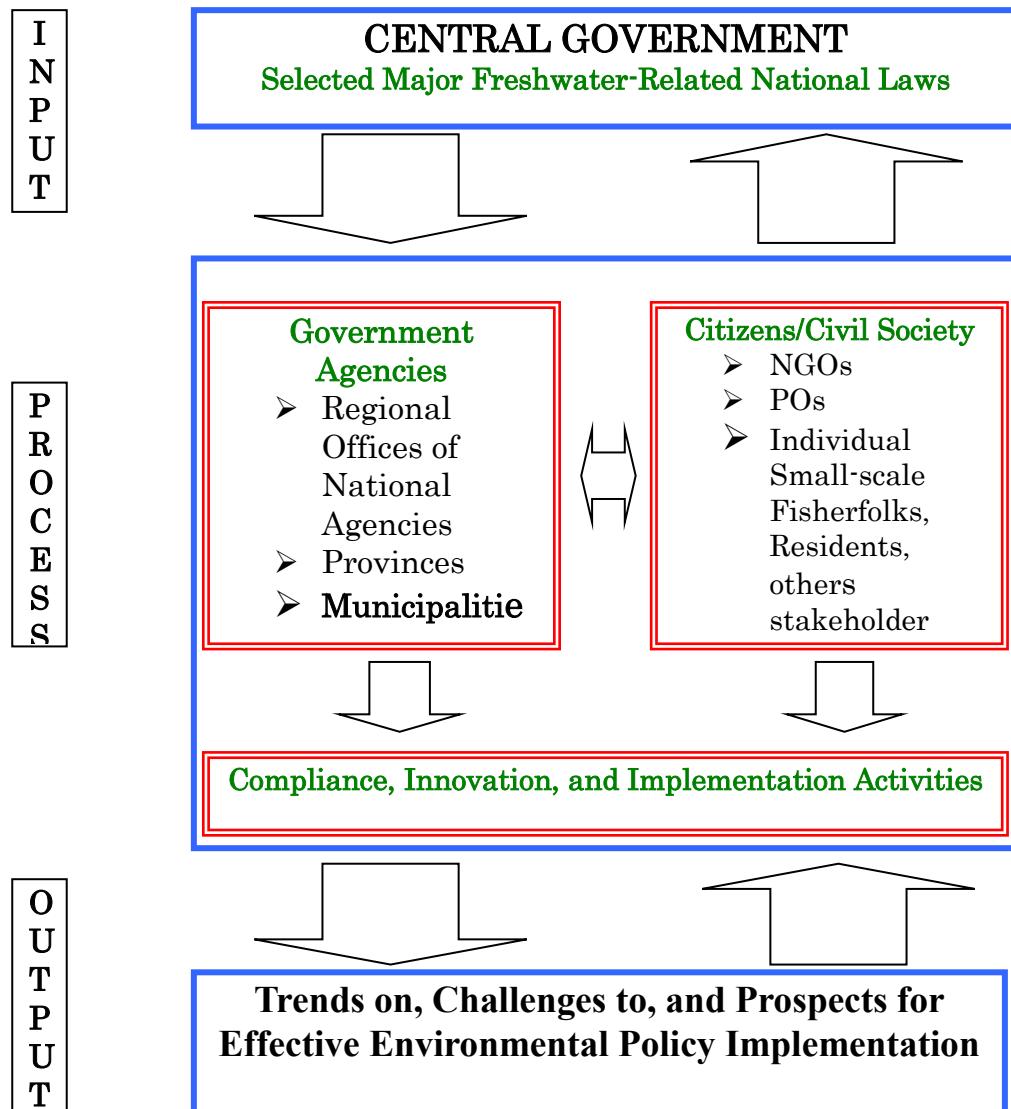


Figure 1 displays the analytical framework developed based on *logic model* which is widely used in evaluation researches. The *logic model* (Patton, 2002, p. 162) is a framework that “depicts, usually in graphic form, the connections between program inputs, activities and processes (implementation), outputs, immediate outcomes, and long-term impacts.” He argues that the only distinct criterion of logic models is that it is logical and it “portrays a reasonable, defensible, and sequential order from inputs through activities to outputs, outcomes, and impacts” (Patton, 2002, p. 163).

For the inputs, the variables are the decentralization reforms of national government (the Local Government Code) and the selected major national environmental laws and policies – mostly enacted after the passage of the Code. For the process, there are several actors included herein but the focus is on the seven lakeshore municipalities located in three major

lakes in Mindanao. The interactions of government agencies and the civil society were explored to determine how these interactions affected the compliance, enforcement, innovations, and the implementation activities as well as the processes.

### **THE POLICY REFORMS TOWARDS DECENTRALIZED ENVIRONMENTAL GOVERNANCE**

The Local Government Code of 1991 was a major turning point towards decentralized environmental governance in the Philippines. The Code enumerates encompassing functions and powers of Local Government Units (LGUs) relative to the management over environment and natural resources. The major roles LGU as mandated by the Local Government Code are summarized as follows: (1) natural resource conservation and habitat protection measures (2) formulation of development, land use, zoning plans (3) intergovernmental collaboration and cooperation (4) mobilize private sector participation (5) LGU partnerships with and assistance to NGOs and POs (6) formulation of appropriate regulatory instruments (7) adopt solid waste management (8) conduct research and extension services (9) enforcement and execution of environmental laws.

There are other national environmental laws related to inland fishery and other freshwater resources that clearly outline the roles of municipal LGUs, especially those laws that were legislated after the enactment of Local Government Code in 1991. In fact, all of the inland fisheries and freshwater resources in the country fall under municipal waters. Some larger lakes like Laguna de Bay, Lake Lanao, and Lake Mainit are shared by two or more provinces but the Philippine Fisheries Code clearly stipulates that municipal/city local governments have the jurisdiction over these municipal waters. This Code provides that “municipal/city government, in consultation with the Fishery and Aquatic Resource Management Council (FARMC), shall be responsible for the management, conservation, development, protection, utilization, and disposition of all fish and fishery/aquatic resources within their respective municipal waters”.

The coverage of responsibilities of municipal LGUs, however, is not limited to the mandates of Philippine Fisheries Code. The Clean Water Act stipulates that LGUs have the responsibility in the management and improvement of water quality within their respective jurisdictions. LGUs are tasked to take appropriate actions for the establishment and protection of critical habitats as well as in the conservation of species endemic to their areas as provided in the Wildlife Resources Conservation and Protection Act. Also, LGUs have the primary responsibility for the implementation and enforcement of Ecological Solid Waste Management Act.

Meanwhile, the Agriculture and Fisheries Modernization Act puts on the shoulder of the LGUs the following duties: (1) prepare land-use and zoning plans, (2) assist the implementation of AFM Plan, (3) extend credit assistance, research, and extension services, as well as (4) assistance to design and implement non-farm employment programs. The Indigenous Peoples Rights Act encourages LGUs to incorporate the indigenous people's rights in the formulation of local policies and development plans. The role of LGUs is crucial in the implementation of National Integrated Protected Areas System Act at the local levels. The Executive Order 240 requires municipal LGUs to take the lead in the establishment of Fisheries and Aquatic Resource Management Councils at the *barangay* (village) and municipal levels. The DILG-DENR-DOJ Joint Memo Order No. 2 harmonizes the various guidelines for the devolution process of country's forestry sector. LGUs may also be deputized to carry out specific functions or activities to govern the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources as provided by Water Code of the Philippines. Finally, the Philippine Environmental Code establishes a broad framework for concerned government agencies that includes LGUs for a comprehensive environmental protection and management measures.

The above-mentioned national laws are in no way exhaustive. There are several other laws

that do not specify the role of LGUs wherein the local authorities could still refer to. What is clear for now is that LGUs have direct responsibilities in the enforcement of environmental laws after the passage of Local Government Code.

## CHALLENGES AND PROSPECTS ON ENVIRONMENTAL POLICY IMPLEMENTATION

### The Challenges

Weak Technical, Financial, and Institutional Capabilities of Local Government Units (LGUs). Obviously, lakeshore municipalities are not prepared to respond and fulfil the environmental responsibilities devolved to them. With exemption to one LGU, the rest of the lakeshore municipalities are technically inadequate especially in designing environmental plans and actions. Also, financial resources of the LGUs are notoriously insufficient hindering significant local actions for the implementation of national mandates. Institutional capabilities of all the lakeshore LGUs require much support for improvement. In particular, there is a need to capacitate these LGUs in establishing good information management system. Presently, LGUs have very poor ability to collect and consolidate local data.

Fragmentation, Overlapping Functions, and Conflicting Interests among Multiple Government Agencies. As already stressed out in a number of previous studies on the country's natural resource governance – mainly on forestry and marine coastal environment, there have been so much fragmentations in managing these resources. It is particularly pronounced in freshwater governance (Barba, n.d.). The inherently complicated issues surrounding the management of water resources, in which inland fisheries and aquatic resources is substantially part of, the regional and provincial offices of national agencies were functioning only on very specific project in limited areas. Thus, this led to piecemeal development approach. Supposedly, overlapping of functions lead to duplication of actions but as experienced, government agencies with overlapping mandates have literally done less and blamed each other for inactions. All of these obstacles, in one way or another can be attributed to the partial devolution of environmental authority to the local government units. For Laviña (2002) as cited by Gollin & Kho (2008), "decentralization to LGU is highly incomplete, and is sometimes characterized as a tug of war between national and local government authorities".

Problems on Accountability, Legitimacy, and Transparency. In the implementation of national environmental laws and policies in the country, the most prevailing stumbling block is the issue of accountability. The Clear Water Act of 2004, in fact, provides that "local government officials concerned shall be subject to administrative sanctions in case of failure to comply with their action plan in accordance with the relevant provisions of R.A. No. 7160". In spite of obvious failures of all local governments in compliance to the provisions of the said law, none of them was reprimanded or sanctioned at all. The only accountability mechanism functioning right now is the voting power of the public to "punish" or "reward" the local politicians during local elections. In principle, this electoral accountability seems sufficient enough but in current practice, it is practically inadequate.

The legitimacy of local institutions and local authorities had been eroded due to politicalization in the creation of local enforcement bodies. It is particularly applied in the selection and appointment of some deputized fish wardens. The processes of widening "public involvement" were strongly questioned by the locals. Furthermore, the trust and confidence of the public continued to decline as they perceived that even local organizations – NGOs and POs – were conniving with LGUs and shunning away from the ideals of transparency.

Weak Civic Environmentalism. Local actions and concerted effort from local residents to protect and preserve their fragile environment remains relatively poor at the moment. On the

positive side, local residents are substantially knowledgeable of and have good understanding on the problems and threats that endanger their very source of living. On the negative side, they failed to initiate for collective engagements to counter further environmental degradation. Awareness and actions are two different things. Civic environmentalism may have already taken off in several areas in the country but not in the lakeshore communities surrounding the three lakes covered in this study. Self-mobilization and self-initiated environmental actions is extremely rare. Juinio-Meñez (n.d.) offers explanations to this: (1) local communities are disempowered and (2) they are not accustomed to initiate changes for they are used to external mobilizers to lead them.

*Prevailing Traditional Politics.* The local politics are largely captured by the elites. Most of the elected local leaders are predominantly traditional politicians and thriving on culturally clientilistic electorates. There are some LGU personnel who are technically qualified and have the eagerness to introduce environmental measures. However, these creative individuals have frequently encountered discouragements as their proposals always turned down by Municipal Mayors. For these politicians, the introduction of unpopular environmental measures may encounter wide public opposition which may endanger their political bid in the next elections. Politicians sometimes bend the laws to favour some law offenders who happened to be loyal supporters in the preceding elections. These local authorities are, in effect, become selective in dispensing justice to accommodate political favors. Furthermore, there were several instances in the past where good projects have been politically abandoned during the change of administration. Hence, there were so much wastage on the meager resources for discontinuation of promising plans and programs initiated by previous elected leaders. Summing these up, the unhealthy traditional politicking undermines the compliance and enforcement implementation in particular and the sustainability of the environment in general.

### **The prospects**

*Sufficient Legal Framework.* The country has sufficient national environmental laws. Similarly, there had been important functions and responsibilities already devolved to LGUs to effectively govern local natural resources and critical ecosystems - which include inland fisheries and aquatic resources. What the local communities truly need is a strong political will and environmental leadership from the elected leaders and government authorities. Also, the national government has to strictly enforce the administrative accountabilities of local authorities so as to ensure the attainment of policy objectives. It is noteworthy to emphasize that despite some legal and administrative limitations, LGUs still have much to take advantage of the authorities currently afforded to them.

*Strengthening Public Participation.* Farmers, fisherfolks, indigenous people, women, youth, and other civic organizations as well as religious groups of different faiths are exponentially increasing even in the countryside. Many of those organizations constituted by LGUs still exist in spite of dormancy for a long time. Nevertheless, these small community groups have immense potential to help the government only if mobilized and supported properly. They can be effective change agents in increasing awareness and civic environmentalism among their ranks. The experience of Cooperative of Women for Health and Development (COWHED), a small NGO, is a proof to this. COWHED's participation in environmental initiatives in Lake Sebu is relatively young. Nonetheless, it has already delivered significant milestones and the on-going collaboration with LGUs may bear more positive outcomes in the next few years. As a grantee of USAID financial support for its innovative sanitation projects, COWHED can already use this track record to secure more foreign fundings.

Other than strong political will of local leaders, the active participation of local residents to join the ranks of enforcement volunteers are equally important. Their actions would be more aggressive only if they are provided with proper security – i.e. health insurance and legal

support in the event of court battle. Fortunately, the Local Government Code clearly stipulates that municipal government may “provide group insurance or additional insurance coverage for *barangay* officials, including members of *barangay tanod* brigades and other service units with public or private insurance companies, when finances of the municipal government allow said insurance”. Additionally, LGUs have to “provide legal assistance to *barangay* officials who in the performance of their official duties or on the occasion thereof, have to initiate judicial proceedings or defend themselves against legal action”.

*Intensifying Compliance Promotion, Monitoring, and Enforcement.* Some important compliance promotions (education, technical assistance, financial assistance, and compliance incentives) and enforcement strategies (routine and surprise inspections, patrolling, citizen involvement) are already in place. What the LGUs need to do is to further intensify these and adopt some stringent enforcement mechanisms i.e. filing and pursuing court cases. To set precedence may discourage future violations and provide public impression that authorities are doing serious business. The authorities must not be selective in dispensing appropriate sanctions so as enforcement becomes more predictable. The LGUs can capitalize on the strong “texting culture” or the use of cellular phones among Filipinos. It is a potent force to empower the locals to become community watchdogs without expecting financial rewards. Additionally, the public may exercise the power of citizen’s arrest against law breakers as practiced in San Miguel Bay in apprehending commercial trawlers (Juinio-Meñez, n.d.).

*LGU-Academe Partnership.* Academe has always been a repository of knowledge and latest information. Oftentimes, they are at the forefront of generating innovative ideas, skills, and techniques. Fostering LGU partnership with academic institutions makes technical inadequacies more manageable. For example, university instructors need research and extension activities for them to gain required applied professional experiences to qualify for higher academic ranks. These academics have excellent records in winning research funds. In fact, much of the major researches in Lake Mainit were conducted by Mindanao State University researchers with funding coming from external resources. They were also able to train LGU personnel to become local research partners. All of Higher Educational Institutions (HEIs), i.e. both public and private universities and colleges, are required to carry out the National Service Training Program (NSTP). These HEIs can provide massive human resources to carry out environmental projects under Civic Welfare Training Service (CWTS) component.

## **CONCLUSION**

Environmental problems are typically local in nature and one way to smartly address these is to tap local ideas and energies (Andersen, 2007; WRI, 2003). These local governments, for Bretton & Salmon (2007), are in fact more vulnerable to local pressures concerning environmental problems than the central government. Hence, decentralization in environmental governance provides fertile ground for practical and intellectual debates. In the Philippines, decentralization was explicitly welcomed after the passage of Local Government Code in 1991. This has become a watershed for national environmental laws which formidably placed the implementation responsibilities on the shoulders of LGUs. Additionally, there is a wide array of national environmental laws with positive provisions supporting the primacy of LGUs in providing environmental leadership. These advances in governance reforms, unfortunately, were not fully utilized by the local leaders to their own advantage. Moreover, this study has confirmed the findings of earlier studies on natural resource governance, i.e. marine coastal environment and the forestry sectors that LGUs in the country were struggling in terms of technical, financial, and institutional capabilities.

Saito (2008) describes decentralization as a mechanism in adjusting the existing relationships among government agencies. This mechanism is two-fold: (1) it necessitates division of functions and (2) it requires coordination. In the experiences of the lakeshore municipalities, division of responsibilities and proper coordination among LGUs with other involved government agencies are two of the major challenges which have to be carefully addressed. While there had been remarkable development on decentralizing environmental policy implementation, local offices of national government agencies and the LGUs have competing interests and confusing scope of responsibilities which led to obvious failures in achieving environmental policy objectives. Because of the apparent partiality on decentralizing central government's powers over environment and natural resource management, environmental policy implementations have been seriously compromised.

Finally, the challenges in decentralizing the responsibilities and functions over environment and natural resources are evidently enormous. Nevertheless, the available options are equally overwhelming. It is then incumbent upon the local leaders as well as the civil society at the grassroots level to boldly act and make a difference by taking advantage of the initial gains of decentralization in the Philippines.

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# SISTEM TRIBUNAL DI MALAYSIA: SATU TINJAUAN

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## ABSTRAK

Kewujudan tribunal-tribunal di dalam sesebuah negara dikatakan dapat membantu melicinkan sistem pentadbiran dengan penglibatan pihak pentadbiran sendiri untuk membuat keputusan-keputusan penting dalam konteks pentadbiran. Badan pentadbir telah mengambil sedikit kuasa atau berkongsi kuasa dengan badan kehakiman apabila diberi kuasa untuk membuat keputusan yang melibatkan hak dan juga harta seseorang. Sebagai contoh dalam kes pemecatan pekerja sektor awam. Oleh itu kawalan yang berkesan perlu ada bagi memastikan tidak berlaku salah guna kuasa atau melampaui bidang kuasa yang diberikan kepada pihak pentadbiran. Keputusan tribunal yang telus dan adil juga amat penting bagi menjamin kesejahteraan dan keyakinan rakyat terhadap kerajaan. Justeru objektif kertas kerja ini adalah untuk meninjau perkembangan pelaksanaan sistem tribunal di Malaysia, kawalan-kawalan ke atas kuasa yang diberikan serta membandingkan dengan perkembangan sistem tribunal yang berlaku di negara luar seperti di United Kingdom sendiri. Perbincangan dalam kertas kerja ini dapat membantu memantapkan lagi pengurusan sistem tribunal di Malaysia dan mewujudkan bentuk kawalan yang berkesan ke atas sistem tribunal yang ada selaras dengan perkembangan dan pembaharuan yang berlaku di luar negara.

Kata Kunci: Tribunal, Malaysia, badan pentadbiran, kawalan kuasa.

## PENGENALAN

Perlembagaan Persekutuan Malaysia di dalam Perkara 121 dan 131A memberi jaminan dalam hal ehwal kehakiman dan menjamin kebebasan kehakiman di Malaysia. Walau bagaimanapun, kuasa kehakiman yang dimonopoli oleh badan kehakiman tidak lagi mutlak. Badan kehakiman perlu berkongsi kuasa untuk membuat keputusan dengan badan pentadbiran sama ada melibatkan persoalan undang-undang atau persoalan fakta. Perkembangan pesat yang berlaku dalam negara kebajikan (*welfare state*) iaitu negara yang mempunyai sistem yang memastikan kebajikan rakyatnya terjamin dengan memberi perkhidmatan sosial menyebabkan wujud badan-badan baru yang mempunyai fungsi untuk memutuskan pelbagai jenis permasalahan mengikut organisasi masing-masing.

Badan-badan pentadbiran yang mempunyai kuasa separa kehakiman ini lebih dikenali sebagai tribunal pentadbiran. Kewujudan tribunal-tribunal ini dikatakan dapat membantu melicinkan lagi sistem pentadbiran kerana prosesnya lebih cepat, murah, pendekatan yang fleksibel dan mudah dari segi teknikal. Sistem ini juga dikategorikan sebagai sistem

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pentadbiran keadilan (*administrative justice*) kerana ia membantu dalam proses pentadbiran dan keadilan sesebuah negara selain dari melibatkan pihak pentadbir sendiri dalam membuat keputusan. (Jain M.P, 2011)

#### **JENIS TRIBUNAL**

Terdapat pelbagai tafsiran mengenai maksud dan nama tribunal yang diberikan oleh ilmuan undang-undang. Menurut Diane Longley dan Rhoda James (1999) secara umum, tribunal merupakan badan yang bertindak secara kehakiman yang diberi kuasa untuk mendengar dan memutuskan permasalahan dalam hal-hal tertentu. Robin C.A White (1987) pula berpendapat, perkara pertama yang perlu di ketahui ialah sebutannya yang pelbagai. Antara terma atau sebutan yang selalu digunakan silih berganti ialah seperti ‘tribunal’, ‘tribunal khas’(*special tribunal*) dan ‘tribunal pentadbiran’ (*administrative tribunal*) tanpa sebarang indikasi yang jelas merujuk kepada jenis-jenis tribunal yang dimaksudkan.

Pendekatan yang umum mengenai maksud tribunal seperti di atas boleh mengundang masalah jika badan-badan dalam sistem pentadbiran juga mengakui mereka juga sebahagian dari tribunal yang dimaksudkan. Oleh itu, untuk mengelak dari berlaku kejadian seperti di atas, Andrew Le Suer dan MuriceSunkin (1997) mencadangkan adalah lebih baik untuk mengenalpasti sama ada badan-badan pentadbiran itu adalah tribunal atau tidak dengan mengetahui ciri-ciri tribunal sebenar seperti yang dicadangkan oleh Council On Tribunal Annual Report (1993-4) iaitu:

- (a) “Are establish by or under statute;
- (b) Have adjudicative functions- not merely administrative or advisory functions;
- (c) Are decision-making bodies rather than bodies that merely make recommendations to a higher authority;
- (d) Are not one of the ‘ordinary court of law’;
- (e) Are not primarily concerned with complaints-handling or with non-statutory arbitration.”

Selanjutnya, selain dari ciri-ciri tribunal yang telah diberikan oleh Council di atas, Irving Stevens (1996) telah memberikan gambaran dan definisi yang agak jelas mengenai jenis-jenis tribunal yang wujud sekarang. Menurut beliau, memandangkan badan-badan ini wujud hasil dari peruntukan yang diberikan di dalam statut, maka tribunal ini lebih dikenali sebagai ‘tribunal statutori’ (*statutory tribunal*).

Tribunal Statutori ini pula boleh dibahagikan kepada 2 kategori iaitu:

- (a) Tribunal pentadbiran (*administrative tribunal*).

Ia merupakan kategori yang paling besar di bawah tribunal statutori yang wujud di England. Sebagai contoh *Industrial Tribunals*, *Immigration Appeal Tribunals*, *Commissioner Of Income Tax* dan *Rent and Housing Tribunals*. Manakala contoh di Malaysia pula adalah seperti Suruhanjaya Khas Cukai Pendapatan, Mahkamah Industri, Tribunal Tuntutan Pembeli Rumah dan Tribunal Tuntutan Pengguna.

- (b) Tribunal dalaman (*domestic tribunal*) atau tribunal sivil (*civil tribunal*). (Fisher,2003).\*

Kategori ini diwujudkan untuk mendengar permasalahan dalam hal-hal yang melibatkan profesi-profesi atau organisasi-organisasi tertentu. Kebiasaannya dikenali sebagai badan-badan disiplin. Contoh kategori ini yang wujud di England ialah seperti *Professional Conduct Committee* yang mendengar masalah disiplin melibatkan doktor. Manakala contoh di Malaysia pula seperti Pelesenan, Lembaga Tata tertib Perkhidmatan Awam, Lembaga Tata tertib Universiti dan Pengambilan Tanah.

Menurut Professor M.P.Jain (2011), tribunal pentadbiran bermaksud sebuah badan yang diwujudkan oleh badan perundangan untuk menghakimi perbalahan dalam hal-hal tertentu dan memiliki kebebasan atau kuasa autonomi dalam membuat keputusan. Tribunal merupakan mekanisma terbaik untuk menyelesaikan sebarang pertelingkahan yang wujud di luar dari sistem hirarki mahkamah biasa kerana ia juga mempunyai elemen pengasingan kuasa dan bebas dari pengaruh eksekutif.

Elemen pengasingan dan kebebasan amat penting bagi sesebuah badan yang ada fungsi separa kehakiman. Timbul isu sama ada sesuai dipanggil ‘tribunal pentadbiran’ kerana ia seolah-olah atau seperti menunjukkan ada hubungan rapat dan dikuasai oleh eksekutif, (Diane Longley & Rhoda James,1999) atau hanya menggunakan perkataan ‘tribunal’ sahaja.

Bagi Professor M. P. Jain (2011), adalah lebih sesuai dipanggil ‘tribunal’ sahaja bagi membezakannya dengan mahkamah dan bagi mengelakkan timbul tanggapan bahawa tribunal adalah sebahagian daripada badan eksekutif. Pendapat yang sama diberikan oleh Diane Longley dan Rhoda James(1999) kerana tribunal bukan sebahagian dari jentera pentadbiran tetapi ia adalah sebahagian dari jentera kehakiman.(*machinery of adjudication*).

Atas faktor itu juga, tribunal perlu mendokong nilai-nilai yang ada perkaitan dengan prosiding di mahkamah seperti keterbukaan(*openness*), keadilan(*fairness*) dan pengasingan(*impartiality*). Tribunal sebagai sebuah badan yang ada fungsi menjatuhkan hukuman, perlu mematuhi prinsip keadilan asasi dalam tindakan dan proses perbicaraan yang dijalankan. (Forbes,1982)

#### **PERKEMBANGAN SISTEM TRIBUNAL DI UNITED KINGDOM**

Adalah penting untuk kita merujuk kepada perkembangan sistem tribunal yang berlaku di United Kingdom kerana kita mengikut sistem *Common Law* yang sama yang diperkenalkan oleh England sewaktu negara dijajah. Begitu juga dengan amalan beberapa prinsip undang-undang khususnya di bawah Undang-undang Pentadbiran termasuklah sistem tribunal yang kita terima pakai adalah berdasarkan perkembangan dalam kes-kes yang berlaku di sana.

Sistem tribunal di United Kingdom telah melalui pelbagai proses penambahbaikan semenjak ia mula diwujudkan bermula dengan penubuhan Jawatankuasa Frank pada tahun 1955, seterusnya Jawatankuasa Leggatt pada tahun 2000 dan sehingga wujudnya *Her Majesty's Courts and Tribunals Service* pada tahun 2011. Ia wujud di bawah *The Tribunals, Courts and Enforcement Act 2007* yang mengandungi struktur tribunal baru yang seragam dan mengiktiraf ahli tribunal yang berkelulusan dalam bidang undang-undang sebagai ahli kepada badan kehakiman di United Kingdom.

### **Jawatankuasa Frank**

Jawatankuasa Frank ditubuhkan pada tahun 1955 dan laporan lengkap diterima pada tahun 1958. Tujuan penubuhan Jawatankuasa ini adalah untuk melihat masalah-masalah yang berlaku dalam tribunal-tribunal di England seperti berikut:

- (a) prosedur yang tidak seragam dan nilai keadilan prosedur(*procedural fairness*) yang berbeza-beza antara setiap jenis tribunal.
- (b) sejauhmana keahlian tribunal yang dilantik oleh badan eksekutif di lihat sebagai melaksanakan fungsi yang bebas dan tidak terikat.
- (c) kekurangan syarat-syarat umum ke atas hak untuk membuat rayuan selepas keputusan dibuat oleh tribunal.

Matlamat Jawatankuasa Frank secara umumnya ialah untuk menjadikan tribunal sebagai badan separa kehakiman yang betul-betul bebas dengan mematuhi keadilan prosedur (*procedural fairness*) dan bukan sekadar satu alat atau cara oleh pihak eksekutif untuk meningkatkan kecekapan mereka dalam pentadbiran.

Berdasarkan matlamat di atas, Jawatankuasa Frank mencadangkan beberapa perkara seperti berikut:

- (a) pelantikan dan pemecatan Pengerusi Tribunal oleh *Lord Chancellor*,
- (b) keahlian tribunal mesti dilantik oleh *Council on Tribunals* dan dipecat oleh *Lord Chancellor*.
- (c) Secara umumnya pengerusi tribunal mesti seorang yang sah di sisi undang-undang.
- (d) Peraturan-peraturan untuk tribunal perlu digubal oleh *Council on tribunal* dan perlu ada keselarasan.
- (e) Perbicaraan diadakan secara terbuka kecuali dalam hal-hal tertentu.
- (f) Perwakilan oleh seseorang yang berkelayakan undang-undang seperti peguam perludibenarkan.
- (g) Alasan-alasan diberikan atas keputusan yang dibuat.
- (h) Hak untuk membuat rayuan keperingkat tribunal yang lebih tinggi atas persoalan fakta dan undang-undang dan juga hak untuk membuat rayuan seterusnya ke mahkamah atas persoalan undang-undang sepatutnya dibenarkan. ((Alex Carrol, 2007), (Rhoda James & Diane Longley, 1999))

Susulan daripada cadangan diatas, tertubuhnya *Tribunal & Inquiries Act 1958* yang kemudiannya dipinda dan disatukan di dalam *Tribunal & Inquiries Acts 1971* dan *1992*. Walaubagaimanapun tidak semua cadangan yang dikemukakan oleh Jawatankuasa Frank diterima pakai di dalam Akta ini walaupun telah melalui beberapa kali pindaan. Masih tiada tindakan oleh badan perundangan terhadap cadangan supaya keahlian di dalam tribunal mesti dipilih oleh *Council on Tribunal* dan begitu juga dengan hak secara umum untuk membuat rayuan atas persoalan fakta dan undang-undang ke atas semua keputusan yang telah dibuat oleh tribunal.(Alex Carrol, 2007)

### **Jawatankuasa Leggat**

Setelah hampir 45 tahun Jawatankuasa Frank diumumkan, akhirnya Lord Chancellor mengumumkan semakan terbesar buat pertama kalinya ke atas sistem tribunal di England pada bulan Mei 2000. Jawatankuasa ini di pengerusikan oleh Sir Andrew Leggat bertajuk *Tribunals for Users: One System, One Service* yang mengkaji hampir setiap aspek dalam

tribunal termasuklah struktur, bidangkuasa, prosedur, remedi dan proses rayuan ke mahkamah.

Laporan Jawatankuasa Leggat telah siap pada bulan March 2001 dan telah mengenal pasti beberapa masalah utama dalam sistem tribunal di United Kingdom iaitu:

- (a) Kekurangan struktur atau sistem yang lengkap dan jelas.
- (b) Kekurangan pemisahan atau pengasingan antara tribunal dan badan yang akan mendengar rayuan.
- (c) Sokongan dan nasihat yang tidak mencukupi daripada staf-staf tribunal dan badan-badan lain bagi membolehkan setiap individu terbabit mengemukakan kes mereka dengan lebih berkesan,
- (d) Kekurangan hak untuk membuat rayuan bagi sesetengah tribunal.

Berdasarkan kelemahan di atas, Jawatankuasa Leggat memberi beberapa cadangan penting seperti mempertanggungjawabkan sistem pentadbiran tribunal dan pelantikan ahli tribunal kepada *Lord Chancellor*. Seterusnya mencadangkan agar diwujudkan satu sistem tribunal sahaja. Maklumat asas perlu diberikan kepada individu terbabit termasuk menjelaskan mengenai bidangkuasa tribunal, prosedur-prosedur dan juga hak untuk membuat rayuan. Manakala pelantikan ahli tribunal adalah selama lima ke tujuh tahun.

Hasil dari cadangan tersebut, kerajaan telah memberikan respons yang positif dengan mengemukakan kertas putih(*white paper*) pada Julai 2004 bertajuk: *Transferring Public Services: Complaints Redress and Tribunals'* dan diluluskan pada April 2006. Ia mencadangkan agar diwujudkan hanya satu sistem tribunal yang mudah di bawah badan eksekutif yang di gelar '*Tribunal Service*'. Ia beroperasi di bawah *Department of Constitutional Affairs, United Kingdom*.

Seterusnya pada 1 April 2011, *Her Majesty's Courts Service* dan *Tribunal Service* telah bergabung dan membentuk satu badan baru kepada semua mahkamah dan tribunal di England and Wales yang dikenali sebagai *Her Majesty's Court's and Tribunal Service*. Ia merupakan agensi di bawah *Ministry of Justice*. (HM Courts & Tribunals Service <http://www.justice.gov.uk/about/hmcts>) Matlamat penubuhannya ialah "to run an efficient and effective courts and tribunals system, which enables the rule of law to be upheld and provides access to justice for all". Wujudnya tribunal ini di harap dapat meningkatkan fungsi sistem tribunal di United Kingdom agar lebih efisien dan berkesan.

### **KAWALAN KE ATAS TRIBUNAL**

Tribunal boleh dikawal melalui dua cara iaitu kawalan perundangan dan kawalan kehakiman. Selain United Kingdom yang telah membuat perubahan besar dalam mempertingkatkan kualiti sistem penghakiman melibatkan eksekutif (*administrative adjudication*), melalui kawalan perundangan terdapat negara-negara lain seperti United States, Australia dan Afrika Selatan yang mempunyai undang-undang untuk mengawal perjalanan sesebuah tribunal.

Di United States, Administrative Procedure Act (APA) digubal untuk mengawal bagaimana agensi pentadbiran bagi Kerajaan Persekutuan boleh memberi cadangan dan membuat sesuatu peraturan. Menurut Attorney General's Manual on The Administrative Procedure Act (1947), tujuan asas APA digubal adalah:

- (a) Untuk memastikan pihak agensi kerajaan memaklumkan kepada umum mengenai organisasi mereka, prosedur-prosedur dan peraturan yang terpakai.
- (b) Untuk memberi peluang kepada pihak awam mengambil bahagian dalam proses pembuatan undang-undang.
- (c) Untuk mewujudkan satu taraf yang sama dalam membuat undang-undang dan juga dalam membuat keputusan oleh agensi kerajaan.
- (d) Untuk menjelaskan skop semakan kehakiman.

APA memperuntukkan satu taraf yang minima dalam perbicaraan yang dikendalikan oleh agensi pentadbiran. Secara tidak langsung ia dapat memberi pelindungan kepada umum dan pada masa yang sama wujud fleksibiliti kepada agensi kerajaan dalam melaksanakan kuasa mereka.

Australia juga mempunyai undang-undang bagi membantu badan pentadbiran dalam melaksanakan tugas dan tanggungjawab di bawah undang-undang pentadbiran termasuklah juga prosedur untuk tribunal. Ia adalah hasil dari Laporan Jawatankuasa Kerr pada tahun 1971 dan diikuti dengan cadangan dari Jawatankuasa Bland yang diketuai oleh Sir Henry Bland sebagai pengurus.

Antara cadangan utama Jawatankuasa Kerr ialah:(The Kerr Report Of 1971)

- (a) *clarification of the grounds of judicial review;*
- (b) *the establishment of a general merits review tribunal (later called the Administrative Appeals Tribunal ("the AAT"));*
- (c) *the introduction of an obligation on the part of the decision-maker to provide a statement of findings of fact and reasons at the request of a person affected by the making of the decision, there being no such general obligation at common law;*
- (d) *the introduction of an obligation to disclose relevant documents;*
- (e) *the establishment of a Counsel for Grievances (later transformed by the Bland Committee into the office of the Ombudsman); and*
- (f) *the establishment of the Administrative Review Council ("the ARC") with a continuing role to overview and monitor the new system.*

Berdasarkan cadangan di atas *Administrative Appeals Tribunal Act 1975* dan *Administrative Decisions (Judicial Review) Act 1977* telah diperkenalkan. Antara lain, undang-undang ini membenarkan semakan semula kehakiman(*judicial review*) ke atas keputusan pihak pentadbiran.

Manakala Republik Afrika Selatan memperkenalkan undang-undang yang dikenali sebagai *Promotion Of Administrative Justice Act 3, 2000*.(PAJA). PAJA diluluskan oleh Parlimen adalah untuk melaksanakan matlamat Seksyen 33 Perlembagaan Republik Afrika Selatan 1996 agar setiap orang diberi peluang untuk mendapat keputusan atau tindakan yang adil, sah di sisi undang-undang dan telus oleh pihak pentadbiran dengan mematuhi prosedur yang adil. Sesiapa yang haknya terjejas akibat tindakan pentadbiran mempunyai hak untuk mendapat alasan secara bertulis.

Secara umum PAJA memperuntukkan agar pihak pentadbir:

- (a) mengikuti atau mematuhi prosedur yang adil apabila membuat keputusan dan menerangkan dengan jelas setiap keputusan yang di ambil.

- (b) Membenarkan pihak-pihak terbabit menyuarakan pembelaan sebelum mengambil sebarang keputusan yang boleh menjaskan hak-hak mereka.
- (c) Memaklumkan kepada umum tentang hak-hak mereka untuk membuat rayuan dan semakan di mahkamah.
- (d) Meminta agar alasan diberikan secara bertulis terhadap keputusan yang telah dibuat.

Manakala kawalan kehakiman pula memberi ruang kepada mahkamah untuk menyemak semula keputusan yang dibuat diperingkat tribunal sekiranya ada pihak yang tidak berpuas hati dengan keputusan tersebut. Sebagai contoh, dalam kes *R Iwn Hillingdon Borough Council, ex parte Royco Homes [1974] 1 QB 720*, dimana dalam kes ini mahkamah telah menerima secara umum bahawa remedii certiorari boleh dipohon oleh sesiapa yang terjejas haknya, atau yang mempunyai jangkaan yang sah kesan dari tindakan pihak pentadbiran ataupun keputusan hakim. Pihak yang mempunyai kuasa untuk membuat keputusan ini harus bertindak dengan adil dan mematuhi prinsip keadian asasi. (*Ridge Iwn Baldwin [1964] AC 40, Board of Education Iwn Rice [1911] AC 179*.

### **TRIBUNAL DI MALAYSIA**

Di Malaysia, penghakiman dalam sistem pentadbiran juga semakin berkembang. Badan dan pihak berkuasa yang bukan mahkamah tetapi menjalankan fungsi yang sama seperti fungsi mahkamah dikatakan menjalankan fungsi separa kehakiman (*quasi-judicial*). Di Malaysia ia juga dikenali sebagai tribunal pentadbiran dan tribunal domestik seperti lembaga tatatertib sesuatu persatuan, lembaga tatatertib pelajar dan lembaga tatatertib polis dan sebagainya. Ada kalanya sesuatu tribunal ini ditubuhkan di bawah sesuatu akta. Maka akta itulah yang membuat peruntukan mengenai prosedur yang perlu diikuti oleh tribunal tersebut dalam membuat keputusan. Sebagai contoh, Pesuruhjaya Khas Cukai Pendapatan telah ditubuhkan di bawah Bab 2, Akta Cukai Pendapatan 1967 yang dibaca bersama Jadual 5 akta berkenaan. Justeru prosedur tatatertibnya terdapat di dalam akta tubuh berkenaan. Begitu juga dengan Tribunal Tuntutan Pengguna yang ditubuhkan di bawah Akta Perlindungan Pengguna 1999. Akta ini akan menyediakan garis panduan dan prosedur perbicaraan di dalam tribunal berkenaan.

Bidangkuasa yang dimiliki oleh badan-badan yang mempunyai kuasa penghakiman ini sangat luas dan banyak. Justeru, perlu ada kawalan yang baik agar tidak berlaku penyalahgunaan kuasa ataupun melampaui bidang kuasa (*ultra vires*) yang diberikan kepada pihak-pihak yang membuat keputusan. Walau bagaimanapun, kawalan perundangan ke atas tribunal di Malaysia agak longgar. Kebanyakan prosedurnya tidak selaras antara satu organisasi dengan organisasi yang lain. Ini kerana Malaysia tidak mempunyai satu akta yang khusus dalam mengawal sistem tribunal yang ada, tidak seperti Amerika Syarikat, Australia dan Afrika Selatan yang mempunyai akta khusus yang boleh mengawal perjalanan sesebuah tribunal di negara mereka seperti yang dibincangkan di atas.

Di bawah kawalan kehakiman, terdapat beberapa asas untuk semakan semula kehakiman (*grounds of review*), seperti gagal mematuhi prinsip keadilan asasi, kesilapan dalam mentafsir peraturan jabatan atau organisasi dan memutuskan sesuatu isu yang berada diluarbidangkuasa yang ditetapkan. (Wan Azlan & Nik Ahmad Kamal, 2006) Sebagai contoh, dalam kes *Darshan Singh Iwn Farid kamal Hussain [2004] 6 AMR 608, Hakim Arifin bin Zakaria JCA menyebut dan bersetuju dengan dicta oleh Denning LJ dalam kes Lee V*

*Showmen's Guild of Great Britain [1952] 1 ALL ER 1175 iaitu dalam kes yang melibatkan kelab sosial:*

*"... on any expulsion they will see that there is fair play. They will see that the man has fair notice of the charge and a reasonable opportunity of being heard. They will see that the committee observe the procedure laid down by the rules; but will not otherwise interfere".*

Dalam kes yang melibatkan *tribunals of trade of profession*, Denning LJ menyebut:

*" A man's right to work is just as important to him as, if not more important than, his rights of property. These courts intervene every day to protect rights of property. They must also intervene to protect the right to work".*

Seterusnya dalam kes *Shayne Corey Cahill V Kaka Singh Dhaliwal [2005] 2 CLJ 147, Hakim James Foong* menyatakan:

*" ...the court is only prepared to examine the correctness of the decision when the matter in contention involves "the right to earn a livelihood" and it is only to see that the tribunal has given a "correct interpretation of the rules". It is only when these conditions arise, the court will proceed to examine the decision on its merits to see whether the tribunal has correctly interpreted the rules; otherwise, the courts will only confine itself to review the decision making process."*

Keputusan hakim dalam kes-kes di atas menunjukkan bahawa mahkamah mempunyai kuasa untuk campur tangan dalam keputusan tribunal sekiranya mempunyai asas yang kuat dengan memeriksa sama ada tribunal telah membuat keputusan dengan betul.

Terdapat hanya satu ciri yang mempunyai persamaan dalam proses perbicaraan sesebuah tribunal iaitu pematuhan kepada prinsip keadilan asasi dalam proses perbicaraan di bawah kawalan kehakiman yang merangkumi dua elemen penting iaitu *audialterampartem* atau hak untuk membela diri dan juga tiada pilih kasih (*bias*). Prinsip keadilan asasi ini dapat disifatkan sebagai asas ukuran bagi menentukan keadilan dan kesempurnaan sesuatu prosedur perbicaraan. Namun, syarat supaya patuh kepada prinsip keadilan asasi ini juga berbeza-beza tertakluk kepada peruntukan dalam akta masing-masing yang terpakai bagi mengesahkan kewujudan tribunal berkenaan. Ada yang termaktub secara jelas(*express*) di dalam akta induk atau Undang-Undang Kecil Jabatan dan ada yang hanya wujud secara tersirat(*implied*)(Jain M.P., 2011). Ada juga prosedur yang ditetapkan oleh akta tidak merangkumi prinsip keadilan asasi.(ShaikMohd Noor Alam,1992). Sebagai contoh, di bawah P.U(B) 441/2000- Suratcara Perwakilan Fungsi-Fungsi, Kuasa-Kuasa Tugas-Tugas Dan Tanggungjawab-Tanggungjawab Tertentu, iaitu peraturan yang ada perkaitan dengan proses tatatertib pasukan polis, di bawah peraturan tersebut, tiada peruntukan untuk pegawai membuat rayuan setelah keputusan dibuat. Pegawai yang tidak berpuashati di atas hukuman yang dijatuhkan khususnya yang telah diturunkan pangkat atau dibuang kerja tidak berpeluang untuk membuat sebarang rayuan keperingkat yang lebih tinggi di dalam organisasinya. Semakan hanya boleh di buat di mahkamah.

Di Malaysia, mana-mana pihak yang tidak berpuas hati dengan keputusan tribunal boleh membuat permohonan untuk semakan semula di Mahkamah Tinggi. Tindakan atau

keputusan yang melampaui bidang kuasa(*ultra-virus*) akibat kesilapan undang-undang(*errors of law*) atau kesilapan bidang kuasa(*jurisdictional error*), menyalahgunakan kuasa atau gagal mematuhi prinsip keadilan asasi dapat diketepikan atau dibatalkan dengan memohon perintah *certiorari* di bawah Perintah 53 Kaedah-Kaedah Mahkamah 2012. (P.U.[A] 205/2012). Permohonan untuk mendapatkan izin pembatalan(*leave*)mesti dibuat dengan segera atau dalam tempoh 3bulan dari tarikh keputusan dibuat atau tarikh mula wujudnya asas-asas untuk membuat permohonan. Remedi *certiorari* dipohon bertujuan untuk membatalkan sesuatu keputusan kehakiman atau separa kehakiman seperti keputusan tribunal yang telah dibuat. Sesiapa yang ingin memohon remedi ini mestilah mempunyai *locus standi* dan telah mendapat keputusan yang telah menjelaskan kepentingan diri atau harta benda mereka.(Fariza,2013)

Seperti dalam kes *Chief Building Surveyor IwnMakhanlall & Co(1969) 2 MLJ 118*, dalam kes ini penyewa di tingkat bawah bangunan telah memohon *certiorari* bagi membatalkan perintah untuk meruntuhkan bangunan tersebut kerana dikatakan tidak sesuai sebagai kediaman manusia. Beliau telah tidak diberikan peluang untuk didengar serta tidak dipanggil untuk memberi penjelasan berkenaan dengan perkara tersebut. Mahkamah memutuskan bahawa beliau mempunyai *locus standi* untuk membawa kes tersebut ke mahkamah kerana haknya sebagai penyewa bangunan yang akan diruntuhkan telah terjejas.

Menurut M.P Jain (2011), terdapat beberapa kelemahan dalam pelaksanaan sistem tribunal di Malaysia iaitu:

- (a) Tribunal yang ada tidak betul-betul bebas kerana masih ada kaitan dengan pihak pentadbiran. Masih banyak tribunal yang diputuskan atau dikendalikan oleh pemerintah atau kerajaan. Perkaitan yang wujud boleh memberi satu cabaran yang besar dalam menentukan objektif tribunal untuk membuat keputusan yang melibatkan pihak pentadbiran sendiri sebagai parti dalam permasalahan berkenaan.
- (b) Ahli dalam tribunal tidak dilatih secara perundangan (*not legally trained*), dan kebanyakannya tiada pengetahuan atau latar belakang undang-undang. Keadaan ini boleh menjadikan mereka sukar untuk mentafsir undang-undang yang berkaitan, mengenalpasti fakta kes dan bertindak mengikut naluri tanpa bersandarkan kepada bukti yang kukuh.
- (c) Proses tribunal yang tidak formal sewaktu perbicaraan boleh mengakibatkan ketidakpatuhan kepada prosedur-prosedur penting sewaktu perbicaraan.
- (d) Tribunal selalunya tidak akan memberi alasan kepada keputusan yang dibuat. Rakyat tidak akan tahu bagaimana cara tribunal menyelesaikan kes-kes tersebut. Pihak yang terjejas juga akan hilang peluang untuk membuat rayuan atau semakan kehakiman ke mahkamah.
- (e) Ahli tribunal juga dibebankan dengan tugas yang banyak dan tertakluk kepada polisi kerajaan, jadi besar kemungkinan merit setiap kes tidak diperhalusi atau diabaikan begitu sahaja tanpa diberi penilaian yang seadilnya dalam membuat keputusan.

Berdasarkan kelemahan-kelemahan di atas, sudah seharusnya sistem tribunal di Malaysia di lindungi dan di semak semula pelaksanaannya. Penambahbaikan juga perlu dibuat dari masa ke semasa. Cadangan Jawatankuasa Frank masih boleh diterima pakai walaupun telah berabad berlalu apabila Jawatankuasa Frank menyebut dalam Laporan 6:

*“ All or nearly all tribunals apply rules. No ministerial decision... is reached in this way... sometimes the policy of legislation can be embodied in a system of detailed regulations. Particular decisions cannot, single case by single case, alter the Minister’s policy”.*

*“... the committee warned that a decision made ‘without principle, without any rules’ is ‘unpredictable’ and ‘arbitrary’ and is ‘the antithesis of a decision taken in accordance with the rule of law’ ”.*

Cadangan Jawatankuasa Frank di atas amat penting dan perlu diambil perhatian supaya setiap tribunal mempunyai peraturannya sendiri. Peraturan tersebut harus lengkap dan sempurna dan perlu dipatuhi. Keputusan yang dibuat tanpa prinsip, tanpa sebarang peraturan boleh menghasilkan keputusan yang di luar jangkaan, dibuat sewenang-wenangnya serta tidak selari dengan prinsip keluhuran undang-undang.

Seperti yang kita ketahui, kawalan perundangan dan kawalan kehakiman adalah sama penting dan berkesan dalam mengawal pelaksanaan dan fungsi sesebuah tribunal. Walau bagaimanapun, keberkesanan kawalan kehakiman ini cuma akan berfungsi dan memberi kesan sekiranya kes-kes di bawa ke mahkamah untuk dibuat semakan semula oleh hakim. Justeru perlu ada penambahbaikan terhadap kawalan perundangan agar setiap tindakan yang diambil dalam setiap peringkat tribunal sehingga salah keperingkat pembuatan keputusan adalah terkawal dan menghasilkan satu keputusan yang berkualiti dan adil.

### **KESIMPULAN**

Sudah tiba masanya kita membuat penambahbaikan ke atas pelaksanaan sistem tribunal di Malaysia bagi menjamin keberkesanan kawalan perundangan dan kehakiman agar tidak mudah berlaku salah guna kuasa atau melampaui bidang kuasa yang diberikan. Semakan semula ke atas proses perbicaraan sesebuah tribunal amat penting bagi menjamin satu perbicaraan yang adil. United Kingdom sendiri telah membuat semakan semula ke atas sistem tribunal di negaranya setelah hampir 45 tahun berlalu selepas tertubuhnya Jawatankuasa Frank. Apabila semakan dibuat, barulah kita mengetahui di mana kelemahan sistem tribunal di negara kita dan apa yang harus kita perbaiki dan dibuat penambahbaikan.

Terdapat beberapa negara-negara lain yang bergerak ke arah membukukan prosedur tatatertib di bawah undang-undang pentadbiran yang ada agar lebih mudah dirujuk dan dijadikan panduan.( Wu Min Aun, 1999 ) Justeru tidak salah sekiranya diwujudkan satu akta yang khusus bagi mengawal tribunal-tribunal di Malaysia seperti yang telah dilaksanakan di negara luar seperti di Australia, Amerika Syarikat dan Afrika Selatan. Matlamat utama ialah untuk memastikan sistem tribunal di Malaysia betul-betul mendokong nilai-nilai yang ada perkaitan dengan prosiding di mahkamah seperti keterbukaan (*openness*), keadilan (*fairness*) dan pengasingan (*impartiality*).

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# **CONTROVERSY OVER CUSTOMARY LAND OWNERSHIP: AN OVERVIEW FROM POLITICAL PHILOSOPHY PERSPECTIVE**

Khandakar Qudrat-I Elahi

## **ABSTRACT**

In many countries of Africa, Asia and South America, an overwhelming proportion of earth surface has remained undemarcated, unrecorded and unregistered. This territory is popularly known as customary land, whose ownership is claimed by the tribe/clan living in the area for generations. An important feature of this vast track of land is that contains precious minerals, natural gases and oils etc., which are vital for rapid economic growth and poverty reduction. Accordingly, supranational organisations, including the World Bank, FAO and UNDP, began investing substantial sums of monetary and technical resources on developing these lands since 1960's. The general policy principle they pursued is called individualisation. Under this scheme, the communally owned lands are first demarcated and recorded, and then registered under the names of individuals using them. Unfortunately, the customary land literature seems to suggest that these policies have failed to produce satisfactory outcomes. This paper puts up two points with the hope that they might be helpful to identify problems associated current policy regimes. First, the prevailing perception of customary land needs refinement, it conceptually confusing. Second, ownership of any property, including land, has political as well as legal aspects, meaning the customary land controversy belongs to the jurisdiction of legal and political philosophy. The paper suggests that John Locke's theory of property right has necessary policy logics that can resolve the customary land controversy once for all.

**Key Words:** Customary Land, Ownership Controversy, Landforms and Land Use, John Locke, Political Theory of Property Right

## **INTRODUCTION**

In many developing countries, the term customary land is used to describe the vast areas of earth surface that have remained undemarcated, unrecorded and unregistered. Although this type of earth surface exists in many developed countries, like Australia, Canada, United States and New Zealand, the controversy about their ownership primarily pertains to the developing world. The main reason seems simple: these lands are critically important for economic growth and development of these countries. First, an overwhelming proportion of population lives in rural areas, which depends directly or indirectly upon occupations related to land use. Second, the earth surface - which contains many valuable economic resources including the potential of producing important food crops, forestry products, mineral and energy resources etc. - is the most abundant unexplored and unexploited resource available in these countries. It is thus quite obvious that the use and exploration of these resources is vital for accelerating economic growth and reducing poverty in the concerned countries. This in turn requires appropriate and effective planning to develop the available land resources.

All this is very well understood. Massive international efforts have been planned and executed for developing and using these huge land resources. For example, the World Bank envisages investing about USD 4.5 billion over the next decade for developing Sub-Saharan's vast land resources (World Bank, 2013). However, many previous efforts have been frustrated (Lastarria-Cornhiel, 1997; Lund, 2000; Elahi and Stilwell, 2013; Henley, 2013). This policy failure may be attributed to ambiguous ownership issue.

An area of earth surface is called customary land if it has remained unrecorded and undemarcated. Since the land is unrecorded and undemarcated, it could not be registered under any organisation or agent- public or private. And since there is no legitimate authority to claim its ownership, the land is considered communally owned by the people living in the area for generations.

Given this notion, different authors and organisations are cooking up figures about the extent of customary land existing in any country. Wily (2012) is a good example in this regard. Since there is no known statistics, the extent of customary sector, the paper says, can be estimated by excluding formally titled properties governed by statutory law. In Sub-Saharan Africa, most titled properties are in cities and towns, which account for less than one percent of the region's total land area. One quarter to a third of Kenya and 12-15 percent of Uganda's areas are subject to formal title. Elsewhere titled rural lands usually account for only 1–2 percent of the country area. Normally, wildlife, forest reserves and parks are excluded from the customary sector. If wildlife and forest reserves, urban lands and privately titled lands are excluded, the domain of so-called customary land potentially extends to 1.4 billion hectares. Given that only 12-14 million hectares of Sub-Saharan Africa are under permanent cultivation, it may safely be assumed that most of the customary sector comprises unfarmed forests, rangelands, and marshlands.

Conceptualisation and calculation of customary land in this way appears problematic from both academic and political points of view. First, this conventional wisdom of customary land is one serious source of land conflict causing political instability in concerned countries. Then placing vast areas of land resources under customary ownership to recognise the customs of concerned countries presents a serious problem in developing effective economic planning and policies. Unambiguous land ownership right is vital this purpose.

Nowadays a substantial size of literature exists on customary land topic (Anderson, 2011; Gosarevski, Hughes and Windybark, 2004; TNI, 2013). Yet, the issue of ownership of this vast resource has remained basically unaddressed. This paper, organised in six sections, intends to shed some light on this matter. Section II discusses the difficulties in defining customary land from the perspective of physical features while its ownership issue is identified and interpreted in political philosophy terms in Section III. Section IV discusses political theory of property rights, which is then applied to examine the nature of ownership controversy involved in the CLT literature in Section V. The paper is concluded in Section VI by summarising the main points and listing its major recommendations.

### **CONCEPTION OF CUSTOMARY LAND: PHYSICAL ISSUE**

As noted above, lands are ordinarily understood as customary if they are undemarcated and unrecorded. Since the earth surface varies significantly in terms of physical features, this definition presents a serious conceptual problem in assigning ownership right. More specifically, this definition raises questions about both the legitimacy of ownership claims

made by the concerned tribe/clan and the individualisation policy pursued by national policymakers and international donor agencies. The following paragraphs illustrate this issue by taking Papua New Guinea (PNG) as an example.

The exact area of customary land in PNG is still unknown, because the vast areas of the country are yet to be recorded properly. The political boundary of the country is well established and within this boundary the administrative areas like province, district etc. have also been well defined. But, to determine the nature of ownership, this land mass has to be classified and recorded. Due to the absence of this statistical information, different sources have prepared made different estimates. However, the most popular estimate is that 97% of PNG's land resources are under customary ownership. The estimated total land mass of the country is 462,243 km<sup>2</sup>, which means 448375 km<sup>2</sup> is customary land. With an estimated population of 6.4 million, the per capita customary land in PNG turns out to be about 0.07 km<sup>2</sup> or 7.00 hectares. Nevertheless, agricultural lands constitute only 2.54% or 11,740 km<sup>2</sup> of this of the total land mass; meaning the estimated agricultural lands available per person is only 0.002 km<sup>2</sup> or 0.20 hectares. Then consider the country's topography and landforms. PNG is largely a mountainous country, much of which is covered with tropical rainforest. Available statistics for the Southern Highlands Province indicate the following types of land formation: Mountains & hills 65.4%, Volcanic 29.2%, Plains & plateaux 3.5% and Floodplains 1.9% (Allen, undated; Bourke 2013).

The inference, which follows from these statistics, is that the vast areas of landmass in PNG are inaccessible to general use. This information may be extended to other countries the customary land tenure dominates the land ownership pattern. Yet, according to the popular perception, these inaccessible lands belong to people living in the concerned areas. The lands being used or cultivated rightfully belong to the individuals who are occupying them. It really does not matter whether these lands are recorded or not, demarcated or not; they belong to their users. Therefore, if these lands are brought under public administration and management, their titles ought to be awarded to actual occupiers. But can this same principle be applied to award ownership right of lands to people which they have never used? These lands include, among others, hills, forests, marshy lands and low-lying areas. There is, and must be, a positive principle of property ownership. As will be discussed later, this principle does not allow the concerned tribe/clan to claim the ownership of these lands.

On the other hand, both theoretical and policy literature is concerned with individualising the customary lands (AusAID, 2008; Cotula, Vermeulen, Leonard and Keeley, 2009; Braun and Meinzen-Dick, 2009). Individualisation of ownership is physically possible and legally permissible only on the lands being actually occupied and used, which ordinarily happen in lands suitable for agricultural enterprises. As noted above, the area under this category constitutes a very tiny proportion of the total land mass of the country. Yet the policy documents assign customary ownership to lands, which may have never been used before or simply is not suitable for individual use. This may be considered a serious lacuna in formulating policy for reforming customary land tenure system.

### **OWNERSHIP OF CUSTOMARY LAND: POLITICAL PROBLEM<sup>1</sup>**

Besides the physical difficulties inherent in the definition of communal ownership of customary land, the idea is problematic politically. To understand the nature of this problem, the issue of ownership controversy may be approached hypothetically in the way Rousseau (1754) analysed the origin of inequality among men. In his essay, 'What is the Origin of

Inequality among Men and is it Authorised by Natural Law?' Rousseau bases his discourse on the basic premise that the true source of inequality among men can be unearthed only by studying them in their natural state. Such an analysis, he says, requires, first of all, laying aside all facts and ignoring all historical truths, because these facts and historical truths are basically mutilations of the original state of humankind. The appropriate investigation should only consider conditional and hypothetical reasonings so that it can explain the nature of things instead of ascertaining their actual origin.

Man in his original state, Rousseau says, is no different from all other animals living around him. But he is indeed 'most advantageously organised' than other animals, because he can out-manoeuvre them. Like all other animals, men satisfy their hunger with the fruits abundantly available, slake their thirst with water from brooks and find their beds at the foot of trees or mountain caves. Being dispersed up and down among other animals, men observe and imitate their industry in order to attain their skills and instincts, which they use more competently and expediently than their neighbours.

Being born in the state of nature, men, from their very infancy, become accustomed to the inclemency of the weather and the rigour of the seasons, because they have few instruments or amenities available to make their life and living comfortable. This endurance however helps them develop internal immunities against illness and stronger bodies which they need to survive. They also develop means and manoeuvres to protect them against their enemies- both fellow humans and animals. In doing all this, his primary motive is to satisfy two needs- hunger and thirst. Once these basic needs are satisfied, he has to gratify the third most important natural need, sex. For this purpose, he might have to subdue a female and/fight for her, if that is what required. Once this erotic appetite is fulfilled, both the male and the female separate unless the female need his company for protection, while the male wants to keep her as his personal possession. At this stage, the development of emotional tie between a man and a woman is supposed to be at a very rudimentary stage.

The above may be considered as an account of physical conditions of humans in the state of nature, i.e., before the origin of civil societies which have evolved in the current states. This historical account of the evolution of human society might be used to reason the development of customary land system. Earth surface everywhere is a free gift of nature. Human species have been utilising the fruits of this free gift for satisfying physical needs since its evolution. Initially there was no need to demarcate and divide the earth surface among users and occupants, simply because supply was plenty compared to demand. This demand-supply equation began to change as population expanded. Alongside this development, human races invented technologies that made their livelihood activities easier and efficient. Villages and cities were also created to form human civilisations. All these social developments and technological innovations led to the creation of the need for assigning the idea 'ownership' on lands being occupied and used by individuals and families. This in turn raised the need for demarcating and recording those lands. Ownership, or more specifically 'private' ownership, appears to be an inevitable outcome of human civilisation. This idea in fact resonates the words Rousseau used in his discourse on inequality: "The first man who, having enclosed a piece of ground, bethought himself of saying *This is mine*, and found people simple enough to believe him, was the real founder of civil society."

While this intuitive line of reasoning seems quite believable, it is not known, with certainty, where this process began. But this process, it might be reasoned, was promoted by four

major factors- human demography, land topography, soil fertility and climate- which suggests that the land surface has remained undemarcated, unrecorded and unregistered in areas or regions where the development of human civilisation was slow; topography is rugged and mountainous; lands are less fertile and the climate is not harsh enough to force people to improve their living style and standard. Ironically, these are the regions or territories which succumbed to European colonisation, most of which gained independence after WWII.

This political past brings up another important perspective of ownership controversy over customary land. In most countries, both developed and developing, the ownership of land resources is divided into two fundamental categories- private and public. The private ownership classifies itself into two kinds- individual and groups- which respectively imply ownership of identified person or family and a private social group or business corporation. The public ownership normally signifies lands owned by government- local, provincial or national. These publicly owned lands can also be divided into two kinds. The first kind includes the lands which government owns or acquires from private people for public use, while the second kind refers to all other lands which have not been claimed by anyone. The last kind of land is often called 'crown land'.

This system of land ownership has not developed in the countries where customary lands exist in abundance. Political history and physical factors described above well explain the reasons why such land tenure systems developed in the concerned countries. A colonial power, by definition, cannot claim legitimate ownership of a country's land resources. For, the ownership of lands, which are not being occupied and used by any individual or group, are supposed to be vested in national government of the country. The colonial administration means that this type of government did not exist in those countries.

Accordingly, the huge areas of earth surface remaining unclaimed in these countries may be accounted by these factors. If these countries were independent, then the national governments could have exerted ownership of these resources as 'crown lands'. The problem is further complicated by the fact that these countries are composed of numerous tribes or clans, which have developed their independent identities as a kind of 'sovereign' group. Therefore, in the absence of national government, each group claimed their known area as their sovereign territory. That's how the idea of 'communal/customary ownership' originated in the first place. All tribes consider them independent and sovereign in relation to one another and have developed their own set of laws which govern and guide their social, economic and political life. Viewed in terms public administration, the tribal system is not much different from the one pursued in modern nation-states.

This system changed dramatically after independence, because a national government has been established for entire areas and regions constituting the country, which is, or supposed to be, composed of representatives of all tribes or groups. This political change in turn suggests an automatic transference of customary land ownership to the national government. The idea of 'communal ownership' is no longer legitimate, because all tribes have agreed, voluntarily or involuntarily, to surrender their independent status and have united them under one central political administration.

The current controversy over customary lands indicates that this politically correct legislative rule has not been formulated and implemented in the concerned countries. When these countries became independent, the national governments, led mainly by the chieftains of the most powerful tribes, seem to have legalised their previous claims, thereby creating a dual

system of land administration. Since the ownership of customary lands has been constitutionally entrusted to the concerned tribes, the national government is authorised only to enact laws regarding a very limited areas of the country's earth surface, although it represents all tribes.

### **POLITICAL PHILOSOPHY OF PROPERTY RIGHT**

The word ownership expresses a kind of possessive relationship between human agents and economic objects (tangible or intangible). The human agents could be either private or public and economic objects could be both tangible and intangible. An object is defined 'economic' if it carries exchange/market value. Economists ordinarily categorise those economic objects/goods as 'properties, which can be used for generating current and future incomes. In our case, we are interested in 'property' in earth surface, because it has these characteristics. Although there is little discussion about how topography, landforms, soil quality etc. affect the nature of economic use of lands, a huge literature has developed that deals with the ownership right of these resources. This issue is discussed broadly under topic, the theory of property right. This section intends to examine the latter keeping in view the former point.

This literature, like any other, is fraught with confusions and controversies, perhaps because the analysts apparently ignore the difference between two aspects of this issue- political and economic (Atman, 2008; Locke, 2013). The political theory of property right is concerned with the right of ownership: Who should possess what type of property and under what conditions of constitutional law. The economic theory, on the other hand, ought to investigate the impact of property rights on production and employment generation. If this basic distinction between ownership and use of property is kept clear, then much of the confusions and controversies might be avoided. The following discussion sticks to the above logic and concentrates on the political theory of property right.

Classification and the distribution of property right in the modern states have evolved over a long period of time, meaning the nature of property right established in any particular society is directly related to the development of its socioeconomic and political milieus. Naturally, the nature of property right practised in Europe and North America is expected to be different from that in the developing world, such as Africa and Asia, which means that the history of development of nation-state is critical to understand the property rights being practised in any country. In this respect, the customary land phenomenon presents a unique opportunity.

Customary ownership, as mentioned above, is normally assigned to the vast areas of earth surface which have remained unrecorded and undemarcated. This ownership belongs to the group/tribe living in the concerned area. The main reason for the development of this tenurial arrangement is that there was no nation-state, and hence no national government to claim the ownership of the most of these lands. Each clan/tribe used to claim the land it knew as its sovereign boundary. Naturally, the creation of nation-state causes dramatic changes in the political landscape of the country. This in turn is supposed to bring about dramatic changes in the ownership practice of unrecorded and undemarcated lands: Who should own these lands- individuals, tribes or regional/national government?

An appropriate way to address this question is to review the political theory related to the development of the modern state/nation-state. The basic objective of the theory of nation-

state is to conceptualise the nature of ‘civil government’, which can be indicated by the definition of democracy that the US President Abraham Lincoln enunciated: ‘Democracy is by the people, of the people and for the people’. The best reference for a hypothetical description of the development of the nation-state is John Locke’s *Second Treatise on Civil Government* (1690). The following is the sum and substance of Locke’s monumental theory, which forms the foundation of modern politics.

### **Locke’s Theory of Property Right<sup>2</sup>**

Locke’s political philosophy is basically intended to describe the nature of civil government appropriate for ruling the nation-state. Currently, this philosophy forms the foundation of governance in the countries belonging to the Western hemisphere. His theory of property right is only a component, but indeed the most important one, of his whole project of civil government (Widerquist, 2010). Therefore, to understand his theory of property right properly, we need to review it in the context of his political structure of civil government.

The political debate that captured the philosophical minds in Locke’s time concerned the nature of government- should it be monarchical or republican? This might be one of reasons why Locke used a religious approach to discuss both the nature of government and the theory of property right.

God created the earth and gave it to Adam and Eve for their preservation and propagation of the human race. The subsequent generations received the right to use this gift by being the descendants of these original couples. This is all accepted, Locke says, but does not explain how anyone could have a ‘property’ in anything. Here property means one’s right to exclude other from his/her possession. His sole purpose in the 5<sup>th</sup> Chapter of his Book was to address this issue, which later become the fundamental political principle of determining property right in the states ruled by civil government.

Although the earth is a free gift from God and all the fruits it produces and the beasts it feeds belong to mankind in common, men must use some means to make these products of nature useful or at all beneficial to them: “The fruit, or venison, which nourishes the wild Indian, who knows no enclosure, and is still a tenant in common, must be his, and so his, i.e. a part of him, that another can no longer have any right to it, before it can do him any good for the support of his life.”

Every man has a property in his own person, to which nobody has any right but himself. The labour of his body and the work of his hands are properly his. Therefore, whenever he removes something out of the state that nature has provided and left it in, that thing becomes his property because he has mixed his labour to make it useable for human use. This means that anything removed from the common state nature by someone automatically excludes it from the common right of other men. For, labour is the unquestionable property of the labourer; no man but he can have a right to this human quality once joined to.

Thus it is human labour that puts a distinction between what can be claimed as ‘property’ of a person and what is to be enjoyed in common. Accordingly, this law of reason makes the deer killed by an Indian makes his property. In the civilized part of humankind, where people have made and multiplied positive laws to determine property right, this original law of nature still takes place. By virtue this natural law, fished caught in the ocean are treated as property of those who caught them.

However, the chief object of property issue in our context does not concern gathering fruits of the earth, but the earth itself. Yet this issue, closer inspection, does not appear at all different from the one which created the conception of property in the first place. The land that a man cultivates and plants seeds for growing foods is certainly his property and has the moral as well as positive right to appropriate its fruits, because of the reasons explained above. Therefore, this man has the right to encircle the land with fences in order to separate it from the common use and prevent others to usurp his right.

God indeed gave the earth to men in common. But since this earth was given for survival and the preservation of the human beings, His most favourite creations, He did not mean it to remain always common and uncultivated. Land was meant for the industrious and rational people to mix up their labour in order to make it more productive. By doing this, He gave occasion to formulate positive law for the creation of private property in material things. This law is solely founded on the unquestionable attribute of humankind- his labour.

#### **CUSTOMARY OWNERSHIP AND THEORY OF PROPERTY RIGHT: POLITICAL PHILOSOPHY PERSPECTIVE**

From the political perspective, the term 'right' signifies a perception that defines and regulates our relations and freedoms of action in society. Perhaps the most critical of such perception concerns 'property ownership' in land. In political philosophy, individuals' rights are often divided into two kinds (Rousseau, 1754). First, 'natural rights' imply individuals' proclivities to have whatever their psyches inspire them to get; but their abilities to satisfy these psyches are limited by their physical and mental power. Moral or political rights, on the other hand, are entitlements granted to individuals by the state and are protected by its sovereign power. These entitlements are called 'private properties' not only because they are granted and protected by the state, but also the fact that other citizens recognise them as something on which they do not have any moral or legal claims.

Clearly this conception of 'right' does not apply to customary lands, because individual rights have not been assigned. However, individual ownership is only the tip of the iceberg here, because most of the declared customary lands are not under individual use and/or cultivation. These lands, as mentioned before, include natural resources like hills and mountains, jungles and forests, and marshy lands and low lands under water. Obviously, most of these resources were not used by private people, individually or collectively, for their livelihood needs. Yet, these lands are being claimed by the people living in the relevant areas as owners.

This is an interesting intellectual issue that falls under the jurisdiction of 'the right of first occupants' theory. According to this theory, since the earth surface is the free gift of nature, the ownership right must be determined through the principle of 'first occupancy'. In other words, the human race, which first settled in an area or region, acquires the political right to claim that area as its own sovereign territory. This principle indeed excludes everyone, not belonging to this race, to have the right to settle there. The political structure of the modern nation-state is essentially founded on this theory. The tribal claim of ownership of customary lands might be seen from the same political perspective. Strong sentiments and emotions ordinarily expressed by the tribal peoples about their communal right of ownership and their post-independence recognition through constitutional provisions might be considered as the reflection of that theory.

However the point discussed above raises a curious question: Can this established political theory of 'first occupancy' be applied to justify the communal ownership of the vast areas of customary land existing in many developing countries? It appears to be difficult to come up with an affirmative answer. For, the political superstructure in which these lands used to be treated as the sovereign territory of a particular tribe has absolutely changed after independence as described above.

#### **Definition of Customary Land: The Source of Confusion and Controversy**

Besides the political points discussed above, much of the confusions and controversies surrounding the issue have been created by the way customary lands are defined and reforms policies are formulated and executed by the international development community. This issue has been discussed in Section II, which points out that the vast areas of landmass are inaccessible to general use. Yet, these inaccessible lands are being claimed as communally owned. It was also mentioned that the lands being used or cultivated rightfully belong to the people who are occupying them, whether they are recorded or not, demarcated or not. If these lands are brought under government land registration and administration programme, titles of the demarcated pieces must be awarded to those who are using them. If any public or private agency intends to use these lands for some purposes vital for the country, these people must be well compensated. But how can the government assign ownership rights of hills, forests, marshy lands and low-lying areas to any group, which may have never been accessed, let alone used?

#### **Ending the Customary Land Controversy: The Political Philosophy Perspective**

The definitional confusions discussed above are definitely adding elements to already controversial issue of customary ownership. Accordingly, these confusions need to be cleared out in order to set the stage for resolving the ownership controversy one for all. In doing this, the most important point to remember is that the customary land ownership or the property right in land is out-and-out a political issue. We no longer live in the state of nature; we live in civil society. The foundational feature of life in civil society is that laws have been formulated to define individual rights and the nation-state uses its sovereign force to protect these rights. Of all the rights individuals enjoy in civil society, the right to own and accumulate property is the most momentous and critical. As Locke says, and Rousseau quotes, where there is no issue of property; there is no injury. Property right is a political issue and hence any controversy causing conflicts in it, ought to be dealt with politically.

The political theory of property right as enunciated by John Locke is the clue to the resolution of the customary land controversy. The use of human labour is, and ought to be, the only judging criterion to be employed to assign ownership rights to the vast tracts of land which are called customary. One simple way to carry out this difficult job is first to separate the lands which are being currently used by individuals and communities and those which are inaccessible to ordinary human use. Private as well as group ownership titles can be awarded for the first kind of land, while government (national or regional) can take ownership of the second kind. Arbitration procedures may need to be developed to resolve conflicts over the remaining areas of undemarcated and unrecorded lands.

The above is just a suggestion. There are of course other ways which might be used to determine and distribute ownership rights of the customary lands. It however needs to be underlined that a well-articulated theory of property right exists in political philosophy which can satisfactorily settle the controversy over customary land ownership once for all.

## **SUMMARY AND CONCLUSIONS**

The term customary land is used to describe the vast areas of earth surface remaining undemarcated, unrecorded and unregistered in many developing countries belonging to Africa, Asia North America. This land is vital for these countries' rapid economic development and poverty alleviation. For, an overwhelming proportion of population lives in rural areas and the lands contain valuable economic resources, like natural gas, minerals, oils, forests etc., which underlines the importance of designing appropriate and effective planning to develop the available land resources.

Governments of these countries have responded appropriately by pursuing land reform policies with monetary and technical helps from supernational organisations, like the World Bank, FAO and UNDP. Yet, the customary land literature suggests a sort of agreed evaluation that these policies have not produced satisfactory outcomes. Although customary land researchers seem to see eye to eye on the failure of reform policy, they cannot concur on some common causes of this failure. Under this circumstance, this paper has built up arguments on the proposition that the very conception of customary land is confusing as well as ambiguous. It was further suggested that the solution to the customary land issue lies in clarifying this conceptual confusions.

For clarifying the customary land conception, the critical point to understand is that ownership right to any kind of property is directly related to the employment of human labour. Someone could claim ownership of a piece of land only if he/she has employed own labour on this natural gift, assuming that the piece of land is not inherited. By this criterion, lands which are not accessible to general use cannot be claimed by individuals or private groups. This in turn suggests that an overwhelming proportion of undemarcated and unrecorded lands cannot be granted private titles of ownership.

An interesting question crops us from the above reasoning: To whom should the title of this land belong? Currently, many countries have placed this land under the legal ownership of the tribe/clan of the concerned area. In other words, national governments have given constitutional recognition to traditional claims of individual tribes/clans which have been occupying the areas for generations. This paper argues that these conventional territory claims are no longer valid under changed political circumstances. For, these countries, which suffered long eras of colonial rules, did not have the sovereign political superstructures like the ones they have after independence. Before, the country was divided into as many territories as the number of tribes or clans. Now with independence, all tribes/clans joined together to form one sovereign nation, identifying themselves as a member of the United Nations, like all other nation-states. By doing this, the individual clans/tribes have rescinded their status as belonging to an independent territory. Therefore, the rightful owner of the country's land resources, not suitable for private titles- individual or group- is the national government.

Based on these logics, the paper argues that national governments with the help of supranational organisations should conduct geographical surveys to determine the use patterns of different landforms. The lands, which are suitable for individual use, must be placed under private ownership. However, lands, which are not accessible to general use, may be brought under public management and administration. This will in turn facilitate effective land resources planning and management.

#### Footnote:

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<sup>1</sup>This section has been adapted from Rousseau's 2<sup>nd</sup> Discourse, *What is the Origin of Inequality among Men, and is it Authorised by Natural Law?* The source is digital, for which conventional referencing procedure could not be followed.

<sup>2</sup>This section has been adapted from John Locke's 2<sup>nd</sup> *Treatise on Government*. Because the source is digital, conventional referencing procedure could not be followed in this case either.

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# ENVIRONMENTAL PROTECTION UNDER THE WTO: AN OVERVIEW

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## ABSTRACT

This paper examines the notion of environmental protection under the World Trade Organization (WTO) and how the organization settles dispute among the member states in relation to issues related to the environment. The paper aims to study the laws related to environmental protection under the WTO as well as the loopholes in these laws. In this paper, we have examined the Turtle and Shrimps case and the Retreaded case in addressing the issue of dispute settlement under the WTO and the need for impartiality from the Dispute Settlement Body (DSB) of the WTO while dealing with measures adopted by the member states in the protection of the environment. This paper uses two major research strategies: a quantitative analysis in examining the Turtle and Shrimp case and Retreaded Tyres case by way of collecting the data from libraries, and published reports. The paper argues that the flow of goods between the WTO members should not hamper one of its main objectives that is, of environmental protection. The paper concludes that there is a need for improvement in the laws governing environmental protection under the WTO so that member states could see the operation of these laws as being impartial and not only favoring the industrial nations/developed countries.

**Keywords:** Dispute settlement body, environmental protection, impartiality, industrial nations, WTO.

## INTRODUCTION

The World Trade Organization (WTO) has a legal basis from the General Agreement on Tariffs and Trade (GATT) organization. In fact, it is legally bound to GATT's existence from the Uruguay round negotiation initiated in 1986 and continued until 1994. The WTO goals are aimed to help producers of goods and services, exporters, and importers to conduct their business in order to ensure that, the governments (WTO members) meet social and environmental objectives, climate change, food safety, animal and plant health, and natural resources. Thus, environmental objectives i.e. in this case the protection of environment will be the main theme of this paper and since the WTO has a legal basis from GATT, the authors intend to make reference to Article XX paragraphs (b) and (g) which deals with the protection of the environment as far as the operation of the WTO is concerned.

Environmental protection under the WTO is regulated by Article XX (General Exceptions) paragraphs (b) and (g)(WTO, 2014). According to Article XX, each member has the right to determine the level of protection for each case separately. This is because Article XX

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paragraph (b) only mentions the term 'necessary' without giving any explanation as to the meaning of the term 'necessary'. Hence, the WTO generally supports the sovereignty of each member state and for that purpose it has adopted the principle of Appropriate Level of Protection (ALOP). This principle gave the WTO members a wide range of determining the level of protection to adopt and at the same time gave the WTO dispute settlement system a wide range to change its decisions due to the absence of a clear meaning of the term 'necessary' as well as the existence of ALOP.

#### **THE IMPARTIALITY OF DISPUTE SETTLEMENT UNDER THE WTO IN THE CONTEXT OF ENVIRONMENTAL PROTECTION**

The WTO has an important objective which is impartiality between its members, and the WTO considered it as a unique contribution based on the core principle that it has adopted over the years in the process of dispute settlement i.e. ensuring fair and equitable treatment of all participants (WTO, 2014). However, it is important to note that because of the ambiguous term and principle such as 'necessary' and ALOP, the WTO failed to achieve the principle of equitable treatment. This principle of equitable treatment has two perspectives. Firstly, member states should deal with each other based on the principle of equality. Secondly, the WTO should exercise the principle of equality in the process of dealing with all the members of the organization. In addition, the WTO has also adopted the principle of Most-Favoured-Nation (MFN). This principle is also about treating other people equally.

According to Gruszczynski (2010), the EU depends on scientific risk assessment and not on zero risks management, which means any member in the WTO can set its own suspension depending on its committee to determine their Appropriate Level of Protection (ALOP) under the Sanitary and Phytosanitary Measures (SPS) agreement. As far as his work is concerned, it has not laid down clear process and procedure in dealing with the issue of environmental protection. Hence, the authors have examined in depth the operation of Article XX paragraphs (b) and (g) suggesting ways for improvement in the process and procedure of dispute settlement under the WTO.

Furthermore, Gray (2008) has addressed the meaning of the term 'necessary' in Article XX paragraph (b) by saying that it depends on three factors as enforced in the Korea-Beef case. The three factors are: the contribution made by the non-indispensable measure to the legitimate objective, the importance of the common interests or values protected, and the impact of the measure on trade. Hence, in order to determine the term 'necessary' in Article XX paragraph (b), the panel should concentrate on the previous paragraphs as they are in line with the objectives of the WTO even though the WTO lacks specific measures to determine the meaning of the term 'necessary'. In other words, the parties to the conflict may cite the same arguments based on their opinions through ALOP. The authors have attempted to suggest a modification to Article XX paragraphs (b) and (g) in relation to the meaning of the term 'necessary' so that the environment could be given full protection under the WTO by the member states.

Another important literature dealing with the regulation and scope of Article XX is the work of Michael Ming Du (2010) titled "Autonomy in Setting Appropriate Level of Protection under the WTO Law: Rhetoric or Reality?" In this work Michael argues that, the determination of the Appropriate Level of Protection (ALOP) depends on the WTO members. In other words, each member has the right to determine an acceptable level of protection on genetically modified organisms (GMOs) which is currently referred to as living modified organisms (LMOs).

The production of GMOs (WTO, 2014) is the source of conflict between the EU and the USA. The case is essentially about the right of countries to determine the level of their protection. Although the EU banned the use of GMOs, the USA did not sign the Biosafety Protocol. The US pleaded that the Protocol was not very clear prompting the WTO Panel to be confused as well as to which decision they should consider. It is important to note that the difference between the US and EU in agricultural production lies in the fact that the former depends on an internal trade agreement rather than international agreements, while the EU depends on international agreements. In GMO's case, the authors found the same implications of the problems in Shrimp and Turtle case (Liu, 2014). Moreover, the industrial countries always threaten the developing countries as well as use the dispute settlement in the WTO to enforce their interests upon them, such as the struggle between the US and Sri Lanka for the case of imports of shrimps. As such, the US did not sign the Cartagena on Biosafety Protocol. According to the US rule, it is not necessary to put the label on GMOs agriculture production because it is with zero risks. But for the EU, it is necessary to put the label, because it deals with customers' choices and the labeling is not required just for food, but also for agricultural production. In order to address such problems, the WTO member states always look for a solution by using the dispute settlement mechanism established under the organization. This being the case, the WTO member states expect the Dispute Settlement Body to be impartial in its decision making process.

#### **Shrimp and Turtle Case, Retreaded Tyres Case**

In this case, the US used a device called Turtle Excluder Devices "TED". TED is designed to reduce the number of sea turtles killed in a shrimp catch. The USA banned the importation of shrimp from any state that did not use the "TED" in their fishing. The other parties that were affected by this decision are India, Malaysia, Pakistan and Thailand, who complained that any member in the WTO cannot force other members to follow their internal regulations. The WTO decided that the USA cannot force other countries to follow their regulations. The judgment did not convince the USA, so it decided to appeal, and the Appellate Body confirmed the judgment. The USA did not stop their attempts to implement this ban. Under the pressure of the non-government organizations (environmental organizations), the USA implemented the ban under the WTO against Malaysia, Pakistan and Thailand.

The authors are of the view that, the Shrimp and Turtle case is related to Article XX paragraphs (b) of GATT because of the provision which reads: "necessary to protect human, animal or plant life or health". Paragraphs (b) concentrates on the protection of environment but the WTO Panel and the appellate body's decision on the ban of imported shrimp are unjustified. This is because the US was implementing that ban depending on its internal regulation. The US was totally against this decision and rejected it all together. The US refused that decision and insisted on implementing the ban depending on the US internal regulation. After that Malaysia claimed that because of the US insistence on continuing with the ban, the DSB, of the WTO gave two decisions. The first decision was not in favor of the US and thus prompted her US to refuse to follow the decision. Because of the US position under the WTO, the US resorted to the use of pressure on the DSB of the WTO. This led the DSB to reverse its earlier decision and reached a second decision favoring the US. This second decision was based on the reason of use of good faith to protect the environment. If this second decision is compared with the Retreaded Tyres case, one would notice that the non impartiality of the WTO is very clear in the context of dispute settlement among the member states.

As to the Retreaded Tyres case, it is important to note that the retreaded tyres can be harmful to the environment due to the high cost of spoliation—since they cannot be burnt to save the atmosphere or dumped in soil to save our earth and they cannot be recycled after the retreaded. Because of this, the spoliation of these tyres needs high technology in order to save mother earth. However, this technology is very expensive. Thus, the EU created the retreaded method to transfer obligation of spoliation to other counters.

The Retreaded Tyres case under the WTO can be seen from case number DS332. In this case, Brazil prohibited import on retreaded tyres (Import Ban) as well as fines on importing, marketing transportation, storage, keeping or warehousing of retreaded tyres. Furthermore, the Brazilian state law provided restrictions on the marketing of imported retreaded tyres, exemptions of retreaded tyres imported from Mercosur countries from the Import Ban and fines (“MERCOSUR exemption”).

All in all, the Panel decided that, Brazil does not have the right to impose this ban (the ban on retreaded tyres) and the Panel came up with the following decision:

“(a) with respect to Brazil's import prohibition on retreaded tyres:

(i) Portaria SECEX 14/2004 is inconsistent with Article XI:1 of GATT 1994 in that it prohibits the issuance of import licences for retreaded tyres, and is not justified under Article XX(b) of GATT 1994.

(ii) Portaria DECEX 8/1991, to the extent that it prohibits the importation of retreaded tyres, is inconsistent with Article XI:1 and is not justified under Article XX(b) of GATT 1994.

(iii) Resolution CONAMA 23/1996 is not inconsistent with Article XI: 1.

(b) with respect to the fines imposed by Brazil on importation, marketing, transportation, storage, keeping or warehousing of retreaded tyres, Presidential Decree 3.179, as amended by Presidential Decree 3.919, is inconsistent with Article XI: 1 of GATT 1994 in that it imposes limiting conditions in relation to the importation of retreaded tyres and is not justified under either Article XX (b) or Article XX(d) of GATT 1994.

(c) with respect to the measures maintained by the Brazilian State of Rio Grande do Sul in respect of retreaded tyres, Law 12.114, as amended by Law 12.381, is inconsistent with Article III:4 of GATT 1994 in that it accords less favourable treatment to imported retreaded tyres than to like domestic products and is not justified under Article XX(b) of GATT 1994.

Furthermore, the weakness in Article XX has been highlighted by Oxley (2001). According to him, Article XX of GATT determines the latitude actions of government result in the reduction of trade. From his point of view, Article XX has wide latitude. This could lead to the WTO members using suspension according to their political interests under the guise of environmental protection bearing in mind that “Article XX specifies what activities are exempted from the GATT rules. These exemptions give members very wide latitude to control trade to protect the environment.” Despite this being the case, in reality member states have used this provision to foster their own political interests.

## **CONCLUSION**

Based on the discussions above, it is pertinent to note that the WTO still has a long way to go in addressing the issue of impartiality in the context of dispute settlement among member

states regarding the measures that they have adopted in order to protect the environment. There is no doubt that the cases examined above would go on to show the non impartiality element on the part of the WTO in dealing with the issue of dispute settlement among the member states when it comes to environmental protection especially regarding the measures that have adopted. For example, in the Shrimp and Turtle case, the Dispute Settlement Body came up with two different decisions i.e. the first one was against the US and second one was in line with US interest and against the WTO principles. On the other hand, in the Retreaded Tyres case the decision was also against the WTO law but in line with the EU interest.

It may safely be concluded that in order for the WTO to perform its objectives impartially especially in the context of dispute settlement regarding measures adopted by member states in the protection of the environment, it is an opportune time to come up with a clear and precise meaning of the term 'necessary' under Article XX paragraph (b) of GATT 1994. This reform is urgently needed in order for the WTO to achieve one of its main objectives that is to protect the environment among the member states in the process of conducting trading activities.

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# HUBUNGAN ANTARA FAKTOR-FAKTOR DEMOGRAFI DENGAN KRITERIA PROFESIONALISME ISLAM DALAM MEMPERKASA BUDAYA KERJA ORGANISASI: KAJIAN DI JABATAN KASTAM DIRAJA MALAYSIA

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## ABSTRAK

Kajian ini bertujuan untuk meneliti hubungan antara faktor-faktor demografi dengan kriteria profesionalisme Islam dalam memperkasa budaya kerja organisasi. Faktor-faktor demografi yang dikenalpasti adalah terdiri daripada umur, jantina, tempoh berkhidmat, tahap pendidikan, jawatan dan bahagian. Manakala kriteria profesionalisme Islam terdiri daripada memahami tanggungjawab sebagai hamba Allah, memahami fungsi profesion, berilmu pengetahuan serta mempunyai kemahiran dalam menyelesaikan masalah, kemahiran membuat keputusan, kemahiran komunikasi dan kemahiran kepimpinan. Kajian ini menumpukan kepada Jabatan Kastam Diraja Malaysia (JKDM) yang melibatkan ibu pejabat Jabatan Kastam Diraja Malaysia di Putrajaya. Lokasi dipilih berdasarkan kepada terdapatnya kesemua bahagian dan pemusatan ibu pejabat JKDM. Sebanyak 198 borang soal selidik telah berjaya diedarkan. Responden terdiri daripada pegawai pengurusan dan professional di JKDM. Dapatkan kajian menunjukkan bahawa faktor-faktor demografi keseluruhannya tidak mempunyai hubungan signifikan dan positif dengan kriteria profesionalisme Islam. Ini menunjukkan faktor-faktor demografi setiap responden seperti faktor tahap pendidikan dan jawatan langsung tidak memberi kesan kepada kriteria profesionalisme Islam yang ada dalam diri setiap warga kerja JKDM. Daripada analisis ini jelas memberi gambaran bahawa pengamalan etika profesionalisme Islam sangat mengutamakan aspek nilai-nilai dalam (hati) seseorang individu. Gabung jalin kedua-dua aspek dalam (hati) dengan aspek luaran (fizikal) manusia sangatlah diperlukan bagi memperkasakan budaya kerja organisasi yang cemerlang.

**Kata kunci:** hubungan, faktor-faktor demografi, kriteria profesionalisme Islam, budaya kerja, jabatan kastam.

## PENDAHULUAN

Dalam sektor perkhidmatan awam, penjawat awam adalah golongan yang memainkan peranan penting dalam pembangunan Negara. Penjawat awam perlulah berpegang teguh kepada amalan etika dan moral berdasarkan kepada peraturan dan undang-undang yang telah ditetapkan. Mereka perlulah mempunyai tingkah laku yang baik dan mulia seperti memiliki sifat-sifat positif, berdisiplin, berintegriti, jujur, amanah dan bertanggungjawab dalam memberi bantuan dan perkhidmatan kepada masyarakat. Dalam erti kata lain, mereka perlulah mempunyai etika profesionalisme yang cemerlang. Ia berperanan sebagai piawaian kepada pelaksanaan tugas, penyempurnaan tanggungjawab dan membuat

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keputusan dalam organisasi. Dengan adanya piawaian sedemikian yang menjadi pemandu bagi memastikan prosedur yang digunakan adalah betul, hasil kerja menepati spesifikasi yang dikehendaki dan segala keputusan yang dicapai adalah tepat, konsisten dan berdaya maju. Keadaan ini dapat mengelak berlakunya penyelewengan, penyalahgunaan kuasa dan lain-lain bentuk salah laku moral di kalangan penjawat awam dalam organisasi (Nor 'Azzah Kamri, 2007). Justeru, kajian ini akan melihat sejauhmanakah wujud hubungan antara faktor-faktor demografi dengan kriteria profesionalisme Islam bagi memperkasakan budaya kerja organisasi yang cemerlang.

### **LATAR BELAKANG MASALAH**

Dalam sesebuah organisasi terdiri daripada staf sokongan dan golongan profesional yang mempunyai tugas dan tanggungjawab kepada pembangunan organisasi. Mereka merupakan agen kepada masyarakat dan menunjukkan gambaran imej sesebuah organisasi. Sekiranya warga kerja dalam sesebuah organisasi tidak mempunyai amalan etika dan moral yang baik, ianya akan membawa pelbagai masalah salahlaku, penyelewengan, penipuan dan sebagainya. Hal ini memperlihatkan kegagalan dalam pelbagai aspek profesionalisme dalam kalangan warga kerja dalam sesebuah organisasi. Keadaan ini membuktikan bahawa walaupun terdapat garis panduan kod etika yang diwujudkan, namun tingkahlaku yang menyalahi peraturan dan undang-undang dalam kalangan penjawat awam masih berleluasa. Justeru, kajian ini akan melihat sejauhmanakah terdapat hubungan antara faktor-faktor demografi dengan kriteria profesionalisme Islam.

### **OBJEKTIF KAJIAN**

Menganalisis hubungan antara faktor-faktor demografi dengan kriteria profesionalisme Islam dalam memperkasa budaya kerja organisasi.

### **METODOLOGI KAJIAN**

Kajian ini menggunakan kaedah tinjauan (*survey*) dengan pendekatan kuantitatif. Kaedah edaran borang soal selidik digunakan untuk mendapat maklumat kajian daripada responden. Kajian kuantitatif juga memberi penekanan kepada kolerasi perkaitan antara pemboleh ubah-pemboleh ubah yang wujud dalam sesuatu masalah (Chua Yan Piaw, 2006). Penyelidikan kuantitatif boleh ditafsirkan sebagai strategi penyelidikan yang menekankan kuantifikasi dalam pengumpulan dan analisis data yang melibatkan pendekatan deduktif, berasaskan falsafah positivism yang merangkumi pandangan realiti sosial sebagai luaran dan realiti objektif (Bryman, 2008).

Skop kajian menumpukan kepada ibu pejabat Jabatan Kastam Diraja Malaysia di Putrajaya. Lokasi dipilih berdasarkan kepada terdapatnya kesemua bahagian dan pemasutan ibu pejabat JKDM. Seramai 198 responden telah dipilih secara rawak daripada pegawai pengurusan dan profesional di JKDM.

Dalam kajian ini, data kuantitatif akan dianalisis menggunakan SPSS versi 16.0 (*Statistical Package for Social Science Version 16.0*) bagi memudahkan pengiraan dan memastikan ketepatan pengiraan. Menurut Majid Konting (2005) penggunaan pengaturcaraan SPSS bagi menganalisis data berstatistik dapat menghasilkan pengiraan yang tepat dan bebas daripada ralat.

## DAPATAN KAJIAN

Jadual 1: Analisis Demografi responden

Latar Belakang Responden (Jantina)	Bilangan/Peratus
Lelaki	124 (62.6%)
Perempuan	74 (37.4%)
Jumlah	198

Jadual 1 menunjukkan taburan bilangan dan peratus responden mengikut jantina, seramai 124 orang (63%) mewakili kakitangan lelaki dan 74 orang (37%) kakitangan perempuan. Peratusan tinggi daripada kalangan responden lelaki ini ada asasnya. Daripada jumlah tersebut, ianya relevan dengan jumlah sebenar kakitangan lelaki hampir 75%, manakala selebihnya adalah mewakili kakitangan wanita di JKDM.

Jadual 2: Analisis Hubungan Antara Faktor Demografi (Jantina) dengan Kriteria Profesionalisme Islam

Kriteria Profesionalisme Islam	Jantina		
	Nilai korelasi (rs)	Nilai signifikan (p)	Tahap hubungan
Memahami Tanggungjawab Sebagai Hamba Allah	.058	.414	Lemah
Memahami Fungsi Profesional	-.053	.454	Lemah
Ilmu Pengetahuan	.075	.292	Lemah
Kemahiran Menyelesaikan Masalah	.092	.199	Lemah
Kemahiran Membuat Keputusan	.206(**)	.004	Rendah
Kemahiran Komunikasi	.174(*)	.014	Lemah
Kemahiran Kepimpinan	.033	.640	Lemah
Kriteria Profesionalisme Islam keseluruhan	.091	.203	Lemah

\*\*Signifikan pada aras  $p \leq 0.01$

\*Signifikan pada aras  $p \leq 0.05$

*Sumber : Soal selidik.*

Jadual 2 di atas menunjukkan analisis bahawa kekuatan perhubungan antara faktor demografi (jantina) dengan kemahiran membuat keputusan dan kemahiran komunikasi di bawah kriteria profesionalisme Islam masing-masing adalah rendah dan lemah dengan nilai ' $r$ ' yang diperolehi ialah 0.21 dan 0.17 dan signifikan pada aras 0.01 dan 0.05. Ini bermakna terdapat hubungan yang lemah dan rendah dan signifikan antara faktor demografi (jantina) dengan kemahiran membuat keputusan dan kemahiran komunikasi. Manakala hubungan antara faktor demografi (jantina) dengan lain-lain faktor di bawah kriteria profesionalisme Islam adalah lemah dengan nilai ' $r$ ' antara -0.05 hingga 0.09 dan tidak signifikan pada aras 0.01 atau .005.

Berdasarkan Alias Baba (1999) meletakkan anggaran kekuatan perhubungan antara dua pembolehubah 0.00 - 0.20 lemah dan boleh di abaikan, 0.20 - 0.40 di anggap hubungan yang rendah, 0.40 - 0.60 sebagai hubungan sederhana, 0.60 - 0.80 sebagai hubungan yang tinggi dan 0.80 - 1.00 sebagai hubungan yang sangat tinggi.

Jadual 3: Analisis Hubungan Antara Faktor Demografi (Umur) dengan Kriteria Profesionalisme Islam

Kriteria Profesionalisme Islam	Umur		
	Nilai korelasi ( $rs$ )	Nilai signifikan ( $p$ )	Tahap hubungan
Memahami Tanggungjawab Sebagai Hamba Allah	-.074	.298	Lemah
Memahami Fungsi Profesional	.149(*)	.037	Lemah
Ilmu Pengetahuan	-.041	.568	Lemah
Kemahiran Menyelesaikan Masalah	-.022	.761	Lemah
Kemahiran Membuat Keputusan	-.012	.863	Lemah
Kemahiran Komunikasi	.059	.410	Lemah
Kemahiran Kepimpinan	.107	.135	Lemah
Kriteria Profesionalisme Islam Keseluruhan	.017	.812	Lemah

*Sumber : Soal selidik.*

Manakala Jadual 3 di atas, menunjukkan hubungan antara faktor demografi (umur) dengan memahami fungsi profesion di bawah kriteria profesionalisme Islam adalah lemah dengan nilai ' $r$ ' yang diperolehi ialah 0.15 dan signifikan pada aras 0.05. Ini bermakna terdapat hubungan yang lemah antara faktor demografi (umur) dengan memahami fungsi profesion.

Dapatkan yang sama menunjukkan hubungan antara faktor demografi (umur) dengan lain-lain faktor di bawah kriteria profesionalisme Islam adalah lemah dengan nilai 'r' antara -0.07 hingga 0.11 dan tidak signifikan pada aras 0.01 atau 0.05.

Jadual 4: Analisis Hubungan Antara Faktor Demografi (Tempoh berkhidmat) dengan Kriteria Profesionalisme Islam

Kriteria Profesionalisme Islam	Tempoh berkhidmat di JKDM		
	Nilai korelasi (rs)	Nilai signifikan (p)	Tahap hubungan
Memahami Tanggungjawab Sebagai Hamba Allah	-.096	.179	Lemah
Memahami Fungsi Profesional	.132	.063	Lemah
Ilmu Pengetahuan	.035	.629	Lemah
Kemahiran Menyelesaikan Masalah	-.008	.911	Lemah
Kemahiran Membuat Keputusan	-.065	.363	Lemah
Kemahiran Komunikasi	.025	.728	Lemah
Kemahiran Kepimpinan	.070	.326	Lemah
Kriteria profesionalisme Islam keseluruhan	.025	.731	Lemah

Sumber : Soal selidik.

Jadual 4 di atas, menunjukkan bahawa hubungan antara faktor demografi (tempoh berkhidmat di JKDM) dengan kesemua faktor di bawah kriteria profesionalisme Islam adalah lemah dengan nilai 'r' yang diperolehi antara -0.09 hingga 0.13 dan tidak signifikan pada aras 0.01 atau 0.05. Ini bermakna tidak terdapat hubungan yang signifikan antara faktor demografi (tempoh berkhidmat di JKDM) dengan kesemua faktor di bawah kriteria profesionalisme Islam.

Jadual 5: Analisis Hubungan Antara Faktor Demografi (Kelulusan Akademik) dengan Kriteria Profesionalisme Islam

Kriteria Profesionalisme Islam	Kelulusan Akademik		
	Nilai korelasi (rs)	Nilai signifikan (p)	Tahap hubungan
Memahami Tanggungjawab Sebagai Hamba Allah	.134	.062	Lemah

Memahami Fungsi Profesional	.097	.179	Lemah
Ilmu Pengetahuan	.034	.642	Lemah
Kemahiran Menyelesaikan Masalah	-.008	.917	Lemah
Kemahiran Membuat Keputusan	-.001	.987	Lemah
Kemahiran Komunikasi	.037	.608	Lemah
Kemahiran Kepimpinan	.064	.377	Lemah
Kriteria profesionalisme Islam keseluruhan	.085	.240	Lemah

Sumber : Soal selidik.

Seterusnya jadual 5 menunjukkan bahawa hubungan antara faktor demografi (kelulusan akademik) dengan kesemua faktor di bawah kriteria profesionalisme Islam adalah lemah dengan nilai ‘r’ yang diperolehi antara -0.008 hingga 0.13 dan tidak signifikan pada aras 0.01 atau 0.05. Ini bermakna tidak terdapat hubungan yang signifikan antara faktor demografi (kelulusan akademik) dengan kesemua faktor di bawah kriteria profesionalisme Islam.

Jadual 6: Analisis Hubungan Antara Faktor Demografi (Gred Jawatan) dengan Kriteria Profesionalisme Islam

Kriteria Profesionalisme Islam	Gred Jawatan		
	Nilai korelasi ( <i>rs</i> )	Nilai signifikan ( <i>p</i> )	Tahap hubungan
Memahami Tanggungjawab Sebagai Hamba Allah	-.098	.169	Lemah
Memahami Fungsi Profesional	.196(**)	.006	Lemah
Ilmu Pengetahuan	.020	.785	Lemah
Kemahiran Menyelesaikan Masalah	.055	.441	Lemah
Kemahiran Membuat Keputusan	-.030	.670	Lemah
Kemahiran Komunikasi	-.005	.940	Lemah
Kemahiran Kepimpinan	.024	.736	Lemah
Kriteria profesionalisme Islam	.050	.484	Lemah

keseluruhan			
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Sumber : Soal selidik.

Dapatan analisis jadual 6 di atas menunjukkan bahawa hubungan antara faktor demografi (gred jawatan) dengan memahami fungsi profesion di bawah kriteria profesionalisme Islam adalah lemah dengan nilai ' $r$ ' yang diperolehi ialah 0.20 dan signifikan pada aras 0.01. Ini bermakna terdapat hubungan yang lemah dan signifikan antara faktor demografi (gred jawatan) dengan memahami fungsi profesion. Manakala hubungan antara faktor demografi (gred jawatan) dengan lain-lain faktor di bawah kriteria profesionalisme Islam adalah lemah dengan nilai ' $r$ ' antara -0.09 hingga 0.05 dan tidak signifikan pada aras 0.01 atau 0.05.

Jadual 7: Analisis Hubungan Antara Faktor Demografi (Bahagian) dengan Kriteria Profesionalisme Islam

Kriteria Profesionalisme Islam	Bahagian		
	Nilai korelasi ( $rs$ )	Nilai signifikan ( $p$ )	Tahap hubungan
Memahami Tanggungjawab Sebagai Hamba Allah	- .016	.828	Lemah
Memahami Fungsi Profesion	.190(*)	.010	Lemah
Ilmu Pengetahuan	.032	.666	Lemah
Kemahiran Menyelesaikan Masalah	- .016	.828	Lemah
Kemahiran Membuat Keputusan	.075	.318	Lemah
Kemahiran Komunikasi	.091	.221	Lemah
Kemahiran Kepimpinan	- .011	.885	Lemah
Kriteria profesionalisme Islam keseluruhan	.070	.351	Lemah

Sumber : Soal selidik.

Dapatan analisis jadual 7 menunjukkan bahawa hubungan antara faktor demografi (bahagian) dengan memahami fungsi profesion di bawah kriteria profesionalisme Islam adalah lemah dengan nilai ' $r$ ' yang diperolehi ialah 0.19 dan signifikan pada aras 0.05. Ini bermakna terdapat hubungan yang lemah dan signifikan antara faktor demografi (bahagian) dengan memahami fungsi profesion. Dapatan yang sama menunjukkan hubungan antara faktor demografi (bahagian) dengan lain-lain faktor di bawah kriteria profesionalisme Islam

adalah lemah dengan nilai ‘*r*’ antara -0.02 hingga 0.09 dan tidak signifikan pada aras 0.01 atau 0.05.

### RUMUSAN

Hasil analisis keseluruhan faktor-faktor demografi dengan kriteria profesionalisme Islam menunjukkan tidak ada hubungan positif dan tidak signifikan. Keadaan ini memberi penjelasan bahawa pengamalan etika profesionalisme Islam tidak boleh diukur hanya semata-mata aspek fizikal sahaja, malah aspek spiritual perlu digabung jalin bagi menghasilkan pembentukan akhlak yang baik dalam kalangan warga kerja organisasi. Dalam erti kata lain, semakin tinggi tahap pendidikan dan tinggi jawatan seseorang responden, tidak semestinya responden tersebut memiliki kriteria Profesionalisme Islam yang lebih menonjol. Terdapat faktor lain yang melibatkan aspek nilai dalaman yang akan mempengaruhi kriteria Profesionalisme Islam seseorang pegawai, contohnya komitmen dan keazaman. Jika responden itu memiliki komitmen yang tinggi terhadap pekerjaannya, maka semakin tinggilah kriteria Profesionalisme Islam yang ditunjukkannya. Nilai-nilai positif inilah yang mampu membawa warga kerja yang cemerlang ke arah memperkasakan budaya kerja organisasi.

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# **BOARD GOVERNANCE, DIVERSITY AND EFFICIENCY: EVIDENCE FROM ASEAN-5 COMMERCIAL BANKS**

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Mohd. Zulkhari Bin Mustapha

## **ABSTRACT**

The role of sound corporate governance in the banking industry is exacerbated following the disastrous effects of the Asian Financial Crisis and the Global Financial Crisis in 1998 and 2008 respectively. A common theme to the crises was the tendency of banks to engage in risky business such as off-balance sheet and imprudent lending activities, which contributed to the failure in resource allocation and of the payment system. A key aspect of corporate governance is the effectiveness of the board of directors to steer commercial banks to greater accountability and ultimately enhancing performance. This study examines the effect of board governance and diversity on the efficiency of commercial banks in Malaysia, Indonesia, Thailand, Singapore and the Philippines or ASEAN-5. Using unbalanced panel data from 1998 to 2012, the results of Generalized Least Squares regression show that board size, ratio of independent directors and board diversity variables have positive effect on bank efficiency. However, the net effect of one board governance mechanism is more likely to be contingent on the level of corporate outcome that it is expected to influence. High efficiency banks seem to benefit from a larger board size, higher ratio of independent directors and board diversity. This study provides supporting evidence for the results of prior studies that showed that the effects of board size and board independence vary and is more likely to be contingent on the level of corporate outcome that it is expected to influence.

**Keywords:** corporate governance, board of directors, board diversity, bank efficiency, ASEAN-5

## **1.0 INTRODUCTION**

The Global Financial Crisis in 2008 saw the collapse or bail out of major financial institutions, particularly in the United States and Europe. ASEAN financial institutions had a similar experience during the Asian Financial Crisis in 1998. The two major crises revealed a common theme that was the failures of corporate governance in financial institutions in monitoring risky non-traditional business activities. In response to the disastrous effect of the Global Financial Crisis, the Basel Committee on Banking Supervision (BCBS) initiated a regulatory measure to enhance the resilience of the banking sector. BCBS introduced a package of reforms focusing on the role of board governance as an integral component of corporate governance framework for banking institutions. This study examines the relationship between board size, director independence, board diversity and efficiency of

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ASEAN-5 commercial banks. ASEAN-5 offers an excellent opportunity to study this relationship because it was exposed to the Asian Financial Crisis. Each country instigated a series of governance reforms mainly focusing on strengthening the role of board of directors in response to the crisis.

Sound governance of banks is not only crucial to safeguard the interest of various stakeholders, in particular, the depositors but also increases the efficiency of banks, which is a necessary requirement for a sound financial system. Flannery (1998) asserts that good corporate governance practices are crucial in the financial system in order to minimize externalities that will create additional risk. Agency theory emphasizes the role of board governance as the first line of defense for shareholders against potential risky behavior of bank managers. Prior studies suggest a few reasons in highlighting the importance of bank board governance. First, agency problems are highly relevant in banking business because there is less transparency in their activities (Levine, 2003) mainly due to information asymmetries (Furfine, 2001). Second, bank directors are accountable for a range of stakeholders such as depositors, clients, regulators, creditors and investors. Third, banks have a key role in the economy especially in ensuring liquidity that could spur economic activities and growth. Finally, in ASEAN-5 bank board governance plays a special role to prevent incident of bail out when they fail and help to restrain the incident of connected lending to family owners and conglomerates (Charumilind et al. 2006).

Corporate governance codes emphasize the role of board of directors particularly the directors' independence and size of the board so as to ensure effectiveness of the boards. However, theory provides inconsistent views as to the effect of these two board characteristics on the control and performance of firms. Further, empirical evidence is also inconclusive. Most prior studies focused on corporate governance in commercial corporations and excluded financial institutions from their sample. Hence, it is unsurprising that little is known about the effectiveness of board of directors in commercial banks. It is timely that an empirical investigation of the relationship between board monitoring and diversity and the efficiency of listed commercial banks is initiated in ASEAN after more than a decade of efforts to improve bank governance in the region. We envisage that this study will provide evidence of the effectiveness of board governance in enhancing the efficiency of the selected commercial banks.

This study distinguishes itself from other studies by measuring the performance of the banks using cost and profit efficiency rather than the conventional profitability ratios (ROA, ROE and Tobin's Q). Efficiency analysis provides a more holistic view of the ability of the banks to manipulate their factors of production in cost minimization and profit maximization, something that financial ratios fail to take into consideration. The efficiency level of banks is important because their long-term survivability depends on their ability to effectively identify and provide the types of financial products demanded by the public at competitive prices. The study incorporates data from 102 banks from the 1999 to 2012, which covers the 1997 Asian Financial Crisis and the Global Financial Crisis of 2008-2009. In addition, this paper contributes to the existing literature by providing new empirical evidence post regulatory and governance changes on the efficiency of the ASEAN-5 commercial banks. No investigation has been conducted on how the banking industry in ASEAN-5 has performed after undergoing this structural change.

The rest of this paper is organized as follows. A survey of related literature and development of hypotheses are provided in Section 2. Section 3 describes the data, sources, and the research methodology. Section 4 reports the results. Section 5 concludes this paper.

## 2. RELATED LITERATURE AND HYPOTHESIS DEVELOPMENT

### 2.1. Board Monitoring

#### **Board Size and Bank's Efficiency**

According to Kiel and Nicholson (2003), there are several competing theories to explain the association between board size and performance. On one hand, smaller size boards have a greater incentive to monitor the management team due to their nimbleness and cohesiveness, as well as their lower coordination and communication costs and 'free riding' issues (Jensen, 1993). In contrast, larger boards are less effective monitors than smaller boards because they lack cohesiveness, and there are fewer opportunities to express ideas and opinions due to limited time available at board meetings. There is also a greater tendency for conflicts and disagreements that slow down the decision making process (Lipton and Lorsch, 1992). The findings of several empirical studies support the theoretical benefits of smaller boards (e.g. Staikouras et al., 2007).

The proponents of larger boards assert that they improve firm performance due to their access to greater networking opportunities and highly skilled employees. Accordingly, several studies observed that board size positively affects bank performance (e.g., Adams and Mehran, 2008; Pathan and Faff, 2013) and efficiency (Tanna et al., 2011). A few studies reported inconclusive results (de Andres and Vallezado, 2008; Kiel and Nicholson, 2003). Accordingly, we hypothesize that:

**H<sub>1</sub>:** Bank board size is negatively related with bank's efficiency.

#### **Board Independence and Bank's Efficiency**

The governance role of the board of directors is widely acknowledged, hence, corporate governance reforms around the globe have focused on strengthening the board's monitoring role by appointing a higher number of independent directors to boards. Independent directors play a crucial role in this respect, as they are commonly believed to be better monitors of managers because they want to protect their reputation in the directorship market (Fama and Jensen, 1983). In addition, by virtue of being free from any relationship with executive directors, independent directors are less beholden to management. Thus, they can bring unbiased and diverse opinions and views into board deliberations and decision making, and they are free from conflict of interest when monitoring managers. Further, independent directors have vast experience and skills, which enable them to contribute different perspectives to tackle management problems and strategic issues. In this regard, they have a significant advisory role within the board. Nonetheless, prior empirical studies documented inconclusive findings on the link between board independence and firm performance (Bhagat and Black, 2002).

On the one hand, board independence enhances firm market value (Black et al., 2006) and bank performance (de Andres and Vallezado, 2008). On the other hand, a few studies have

failed to show any systematic relationship between board independence and bank efficiency in the United States (Pi and Timme, 1993) or a relationship to bank performance in Asian emerging markets (Zulkafli and Samad, 2007), Europe (Staikouras et al., 2007), the United States (Adams and Mehran, 2008). Hence, we hypothesize that:

**H<sub>2</sub>:** The proportion of independent directors on the board is positively related with bank's efficiency.

### **Board Diversity and Bank's Efficiency**

Aspects of board diversity include age, gender diversity, educational background, ethnicity and political influences. The fundamental role of the board of directors is to control and monitor managers on behalf of the shareholders so that agency problems can be eliminated, or at least minimized (Fama and Jensen, 1983). To perform this role effectively, boards need to be independent in their decision making. Carter et al. (2003) argued that board diversity can lead to board independence because directors from a different gender, ethnicity, educational and cultural background tend to be more activist in the boardroom, where they ask questions that are different from those of the other traditional directors. According to Carter et al. (2003), board diversity is important for corporations as diverse boards offer fresh and multiple perspectives to problem solving. Thus, board diversity has a positive impact on firm performance and firm value (Erhardt et al., 2003) because the unique attributes that members bring to the board contribute to high quality decisions, an increase in creativity and innovation (Cox and Blake, 1991), and enhanced problem-solving ability (Miller et al., 1998).

Past studies have examined demographic board diversity in terms of director age (Mahadeo et al., 2012), gender (Carter et al., 2010) and ethnicity (Nielsen and Nielsen 2013). Gender diversity is important due to the differences between men and women with respect to personality, communication style, educational background and career experience and expertise (Liao et al., 2014). Women have been found to be more committed and involved, more diligent and less self-interest oriented, thus they improve the decision-making process and enhance board effectiveness and firm performance. Diversity in educational backgrounds, particularly with respect to board members having finance or accounting backgrounds, will enable boards to make better economic decisions and thus lead the company to perform positively (Mahadeo et al., 2012). Directors with finance or accounting background enhance financial reporting quality (Abbott et al., 2003) and therefore contribute to higher efficiency level of the firms. Hence, we hypothesize that:

**H<sub>3</sub>:** Board diversity has a positive effect on bank's efficiency.

### **3. METHODOLOGY**

We use Data Envelopment Analysis (DEA) to estimate the cost and profit efficiency scores of commercial banks in ASEAN-5. These scores will be employed in the second stage of the estimation to determine the effect of board monitoring and board diversity on the efficiency level of commercial banks in the region. Each of the commercial banks is considered as a Decision-Making Unit (DMU) aiming to minimize its operating costs and maximize its profits. The DEA method is able to consistently measure the efficiency level of multiple inputs and multiple outputs. This is crucial because banks use multiple inputs, such as labor, capital and deposits, to create various types of financial products. Also, DEA solves independent and identically distributed problems in the second-stage of estimation because the efficiency scores obtained are not based on the residuals obtained from a set of econometric

estimations. Hence, it requires no prior specification of functional form, as compared to the parametric method.

Cost efficiency is defined as the ability of the banks to minimize costs by manipulating the input mix given the price of their inputs and the outputs. Cost efficiency for  $N$  number of firms ( $i=1,\dots,N$ ) is defined as the objective of the firms seeking to minimize costs by using a vector of  $p$  inputs  $x_i = (x_{i1}, \dots, x_{ip}) \notin \mathfrak{R}_{p++}$  given the price of the inputs  $w_i = (w_{i1}, \dots, w_{ip}) \notin \mathfrak{R}_{p++}$  to produce a vector of  $q$  outputs  $y_i = (y_{i1}, \dots, y_{iq}) \notin \mathfrak{R}_{q++}$ . The cost efficiency for  $j$ th bank can be estimated based on Equation 1:

$$\begin{aligned} & \text{Min} \sum_p w_{pj} x_{pj} \\ & \text{s.t.} \sum_i \lambda_i y_{iq} \geq y_{jq} \forall q \\ & \quad \sum_i \lambda_i x_{ip} \leq x_{jp} \forall p \\ & \quad \sum_i \lambda_i = 1; \lambda_i \geq 0; i = 1, \dots, N \end{aligned} \tag{1}$$

The cost efficiency for the  $j$ th bank is given by the ratio of minimum costs to actual costs, as defined in Equation 2:

$$CE_j = \frac{\sum_p w_{pj} x_{pj}^*}{\sum_p w_{pj} x_{pj}} \tag{2}$$

Cost efficiency (CE) ranges between “0” and “1”, and a DMU with a score of “1” is said to be the most efficient bank as compared to the other DMUs in the sample.

Next, the profit efficiency scores are estimated because banks are not just focused on cost minimization but also on profit maximization. The alternative profit efficiency estimation is used in this study because banks are able to use their local market power to price their deposits and loans in the market (Humphrey and Pulley, 1997). Furthermore, banks can also differentiate their financial products based on their targeted customers, geographical areas and also over time. The alternative profit efficiency for bank  $j$ th can be expressed as follows:

(3)

$$\begin{aligned}
& \text{Max } R_j - \sum_p w_{jp} x_{jp} \\
\text{s.t.} & \sum_i \lambda_i R_i \geq R_j \\
& \sum_i \lambda_i y_{iq} \geq y_{jq} \forall q \\
& \sum_i \lambda_i x_{ip} \leq x_{jp} \forall p \\
& \sum_i \lambda_i = 1; \lambda_i \geq 0; i = 1, \dots, N
\end{aligned}$$

where  $R$  is the revenue of the bank  $j$ . The alternative profit for bank  $j$ th is given by:

$$0 \leq APE_i = \frac{R_j - \sum_p w_{jp} x_{jp}}{\sum_q R_j^* - \sum_p w_{jp} x_{jp}^*} \leq 1 \quad (4)$$

The variable return to scale (VRS), by setting  $\sum_i \lambda_i = 1$ , is used in the estimation of both cost and profit efficiency. VRS is said to provide a better estimation as compared to constant return to scale because banks may not be able to proportionally increase both inputs and outputs simultaneously to minimize cost and maximize profit.

The selection of inputs and outputs in this study is based on the value-added approach proposed by Berger and Humphrey (1992). Deposits are treated as outputs whereas the interest paid on deposits is treated as an input price of the banks. The financial products produced by the commercial banks, namely, loans, investments, off-balance sheet activities and deposits, are used as the output vectors of the banks. Off-balance sheet activities are included in the analysis because the banking industry in the new era not only specializes in deposit taking and granting loans, but also profits by offering off-balance sheet services to its customers. The input vectors used in the production of financial products and services are personnel costs, capital costs and the cost of loanable funds. The price of labor is calculated by dividing total personnel costs by total assets. The price of capital is obtained by dividing total depreciation of the banks by total fixed assets. The price of loanable funds is computed by dividing total interest expenses by total loanable funds. All input and output vectors employed in this study are denominated in USD (million).

In the second stage of analysis, a Tobit regression based on panel data estimation (Equation 5) will be employed to determine the effect of board monitoring and board diversity on the bank efficiency. The Tobit regression is employed in the estimation because of the nature of the independent variables that take a value between "0 and 1".

$$\begin{aligned}
Efficiency_{jt} = & \beta_0 + \beta_1 \ln BS_{jt} + \beta_2 IND_{jt} + \beta_3 FIN_{jt} + \beta_4 GEN_{jt} + \beta_5 FOR_{jt} \quad (5) \\
& + \beta_6 \ln SIZE_{jt} + \beta_7 ROA_{jt} + \beta_8 ROE_{jt} + \beta_9 ETA_{jt} + \varepsilon_{jt}
\end{aligned}$$

where:

$efficiency_{jt}$  = cost efficiency or profit efficiency of  $j^{th}$  bank at time  $t$ .

$BS_{it}$  = natural logarithm of the total number of directors on the board of  $j^{th}$  bank at time  $t$ .

$IND_{it}$  = percentage of the number of independent directors of  $j^{th}$  bank at time  $t$ .

$FIN_{it}$  = percentage of directors with education in finance of  $j^{th}$  bank at time  $t$ .

$GEN_{it}$  = percentage of female directors on the board of  $j^{th}$  bank at time  $t$ .

$FOR_{it}$  = percentage of foreign directors on the board of  $j^{th}$  bank at time  $t$ .

$SIZE_{it}$  = natural logarithm of the total assets of  $j^{th}$  bank at time  $t$ .

$ROA_{it}$  = Return On Assets of  $j^{th}$  bank at time  $t$ .

$ROE_{it}$  = Return On Equity of  $j^{th}$  bank at time  $t$ .

$ETA_{it}$  = Equity to Total Assets of  $j^{th}$  bank at time  $t$ .

$\varepsilon_{it}$  = error-terms of  $j^{th}$  bank at time  $t$ .

The estimation method of the Tobit regression is obtained using unbalanced-panel data based on a Generalized Least Squares estimation that allows for a fixed and random effects estimation of the model. This is crucial for the selection of the model in any panel data study because the firm effects may be correlated with the explanatory variables in any time period. We perform the necessary preliminary test to examine heteroskedasticity in our data.

### 3.1 Data and Explanatory Variables

Financial data between 1999 and 2012 were collected from Bankscope database. Only banks with financial data for three years or more were selected for the analysis. The selection criteria provided a sample of 102 banks or 1,108 bank-year observations. Board monitoring and diversity variables were extracted manually from the annual reports.

#### Governance Variables

We measure board size (BS) by determining the number of directors appointed to the board. Director's independence (IND) is defined as the percentage of independent directors in the board. Independent directors are directors that are not employees of the banks and, by virtue of being free from any relationship with executive directors, are less beholden to management. Board diversity is represented by the percentage of female directors on the board (GEN), the percentage of directors with an educational background in finance (FIN) and the percentage of directors from foreign countries (FOR).

#### Control Variables

This study controls for bank asset size because the level of efficiency may be different for banks of different scales of operation. Bank size is positively related to bank efficiency level because banks tend to exhibit economies of scale and capture market share given a larger scale of operation. We also control for profitability in terms of return on assets (ROA) and return on equity (ROE). Profitability affects the way banks conduct their daily business activities, especially in deciding on the price of outputs and the usage of inputs. Next, the equity to total assets (ETA) of the bank is included to control for capital requirements. A bank with a higher ETA is better capitalized and able to withstand future economic shocks, which contributes to a higher efficiency level in the case of both cost and profit.

Table 1 presents the summary statistics for the variables. On average, banks in the ASEAN-5 region are relatively inefficient in terms of cost and profit efficiency, with average efficiency scores of 31.6% and 34.8% respectively. They could have further reduced their input mix by 68.4%, given the price of inputs in order to achieve a given level of output in their cost minimization objective banks could reduce 65.2% of the input mix in their objective to achieve a given level of profit. The average board size is 7 directors, which is quite similar to the finding of Adnan et al. (2011). The mean size of the board is considered optimum as suggested by Jensen and Ruback (1983), and the optimal size of corporate boards should not be more than 7 or eight members to ensure their effectiveness. The average board size in Indonesia and Thailand is five and 12 directors respectively. Board size of Thai commercial banks has not changed much compared to the findings of Pathan et al. (2007). The table also shows that banks, apart from those in the Philippines, have at least 30% of the board comprised of independent directors, which is consistent with the study of Adnan et al. (2011). Further, Singaporean commercial banks have the largest composition of independent directors with an average of 61.8%. This may be due to Singapore's more independent and developed financial market as compared to other countries in the ASEAN-5.

Table 1 also shows that an average of 42.5% of directors in the ASEAN-5 have an educational background in finance. The percentage is relatively small compared to the developed countries (see Göhlmann and Vaubel, 2007). In terms of the percentage of female directors, banks reported an average of 11.1% of female board members, which is in line with Liao et al. (2014). Singaporean commercial banks have the lowest percentage of female directors with an average of 3.3%. In terms of foreign directors, the percentage of foreign directors on the boards of banks in the region is 5.7%. This finding suggests that the ownership of commercial banks in the region is still highly regulated, which restricts foreign investment in the banking industry. Singapore reported the highest percentage of foreign directors on the boards of commercial banks with an average of 9.7%.

We examine multicollinearity issue by conducting correlation analysis for the independent and dependent variables. We find no significant correlation between the variables and hence, the model does not suffer from serious multicollinearity.

#### **4. RESULTS AND DISCUSSION**

Table 2 and Table 3 present the results of the Tobit regression for cost and profit efficiency, respectively. The base model is Model 1, which is estimated based on Equation 5. Consistent with our expectation, the results from Model 1 show that board size is negatively related to cost and profit efficiency. This finding supports the theoretical proposition that smaller boards provide better monitoring than larger boards, thus enhancing both the cost and profit efficiency of the sample banks. The finding is similar to that of Kiel and Nicholson (2003), and Staikouras et al. (2007). Further, we find that board independence is negatively related to both cost and profit efficiency. This finding suggests that, contrary to expectations, greater board independence reduces the cost and profit efficiency of the sample banks. It appears that the finding contradicts the positive effect of board independence as envisaged by various codes on corporate governance. As for the board diversity variables the results show that they do not have an effect on bank efficiency. This is contrary to our expectation, as board diversity should promote greater efficiency and performance at the banks since

each board member has unique cognitive attributes that can help to achieve high quality decisions and increase creativity and innovation (Cox and Blake, 1991).

We suspect that the level of cost and profit efficiency in the commercial banks in ASEAN-5 influences the corporate control process. Therefore, we further examine the effect of corporate governance factors on cost and profit efficiency using an interaction term to differentiate corporate governance practices of high efficiency banks. A dummy variable is then assigned to the top 50 banks in terms of cost and profit efficiency. Then, this variable is interacted with the board size, percentage of independent directors, percentage of female directors and percentage of foreign directors. This process is done to investigate the significance of the contribution of the board governance attributes based on the level of bank's efficiency.

Table 1: Descriptive statistics of the variables

Full Sample							
	COST	PROFIT	BS	IND	FIN	GEN	FOR
Mean	0.316	0.348	7.901	0.381	0.425	0.111	0.057
Standard Deviation	0.342	0.402	1.607	0.162	0.210	0.125	0.140
Minimum	0.000	-0.216	2.000	0.000	0.000	0.000	0.000
Maximum	1.000	1.000	19.000	1.500	2.000	0.667	2.250
Count	1108	1108	1108	1108	1108	1108	1108
Indonesia							
Mean	0.274	0.271	5.308	0.384	0.512	0.142	0.072
Standard Deviation	0.318	0.342	1.545	0.181	0.267	0.144	0.184
Minimum	0.004	-0.014	2.000	0.000	0.000	0.000	0.000
Maximum	1.000	1.000	15.000	1.500	2.000	0.667	2.250
Count	427	427	427	427	427	427	427
Malaysia							
Mean	0.497	0.513	8.844	0.436	0.419	0.052	0.018
Standard Deviation	0.353	0.455	1.268	0.120	0.138	0.082	0.062
Minimum	0.000	-0.216	5.000	0.182	0.214	0.000	0.000
Maximum	1.000	1.000	16.000	0.750	0.857	0.333	0.286
Count	253	253	253	253	253	253	253
The Philippines							
Mean	0.143	0.129	10.723	0.288	0.346	0.124	0.094
Standard Deviation	0.255	0.269	1.349	0.106	0.112	0.108	0.150
Minimum	0.001	0.001	4.000	0.083	0.077	0.000	0.000
Maximum	1.000	1.000	19.000	0.800	0.667	0.400	0.625
Count	192	192	192	192	192	192	192
Singapore							

Mean	0.443	0.617	9.245	0.618	0.365	0.033	0.097
Standard Deviation	0.366	0.407	1.396	0.105	0.095	0.048	0.055
Minimum	0.013	0.007	3.000	0.375	0.214	0.000	0.000
Maximum	1.000	1.000	14.000	0.818	0.667	0.143	0.182
Count	50	50	50	50	50	50	50
<b>Thailand</b>							
Mean	0.309	0.458	11.801	0.335	0.333	0.129	0.031
Standard Deviation	0.332	0.407	1.291	0.134	0.160	0.123	0.068
Minimum	0.008	0.003	8.000	0.053	0.067	0.000	0.000
Maximum	1.000	1.000	19.000	0.700	0.889	0.375	0.222
Count	186	186	186	186	186	186	186

Notes: COST=cost efficiency score, PROFIT=profit efficiency score, BS=board size, IND=% of independent directors, FIN=% of directors with finance education, GEN=% of female directors, FOR=% of foreign directors

Tables 2 and 3, Models 2 to 6 report the Tobit regression results when we interact each of the corporate governance and board diversity variables with the dummy variable representing the high efficiency banks. We find contrasting findings from the results of our base model. The base model that consists of all banks shows a negative link between board size and cost efficiency. In Model 2, we find that board size is positively related to both cost and profit efficiency at the 1% significance level. Banks with a higher level of efficiency seem to benefit from a larger board size. Lower efficiency banks seem to benefit from smaller board. Thus, the result of the base model is possibly driven by banks in the lower rank. Our finding casts doubt on the theoretical proposition that either large or small board size is always the best practice to be followed in all firms. The differential effect of firm-level cost efficiency should be taken into consideration in determining a board size that could result in a positive corporate outcome.

Tables 2 and 3, Models 2 to 6 report the Tobit regression results when we interact each of the corporate governance and board diversity variables with the dummy variable representing the top 50 banks in terms of cost and profit efficiency. We find contrasting findings from the results of our base model. We find that board size is positively related to both cost and profit efficiency at the 1% significance level. Higher efficiency banks seem to benefit from a larger board size. Lower efficiency banks seem to benefit from smaller board size. Thus, the result of the base model is possibly driven by lower efficiency banks. Our findings seem to support both theoretical propositions on the benefit of either smaller or larger board size, but this is confounded by the level of cost efficiency. Our finding casts doubt on the theoretical proposition that either large or small board size is always the best practice to be followed in all firms. The differential effect of firm-level cost efficiency should be taken into consideration in determining a board size that could result in a positive corporate outcome.

Model 3 shows that the positive effect of board independence is contingent upon the level of both cost and profit efficiency. High efficiency banks seem to benefit from the greater monitoring of boards with a higher ratio of independent directors. Whilst our result is in line with some prior studies (e.g., Pathan et al. 2007; de Andres and Valletudo, 2008), we find that this positive effect holds true for high efficiency banks only. Our analysis suggests that greater board independence does not necessarily improve corporate outcomes of all firms, as board independence has differing effects on the efficiency of banks at different levels.

In Models 4, 5 and 6, we find the board diversity variables of the high efficiency banks to be positively related to both efficiency measures at the 1% significance level. Thus, our results suggest that this positive relationship between board diversity and performance only holds for the high efficiency banks. They seem to benefit from board diversity compared to lower efficiency banks. Similar to the findings of board monitoring our analysis suggests that greater board diversity does not necessarily improve corporate outcomes of all firms, as it has differing effects on the efficiency of banks at different levels.

Overall, our findings suggest that the net effect of one corporate governance mechanism is more likely to be contingent on the level of corporate outcome that it is expected to influence. Further, our work provides supporting evidence of the results of prior studies that showed that the effects of board size and board independence vary, for example, based on firm complexity (Coles et al., 2008), industry type and firm size (Di Pietra et al., 2008), and board leadership structure (Elsayed, 2011).

Table 2: Estimated Tobit regression results for cost efficiency

Variable	Model (1)	Model (2)	Model (3)	Model (4)	Model (5)	Model (6)
LNBS	-0.123*** (0.043)	-0.210*** (0.035)	-0.108*** (0.036)	-0.095*** (0.038)	-0.131*** (0.042)	-0.115*** (0.043)
IND	-0.314*** (0.084)	-0.114* (0.068)	-0.656*** (0.072)	-0.315*** (0.074)	-0.320*** (0.081)	-0.302*** (0.083)
FIN	0.025 (0.073)	0.013 (0.059)	-0.032 (0.061)	-0.357*** (0.069)	0.035 (0.071)	0.036 (0.073)
GEN	0.051 (0.097)	0.040 (0.078)	0.013 (0.081)	0.036 (0.086)	-0.409*** (0.107)	0.044 (0.096)
FOR	-0.126 (0.086)	-0.025 (0.070)	-0.108 (0.072)	-0.068 (0.076)	-0.095 (0.083)	-0.478*** (0.124)
LNTA	-0.154*** (0.012)	-0.045*** (0.011)	-0.063*** (0.011)	-0.072*** (0.012)	-0.119*** (0.013)	-0.146*** (0.013)
ROA	-0.002 (0.012)	0.000 (0.010)	-0.008 (0.010)	-0.006 (0.011)	0.000 (0.012)	-0.002 (0.012)
ROE	-0.420*** (0.096)	-0.215*** (0.078)	-0.266*** (0.080)	-0.257*** (0.085)	-0.334*** (0.093)	-0.414*** (0.095)
ETA	0.114 (0.096)	0.066 (0.077)	0.092 (0.080)	0.003 (0.085)	0.060 (0.092)	0.111 (0.095)
AC*LNBS	- -	0.177*** (0.008)	- -	- -	- -	- -
AC*IND	- -	- -	0.826*** (0.040)	- -	- -	- -
AC*FIN	- -	- -	- -	0.624*** (0.037)	- -	- -
AC*GEN	- -	- -	- -	- -	0.885*** (0.101)	- -
AC*FOR	- -	- -	- -	- -	- -	0.497*** (0.127)
Constant	1.893*** (0.115)	0.957*** (0.101)	1.139*** (0.103)	1.224*** (0.109)	1.641*** (0.114)	1.811*** (0.116)
Sigma_u	0.429	0.198	0.227	0.250	0.361	0.408

Sigma_e	0.227	0.183	0.190	0.200	0.219	0.225
rho	0.781	0.538	0.589	0.608	0.732	0.766
Overall F-Test	29.37***	93.76***	81.11***	62.24***	36.09***	28.36***
Poolability F-test	12.69***	5.94***	6.18***	5.63***	9.23***	11.19***
BP LM Test	656.88***	379.33***	353.70***	221.70***	435.31***	519.54***
Hausman Test	127.15***	70.09***	114.26***	226.10***	65.21***	182.08***

Notes: \*, \*\*, \*\*\* indicates 10%, 5% and 1% significance level respectively. The standard error of the coefficient is in parentheses. LNBS=board size AC\*LNBS=bank with above average cost efficiency and higher board size, AC\*IND=bank with above average cost efficiency and percentage of independent directors, AC\*FIN=bank with above average cost efficiency and directors with education in finance, AC\*GEN=bank with above average cost efficiency and percentage of female directors, AC\*FOR=bank with above average cost efficiency and percentage of foreign directors

Table 3: Estimated Tobit regression results for profit efficiency

Variables	Model (1)	Model (2)	Model (3)	Model (4)	Model (5)	Model (6)
LNBS	-0.111** (0.053)	-0.206*** (0.036)	-0.058 (0.039)	-0.029 (0.043)	-0.109*** (0.050)	-0.099* (0.052)
IND	-0.357*** (0.103)	-0.043 (0.069)	-0.927*** (0.078)	-0.357*** (0.084)	-0.400*** (0.098)	-0.341*** (0.101)
FIN	0.062 (0.090)	0.042 (0.060)	-0.001 (0.066)	-0.506*** (0.077)	0.102 (0.085)	0.083 (0.088)
GEN	-0.048 (0.119)	-0.092 (0.079)	-0.135 (0.087)	-0.068 (0.097)	-0.737*** (0.131)	0.002 (0.116)
FOR	-0.171 (0.106)	-0.047 (0.071)	-0.123 (0.077)	-0.067 (0.086)	-0.100 (0.101)	-0.844*** (0.145)
LNTA	-0.245*** (0.015)	-0.018 (0.012)	-0.044*** (0.013)	-0.072*** (0.015)	-0.171*** (0.016)	-0.224*** (0.015)
ROA	0.017 (0.015)	0.001 (0.010)	0.002 (0.011)	0.003 (0.012)	0.015 (0.014)	0.018 (0.014)
ROE	-0.721*** (0.117)	-0.136* (0.080)	-0.238*** (0.087)	-0.302*** (0.097)	-0.522*** (0.113)	-0.668*** (0.115)
ETA	0.327*** (0.117)	-0.030 (0.079)	0.133 (0.086)	0.029 (0.096)	0.170 (0.112)	0.316*** (0.115)
AP*LNBS	-	0.266*** (0.008)	-	-	-	-
AP*IND	-	-	1.241*** (0.042)	-	-	-
AP*FIN	-	-	-	0.925*** (0.041)	-	-
AP*GEN	-	-	-	-	1.264*** (0.121)	-
AP*FOR	-	-	-	-	-	0.926*** (0.140)
Constant	1.404*** (0.123)	0.672*** (0.109)	0.935*** (0.118)	1.140*** (0.132)	2.040*** (0.144)	2.422*** (0.140)
Sigma_u	0.429	0.180	0.223	0.269	0.479	0.561
Sigma_e	0.227	0.186	0.204	0.226	0.264	0.272
rho	0.781	0.484	0.546	0.587	0.767	0.810
Overall F-Test	44.39***	212.98***	160.09***	111.09***	55.09***	46.07***
Poolability F	11.66***	6.62***	6.58***	5.69***	9.17***	10.68***
BP LM Test	369.19***	470.30***	453.61***	258.67***	401.50***	337.22***

Hausman Test	305.11***	71.60***	54.77***	155.49***	158.39***	210.31***
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Notes: \*, \*\*, \*\*\* indicates 10%, 5% and 1% significance level respectively. The standard error of the coefficient is in parentheses.

## 5. CONCLUSION

This study examined the relationship between board monitoring and board diversity and the efficiency of ASEAN-5 commercial banks. We found that board monitoring and diversity were confounded by the level of bank efficiency. The finding casts doubt on the theoretical proposition that either large or small boards are always the best practice to be followed in all firms. The differential effect of firm-level cost efficiency should be taken into consideration in determining the size of board needed to achieve a positive corporate outcome. Our finding also implies that greater board independence and board diversity bring about a greater benefit to both cost and profit efficiency than larger board size does on the same. Therefore, we conclude that higher efficiency banks seem to benefit from highly independent and diversified board of directors.

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# PENGARUH KEPIMPINAN KEPALA DESA TERHADAP KUALITI PERKHIDMATAN AWAM : KAJIAN KES DESA MISKIN KABUPATEN INHIL RIAU

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## ABSTRAK

Kualiti perkhidmatan awam di desa Kabupaten Indragiri Hilir Riau terdapat beberapa faktor yang mempengaruhi terutama oleh kepimpinan dari kepimpinan kepala desa terhadap kualiti perkhidmatan awam. Kajian ini bertujuan untuk mengkaji pengaruh kepimpinan kepala desa terhadap kualiti perkhidmatan awam di desa miskin Kabupaten Indragiri Hilir Riau. Populasi desa kajian adalah 85 buah desa miskin. Sampel kajian adalah 9buah desa miskin dari 85 buah desa miskin.Responden seramai 290 orang telah terpilih mewakili 9 buah desa miskin.Teorit kepimpinan situasional (*situationalleadershiptheory*) dan teori *Blanchard* telah berkesan dalam kajian. Kaedahkajian yang diguna pakai dalam kajian ini adalah soal selidik. Soalselidik diguna pakai untuk menelaah persepsi responden terhadap pengaruh kepimpinan kepala desa terhadap kualiti perkhidmatan awam di desa miskin. Pengujian hipotesis pengaruh kepimpinan kepala desa terhadap kualiti perkhidmatan awam menggunakan teknik regresi dengan *uji t*, *uji F* dan *koefisien determinasi*. Dapatkan kajian ini menunjukkan ada pengaruh yang signifikanantara gaya kepimpinan kepala desa terhadap kualiti perkhidmatan awam di desa miskin. Gaya arahan dan gaya delegasi merupakan kedua-dua gaya kepimpinan yang berpengaruh secara dominan di desa miskin.Dikatakan *R Square*(86%)merupakan kontribusi secara bersama-sama yang dijelaskan oleh variabel independen iaitu, Gaya arahan, Gaya perundingan, Gaya keterlibatan, Gaya delegasi, terhadap kualiti perkhidmatan awam.Sokongan Kepimpinan kepala desa pada desa miskin ini memberi pentadbiran secara berkualiti terhadap perkhidmatan awam.Usaha peningkatan kualiti perkhidmatan awam ini berupa *latihan&bengkel* mampu meningkatkan *technical skill &managerial skill* pemimpin bagi kepimpinan kepala desa.Kajian ini mencadangkan latihan dan bengkel diberikan kepada Kepala Desa untuk mengubal gaya kepimpinan arahan dan delegasi kepada gaya yang lebih bersesuaian untuk mengubal kondisi desa miskin Kabupaten Inhil Riau.

**Kata kunci:** Kepimpinan kepala desa,Kualiti perkhidmatan awam, Desa miskin

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## PENDAHULUAN

Kepala desa adalah seorang pemimpin desa yang menyelenggarakan kerajaan desa untuk mengatur kepentingan warga desa. Kepala desa dipilih oleh warga desa melalui pilihan raya. Hubungan Kepimpinan Kepala desa sangat erat, kerana kepimpinan kepala desa memiliki tugas pokok iaitu menyelenggarakan peningkatan kualiti perkhidmatan bagi warga desanya. Dalam perspektif kepimpinan desa, pengaruh kepimpinan Kepala Desa diarahkan untuk mencapai tujuan organisasi pemerintah desa. Gaya kepimpinan dari seorang Kepala Desa bertanggungjawab menjalankan tugas pokok pemerintahan. Dalam menjalankan tugas tersebut mesti dilaksanakan secara merata-rata untuk memberikan perkhidmatan awam kepada publik yang berkualiti.

Kepimpinan kepala desa dalam pembangunan desa untuk meningkatkan kesejahteraan warga desa dan dalam pembangunan desa secara fisik belum terlaksana dengan baik, selain itu juga pembangunan non fisik dalam mujud perkhidmatan awam yang diperlukan warga desa belum tersedia secara memadai. Desa miskin belum memberikan hasil pembangunan baik secara fizik maupun non fizik berupa perkhidmatan awam bagi keperluan asas warga desa. Warga desa miskin selama ini tidak menikmati hasil pembangunan berupa kualiti perkhidmatan awam. Kepimpinan kepala desa tidak memberikan hasil pembangunan dalam bentuk perkhidmatan yang diperlukan bagi warga desa terutama di desa miskin.

Kajian ini adalah mengenai Kepimpinan kepala desa yang berpengaruh dalam menentukan hasil prestasi kerja pembangunan desa dan perkhidmatan kepada awam. Kerana itu kepimpinan dalam institusi pemerintah desa untuk melaksanakan pembangunan desa dan perkhidmatan awam kepada publik mestilah memiliki pengaruh secara signifikan. Kepimpinan merupakan faktor yang menentukan kejayaan menjalankan organisasi pemerintah desa. Organisasi kerajaan desa berfungsi untuk menyelenggarakan pentadbiran awam untuk melaksanakan perkhidmatan awam. Penyelenggaraan perkhidmatan awam merupakan tanggungjawab kepimpinan kepala desa. Oleh sebab itu pentadbiran awam dalam rangka pembangunan desa dan pemberian perkhidmatan awam bergantung pada pengaruh kepimpinan suatu organisasi kerajaan desa

Kepimpinan kepala desa mempunyai peranan di dalam pelaksanaan pembangunan desa dalam meningkatkan kualiti perkhidmatan awam. Pembangunan desa pada umumnya belum menunjukkan kualiti perkhidmatan awam di desa secara signifikan. Peranan kepimpinan kepala desa menjadi sangat penting dalam pembangunan desa kerana ianya merupakan ujung tombak dalam memberikan perkhidmatan awam di desa. Kedudukan kepimpinan kepala desa itu sebagai komponen penyelenggara kerajaan desa yang berada paling bawah dalam susunan kerajaan Indonesia. Justru itu, kepimpinan ketua desa menempati posisi strategik dalam melaksanakan pembangunan desa terhadap kualiti perkhidmatan di desa. Kepimpinan kepala desa ianya merupakan bahagian daripada komponen birokrasi penyelenggaraan pentadbiran awam yang membuat prestasi kerja birokrasi kerajaan di desa. Prestasi kerja birokrasi kerajaan di desa juga merupakan bahagian daripada hasil keseluruhan prestasi penyelenggaraan birokrasi secara nasional Indonesia.

Laporan badan perundingan di Hong Kong *Political and Economic Risk Consultancy* (PERC), tahun 2010 menyatakan keranah birokrasi menjadi masalah terbesar yang dihadapi negara-negara di Asia. Satu daripada negara itu ialah Indonesia. di samping Cina, Vietnam dan India. Dwiyanto(1995) menyatakan penilaian keranah birokrasi itu boleh diukur melalui prestasi kerja produktiviti. keberkesanan kualiti perkhidmatan seperti kepuasan

pengguna. tanggungjawab untuk memenuhi keperluan asas dan keutamaan perkhidmatan awam. Kumorotomo (2005) menegaskan keranah birokrasi harus diukur dari aspek keberkesanan, keadilan dan daya tanggap, keberkesanan dan persamaan memberikan perkhidmatan kepada awam. Dalam aspek fizikal perkhidmatan Zeithaml Parasuraman. dan Berry (1990) mengemukakan bahawa prestasi perkhidmatan awam boleh dinilai berdasarkan indikator fizikal misalnya praktek kualiti bangunan kepada urusan pelanggan. kualiti kemudahan perkhidmatan yang disediakan. Tetapi birokrasi kepimpinan telah memberikan perkhidmatan dalam kualiti yang rendah. Fenomena kualiti tersebut dalam persektif global masih memprihatinkan, sesuai laporan Global Competitiveness yang dikeluarkan oleh *World Economic Forum* (WEF) dinyatakan bahawa Indonesia pada tahun 2006 berada peringkat 50 masih lebih dari Singapura (5) Malaysia (26) dan Thailand (35) pada level peringkat negara-negara Asian (Achmad, 2009).

Berdasarkan aspek pentadbiran awam penyelenggaran perkhidmatan awam merupakan tanggungjawab sebuah negara secara konstitusional (Rasyid.1998; Dwiyanto.2005). Menurut Holle (2011). dijelaskan bahawa Undang-Undang Dasar Indonesia Tahun 1945 (UUD 1945) telah memberi amanah pelaksanaan perkhidmatan awam keranah perkhidmatan awam merupakan hak-hak sosial dasar awam (*social rights/ fundamental rights*). Seterusnya landasan asas pelaksanaan perkhidmatan awam seperti tercantum dalam sesyen 18 A ayat (2) dan sesyen 34 ayat (3) UUD 1945. secara nyata dan tegas mengatur pelaksanaan perkhidmatan awam sebagai wujud hak sosial dasar (*the right to receive*). Sebagai pemberian tugas asas, maka tidak boleh ada penolakan atau penyimpangan ke atas perkhidmatan awam kerana dianggap bercangga dengan UUD 1945.

Penguasa kerajaanmasa lepas telah berlangsung lamamembuat institusi tidak melakukan misinya untuk memberikan perkhidmatan awam secara signifikan (Dwiyanto. 2006). Seterusnya pasca reformasi tahun 1997 birokrasi pemerintah menghendaki untuk memberikan perkhidmatan awam secara berkualiti, maka dibuat Undang-Undang Nomor 25 Tahun 2009 tentang perkhidmatan awam. Dalam perspektif undang-undang dan politik penerapan isu gaya kepimpinan telah diperkenalkan oleh pemerintah untuk meningkatkan perkhidmatan awam. Antaranya kebijakan kesejahteraan rakyat untuk peningkatan perkhidmatan awam dengan dinamika otonomi daerah. Dinamika otonomi daerah mempunyai dampak pada kepimpinan di daerah mengenai perkhidmatan awam.

Undang-Undang Nomor 22 Tahun 1999 yang diubahsuai dengan Undang-Undang Nomor 32 Tahun 2004 menjadi asas penyelenggaraan otonomi daerah dalam sistem desentralisasi pemerintah. Dalam sistem desentralisasi ini penerapan kepimpinandaerah mengikuti kepimpinan secara demokrasi. Kepimpinan ini diterapkan untuk meningkatkan kualiti perkhidmatan awam di desa miskin. Kepimpinan pemerintah sepatutnya untuk meningkatkan kualiti perkhidmatan awam dalam keperluan asas dari masyarakat (Ridwan, 2010). Dalam kepimpinan birokrat pemerintah kepimpinan kepala desa bertanggungjawab terhadap peningkatan kesejahteraan warga. Kerana kepimpinan Kepala Desa merupakan bahagian integral dari kepimpinan birokrat pemerintah pusat.

Kepimpinan dalam konteks konstitusi Indonesia (Undang-Undang Dasar 1945) adalah merupakan usaha untuk mencapai tujuan negara. Faktor kepimpinan merupakan faktor mencapai tujuan negara dalam wujud peningkatan pembangunan desa dalam kualiti perkhidmatan awam. Tugas pokok mencapai tujuan negara antaranya adalah negara wajib memajukan kesejahteraan umum. Memajukan kesejahteraan umum bermakna

malaksanakan pembangunan desa dalam perkhidmatan awam yang berkualiti. Faktor kepimpinan menjadi faktor peningkatan pembangunan desa dalam kualitiperkhidmatan awam untuk mencapai kesejahteraan umum. Kepimpinan yang bertujuan peningkatan kualiti perkhidmatan telah dikeluarkan kebijakanpolisi kerajaan pusat, diantaranya adalah Keputusan Menteri Pendayagunaan Aparatur Negara Republik Indonesia Nomor 63 Tahun 2003 yang mengatur tentang penyelenggaraan perkhidmatan awam. Seterusnya dibuat Undang-Undang Nomor 25 Tahun 2009 mengenai perkhidmatan awam dengan matlamat untuk memberi peluang kepimpinan meningkatkan pembangunan desa untuk kualitiperkhidmatan awam. Oleh kerana itu penerapan kepimpinan melaksanakan pembangunan desa dalam meningkatkan kualitiperkhidmatan awam dalam mencapai tujuan organisasi telah memiliki landasan hukum yang signifikan. Namun dalam fakta masih menunjukkan bahawa kepimpinan pembangunan desa miskin belum didapati peningkatan kualiti perkhidmatan awam secara signifikan. Rendahnya kualiti perkhidmatan awam membuat kesejahteraan warga tidak tercapai di dalam kondisidesa yang masih miskin.

## 1. TINJAUAN LITERATUR

### 1.1 Kepimpinan

Kepimpinan dalam konteks Kepimpinan situasional iaitu kepimpinan yang fokus pada aspek pengaruh terhadap bawahan dari aspek kematangan dan kemampuan untuk mencapai tujuan organisasi. Kepimpinan dalam sebuah organisasi sangat memiliki peranan dalam mencapai tujuan. Kepimpinan organisasi sebagai alat untuk melakukan tindakan organisasi mencapai tujuannya. Aktivitas organisasi selalu oleh kepimpinan yang mengarah pada suatu perubahan yang digalakkan. Peran kepimpinan menggerakkan organisasi dengan perilaku atau gaya kepimpinan untuk tujuan organisasi. Tujuan organisasi hanya dapat dicapai kerana peranan perilaku atau gaya kepimpinan suatu organisasi. Tujuan organisasi dalam pembangunan desa oleh kerajaan desa yang ingin dicapai melalui peningkatan kualiti perkhidmatan awam oleh suatu peranan dari kepimpinan kepala desa.

Kepimpinan dalam organisasi menurut Undang-Undang Nomor 22 Tahun 1999 yang dirubah dengan Undang-Undang Nomor 32 Tahun 2004, meletakkan kepimpinan dalam peranan dan perilaku kepimpinan sebagai faktor pententu untuk mewujudkan tujuan organisasi. Di dalam Undang-Undang Nomor 6 Tahun 2004 yang mengatur tentang desa ditegaskan bahawa Organisasasi desa adalah merupakan organisasi unit paling bawah dalam struktur pemerintah di Indonesia. Desa merupakan kesatuan masyarakat dimana perkhidmatan awam dilakukan melalui peranan atau perilaku kepimpinan. Kerana peranan kepimpinan kepala desa menjadi faktor penting yang menggerakkan organisasi pemerintah desa.

Hersey,(1986) menjelaskan kepimpinan yang berkesan manakala gaya kepimpinan mempunyai korelasi dengan kematangan pengikut. Dikemukakan kembali Hersey, (1986) gaya kepimpinan merupakan perilaku seseorang berupaya mempengaruhi aktivitas orang lain. Gaya kepimpinan situasional menghendaki gaya yang berbeda dalam situasi organisasi yang berbeza. Perubahan gaya menyesuaikan kemampuan, gaya kepimpinan yang berubah tidak sama dengan perubahan kemampuan yang statis. Situasi organisasi yang berbeza, meskipun nama struktur, tugas dan fungsi organisasi sama. Kerana itu pada level organisasi yang sama dalam situasi anggota yang berbeza diperlukan gaya yang berbeza. Situasional adalah kematangan (*maturity*) yang mencakup kemampuan dan kemauan bawahan (*subordinate*).

Menurut Yulk (1998) menyatakan perilaku kepimpinan ditentukan oleh suasana lapangan untuk menghasilkan kinerja dan kepuasan kerja bawahannya. Hersey dan Blanchard (1996) mengatakan gaya kepimpinan tidak untuk semua kondisi dalam organisasi tetapi gaya kepimpinan efektif yang mengakomodasi lingkungannya (pengikut, atasan dan rekan kerjanya). Pemimpin mempunyai kewibawaan, kekuasaan untuk memerintah orang lain dan mempunyai kewajiban serta tanggungjawab terhadap apa yang telah mereka lakukan.

Peranan kepimpinan kepala desa dalam pembangunan merupakan faktor yang meningkatkan kesejahteraan dalam bentuk peningkatan kualiti perkhidmatan awam. Keberhasilan maupun kegagalan organisasi sangat tergantung dari kualitas kepimpinan dalam organisasi itu (Siagian,1998). Dalam perspektif negara kesejateraan, gaya kepimpinan yang diterapkan pemerintah wajib mewujudkan kesejahteraan rakyat dan peranan negara yang dilaksanakan oleh pemerintah meningkatkan kesejahteraan (Ridwan,2010). Sistem administrasi negara peran kepimpinan sangat penting, kerana faktor kepimpinan diyakini sebagai penentu arah polisi/dasar publik bangsa dan negara. Gaya kepimpinan dari perspektif administrasi negara adalah melakukan berbagai jenis perkhidmatan awam yang berkualiti yang diperlukan rakyat (Sinambela et al. 2010). Gaya kepimpinan terhadap perkhidmatan awam adalah gaya penyelenggaraan organisasi publik itu sendiri (Syafiee,2007).

Fungsi utama dari fungsi kepimpinan institusi desa dalam pembangunan desa adalah untuk memberikan perkhidmatan awam di desa. Fungsi kepimpinan Kepala Desa dalam pembangunan desa menjadi urgen kerana memberikan keputusan untuk perkhidmatan awam bagi kepentingan warga desa. Salah satu fungsi kepimpinan yang hakiki dalam pembangunan adalah pimpinan sebagai penentu arah mencapai tujuannya sesuai dengan pemanfaatan segala sarana dan prasarana yang dirumuskan pimpinan dan sebagai penentu strategi dan taktik organisasi di dalam pembangunan. Pada level kepimpinan Kepala Desa sebagai pimpinan penentu arah organisasi dalam kepimpinannya bertumpu pada pengambilan keputusan yang bersifat teknis. Semua bentuk keputusan kepimpinan Kepala Desa diarahkan pada pembangunan desa semua bentuk pelaksanaan perkhidmatan awam bagi keperluan asas warga desa.

Kepimpinan merupakan keperluan semua bangsa. Peranan pemimpin di era global sangat bersifat dominan untuk menjembatani masalah yang dihadapi organisasi (Sanusi,2009). Apapun peranan yang dimiliki pemimpin adalah menuntaskan semua bentuk perkhidmatan awam. Aktiviti perkhidmatan awam merupakan tugas pokok yang dihadapi oleh organisasi apapun, samaada organisasi dalam bentuk institusi seperti institusi kepimpinan pemerintahan desa. Peran diertikan sebagai perilaku yang diatur dan diharapkan dalam posisi tertentu (Rivai,2009).

Pada asasnya kepimpinan Kepala Desa merupakan pimpinan dalam kategori pemimpin menengah ke bawah, namun dalam pengambilan keputusannya terhad pada keputusan sifat teknis semata. Dalam setiap kepimpinan Kepala Desa selalu memberikan perkhidmatan awam yang ditetapkan melalui keputusan teknis. Ketetapan Kepala Desa selalu bersifat melaksanakan ketetapan yang lebih tinggi dari pemerintahan .

Penerapan gaya kepimpinan memiliki pengaruh dalam memberikan kualiti perkhidmatan awam kepada masyarakat desa secara berkualiti di Kabupaten Indragiri Hilir Riau. Kawasan

ini sejak tahun 2011 telah memiliki sebanyak 170 desa. Desa yang diklasifikasi sebagai desa miskin ini 85 buah desa menjadi desa miskin/tertinggal lebih banyak daripada desa berkembang 65 desa, dan desa maju 20 desa (BPMPD INHIL,2011).

Betapa pentingnya peranan kepimpinan kepala desa di desa miskin. Desa miskin terjadi disebabkan kerana faktor ekonomi dan sosial, kondisi buruk terhadap perkhidmatan publik secara signifikan memiliki hubungan kepimpinan Kepala Desa. Kerana itu gaya kepimpinan kepala desa dalam pembangunan desa mempunyai pengaruh terhadap kualiti perkhidmatan awam di Kabupaten Indragiri Hilir Riau.

Peranan kepimpinan kepala desa faktor yang meningkatkan kesejahteraan dalam pembangunan desa yang membentuk peningkatan kualiti perkhidmatan awam. Kepimpinan yang berkualiti dalam organisasi itu sangat tergantung pada kejayaan dan kegagalan organisasi (Siagian,1998). Mewujudkan kesejahteraan rakyat dan peranan negara yang dilaksanakan oleh pemerintah yang meningkatkan kesejahteraan dari perspektif negara kesejateraan, maka kepimpinan yang diterapkan pemerintah wajib meningkatkan kualiti perkhidmatan awam menuju kesejahteraan rakyat (Ridwan,2010). Di dalam sistem administrasi negara peran kepimpinan sangat penting, kerana faktor kepimpinan diyakini sebagai penentu arah polisi/dasar publik bangsa dan negara. Gaya kepimpinan dari perspektif administrasi negara adalah melakukan berbagai jenis perkhidmatan awam yang berkualiti yang diperlukan rakyat (Sinambela et al. 2010).

## **2.2 Kualiti Perkhidmatan Awam**

Perkhidmatan awam adalah kegiatan untuk pemenuhan keperluan asas sesuai dengan hak-hak sipil setiap warga negara dan penduduk atas suatu barang dan jasa. Pengertian setiap perkhidmatan ini berhubungkait dengan barang dan jasa dalam melaksanakan pentadbiran awam. Secara individu, kumpulan dan organisasi menerima perkhidmatan awam yang berbentuk barang dan jasa diserahkan.Ivancevich, Lorenzi dan Crosby (Ratminto & Winarsih (2006) menjelaskan bahawa perkhidmatan adalah produk yang tidak kasat mata (tidak dapat diraba) dan melibatkan usaha manusia yang menggunakan sarana (Ratminto & Winarsih (2006). Seterusnya Groncroos dalam I Wayan,(2007) menegaskan bahawa perkhidmatan awam merupakan aktivitas sifatnya tidak kasat mata dan sebagai interaksi konsumen dengan karyawan atau organisasi yang melaksanakan pentadbiran awam. Ciri pokok dari perkhidmatan awam tidak kasat mata dan tidak dirasakan oleh konsumen mahupun pemberi perkhidmatan awam. Dinyatakan oleh Davidow Uttal dalam (Endang Wiryatmi Trilestari,2003) bahawa perkhidmatan awam itu merupakan suatu usaha untuk mempertinggi kepuasaan pelanggan. Perspektif kata awam sebagai suatu publik-polis dan semua penduduk berketerlibatan di dalamnya. Pengertian publik merupakan semua penduduk suatu komunitas yang berketerlibatan dalam pemerintahan (Endang Wiryatmi Trilestari,2003)

Perkhidmatan awam pada hakikat adalah pemberian pengurusan kepada publik untuk pemenuhan perkhidmatan awam yang merupakan perwujudan kewajiban dari pemerintahan. Perkhidmatan awam sifatnya mendasar mengenai pemenuhan keperluan pokok oleh pemerintahan. Pengertian perkhidmatan awam dalam kajian ini terhad pada pengurusan publik antaranya bentuk perizinan, kartu tanda penduduk, izin mendirikan bangunan, izin tempat usaha. Perkhidmatan awam publik ini merupakan pengurusan publik yang dilakukan oleh pemerintahan pada pemerintahan peringkat desa. Perkhidmatan awam yang diberikan kepada masyarakat desa merupakan kewajiban pemerintahan tingkat desa. Kepala desa sebagai pemegang jabatankuasa berkewajiban memberikan perkhidmatan

awam di kawasan desanya. Pengurusan publik merupakan tanggungjawap dari kepimpinan Kepala Desa dalam memberikan perkhidmatan awam kepada publik secara berkualiti.

Kualiti perkhidmatan awam sebagaimana dijelaskan oleh Ridwan, (2010) adalah bertujuan untuk memberikan rasa kepuasan warga. Kepuasan itu dicapai manakala boleh dilakukan dengan cara meningkatkan kualiti daripada perkhidmatan awam. Kepuasan penyampaian jasa yang melebihi tingkat kepentingan pelanggan perkhidmatan. Kualiti perkhidmatan dijelaskan oleh Tjiptono (2012) merupakan usaha penyampaian jasa untuk memenuhi keperluan dan keinginan pelanggan serta dan disampaikan secara tepat untuk mengimbangi harapan pelanggan. Sedangkan Groncroos (1984) menjelaskan kualiti perkhidmatan dengan cara melakukan pengelompokan menjadi 2 katagori kualiti, iaitu kualiti teknis dan kualiti fungsional. Mengenai apa yang diperoleh pelanggan adalah merupakan kualiti teknis, sedangkan kualiti fungsional lebih menjelaskan kepada keprihatinan daripada perkhidmatan. Kualiti perkhidmatan merupakan suatu kondisi yang berhubungan dengan produk, jasa, manusia, proses dan lingkungan yang memenuhi atau melebihi harapan pelanggan. Kerana itu kualiti perkhidmatan berhubungan dengan pemenuhan harapan atau keperluan pelanggan.

Seterusnya dijelaskan oleh Zeitaml (1990) bahawa Kualiti perkhidmatan berpusat pada upaya pemenuhan dari keinginan pelanggan serta ketepatan penyampaian untuk mengimbangi harapan pelanggan, lebih lanjut Parasuraman (dalam zeithaml dan Bitner, 1990) berpendapat bahawa terdapat lima dimensi yang perlu diperhatikan ketika konsumen melakukan penilaian terhadap kualiti jasa, iaitu:

- 1) *Reliability*, iaitu kemampuan untuk memberikan pelayanan yang sesuai dengan janji yang ditawarkan.
- 2) *Responsiveness*, iaitu tindak balas pegawai dalam membantu pelanggan dan memberikan pelayanan yang cepat dan tanggap, yang meliputi: kesigapan karyawan dalam melayani pelanggan, kecepatankaryawan dalam menangani transaksi, dan penanganan keluhan pelanggan/pasien.
- 3) *Assurance*, meliputi kemampuan karyawan atas: Dimensi kepastian atau jaminan ini merupakan gabungan dari dimensi: Kompetensi (Competence), artinya ketrampilan dan pengetahuann yang dimiliki oleh para pegawai untuk melakukan pelayanan. Kesopanan (Courtesy, yang meliputikeramahan, perhatian dan sikap para karyawan. Kredibiliti (Credibility), meliputi hal-hal yang berhubungan dengan kepercayaan kepada perusahaan, seperti reputasi, prestasi dan sebagainya.
- 4) *Emphaty*, iaitu perhatian secara individual yang diberikan perusahaan kepada pelanggan seperti kemudahan untuk menghubungi perusahaan, kemampuan karyawan untuk berkomunikasi dengan pelanggan, dan usaha perusahaan untuk memahami keinginan dan kebutuhan pelanggannya. Dimensi emphaty ini merupakan penggabungan dari dimensi: Akses (Access), meliputi kemudahan untuk memanfaatkan jasa yang ditawarkan perusahaan. Komunikasi (Comunication) merupakan kemampuan melakukan komunikasi untuk menyampaikan informasi kepada pelanggan atau memperoleh masukan dari pelanggan. Pemahaman pada Pelanggan(Understanding the Customer), meliputi usaha perusahaan untukmengetahui dan memahami keperluan dan keinginan pelanggan.
- 5) *Tangible*, meliputi penampilan fasilitas fisik seperti gedung dan ruangan Front Office, tersedianya tempat parkir, kebersihan, kerapihan dan kenyamanan ruangan, kelengkapan peralatan komunikasi dan penampilan karyawan.

Dengan demikian, baik buruknya kualiti jasa/berkhidmat tergantung pada kemampuan penyedia jasa/ berkhidmat dalam memenuhi harapan pelanggan secara konsisten dan berakhir pada persepsi pelanggan. Ertinya bahawa citra kualiti yang baik bukanlah berdasarkan sudut pandang penyelenggara atau penyedia jasa/ berkhidmat, tetapi harus dilihat dari sudut pandang atau persepsi pelanggan. Hal ini seperti yang dikemukakan oleh Kotler (2004) bahawa yang mengkonsumsi dan menikmati jasa /berkhidmat adalah pelanggan sehingga mereka yang seharusnya menentukan kualiti jasa berkhidmat. Persepsi pelanggan terhadap jasa merupakan penilaian menyeluruh atas keunggulan suatu jasa. Namun perlu diperhatikan bahawa kinerja jasa seringkali tidak konsisten, sehingga pelanggan menggunakan isyarat intrinsic dan detrinik jasa sebagai acuan. Unsur utama dalam kualiti jasa iaitu *expected service* dan *perceived service* bahawa apabila jasa yang diterima atau yang dirasakan sesuai dengan yang diharapkan, maka kualiti jasa yang dipersepsikan sebagai kualiti yang baik dan memuaskan. Jika jasa yang diterima melampaui harapan maka kualiti jasa dipersepsikan sebagai kualiti yang ideal. Sebaliknya jika kualiti jasa yang diterima lebih rendah dari pada yang diharapkan, maka kualiti jasa akan dipersepsi buruk atau tidak memuaskan.

Berhubung kait dengan kualiti perkhidmatan pada peringkat desa, maka telah menjadi tuntutan rakyat desa secara mutlak yang menghendaki kualiti perkhidmatan harus dilaksanakan. Peningkatan kualiti perkhidmatan yang menjadi tuntutan rakyat desa boleh diwujudkan oleh kepimpinan kepala desa. Tuntutan peningkatan kualiti tersebut kerana mendapat pengaruh dari faktor gaya kepimpinan kepala desa. Fungsi negara yang diimplementasikan untuk tujuan meningkatkan kualiti perkhidmatan demi kesejahteraan rakyat hingga di pedesaan. Peningkatan kualiti perkhidmatan telah merupakan konsep negara kesejahteraan yang diterapkan di Indonesia. Dalam menyelenggarakan pemerintahan yang baik dalam rangka peningkatan kualiti perkhidmatan dan kualiti perkhidmatan yang dilakukan oleh kerajaan itu dianggap sebagai cerminan dari kualiti birokrasi secara umum, maka harus didasari atas penyelenggaraan perkhidmatan. Dalam Undang-Undang No. 28 tahun 1999 untuk meningkatkan penyelenggaraan negara yang berkualiti terhadap perkhidmatan, maka faktor akuntabiliti, ketelusan, keterbukaan, aturan undang-undang dan perlakuan yang adil (Erland, 2013). Untuk mencapai tujuan perkhidmatan awam mengikuti asas pedoman penyelenggaraan perkhidmatan awam telah dijelaskan oleh Sutedi, (2010), suatu asas yang menjadi pedoman dan intisari penyelenggaraan perkhidmatan yang berasas keterbukaan, asas akauntabiliti, asas Integriti, asas kesahihan, dan asas berkadar. Untuk menyelenggarakan perkhidmatan yang berkesan maka perkhidmatan dilaksanakan sesuai asas perkhidmatan. Perkhidmatan yang memberi kepuasan pengguna jasa harus dilaksanakan memenuhi asas-asas perkhidmatan sebagai berikut (Keputusan MENPAN No. 63 Tahun 2003): a. Transparansi bersifat terbuka, yang mudah dan dapat diakses oleh semua pihak yang memerlukannya dan disediakan secara memadai serta mudah dimengerti.b. Akuntabilitas dapat dipertanggungjawabkan sesuai dengan ketentuan peraturan perundang-undangan. c. Kondisional sesuai dengan kondisi dan kemampuan pemberi dan penerima perkhidmatan dengan tetap berpegang pada prinsip cekap dan berkesan. d. Partisipatif mendorong peran serta masyarakat dalam penyelenggaraan perkhidmatan awam dengan memperhatikan aspirasi, keperluan dan harapan masyarakat. e. Kesamaan hak dan tidak diskriminasi yang membezakan suku, ras, agama, golongan, gender, dan status ekonomi. f. Keseimbangan hak dan kewajiban diantara pemberi dan penerima perkhidmatan awam harus memenuhi hak dan kewajiban masing-masing pihak

## 2. METOD KAJIAN

### Obkektif Kajian

Penyelidikan ini bertujuan untuk mengetahui pengaruh gaya kepimpinan kepala desa terhadap kualiti perkhidmatan awam di desa miskin Kabupaten Indragiri Hilir Riau.

### Populasi dan Sampel

Populasi desa kajian ini adalah 85buah desa miskin. Sampel kajian ditetapkan sembilanbuah desa, dan responden 290 orang yang mewakili 9buah desasampeltersebut.

### Instrument Kajian

Kaedah penyelidikan ini menggunakan jenis penyelidikan kuantitatif dengan metode *survey*. Pengumpulan data dilakukan dengan borang soal selidikuntuk mengetahui persepsi responden mengenai pengaruh gaya kepimpinan terhadap kualiti perkhidmatan awam.Gaya kepimpinan situasional kepala desa secara spesifik bertumpu pada *Situational Leadership Theory* (Teori Kepimpinan Situasional), suatu teori yang dikembangkan oleh *Blanchard*.

Data kuantitatif dianalisis bagi menguji hipotesis pengaruh gaya kepimpinan kepala desa terhadap kualiti perkhidmatan awam di desa miskin.Pengujian hipotesis pengaruh gaya Kepimpinan terhadap kualiti Perkhidmatan awam digunakan teknik regresi dengan *uji t*, *uji F* dan *koefisien determinasi*.

## HASIL DAN PEMBAHASAN

Untuk mengukur keeratan hubungan antara angkubah X1, X2,X3dan X4terhadap angkubah Y dengan cara menghitung koefisien korelasinya (*multiple coefficient of correlation*) sebagai berikut:

**Jadual 1.**

**Model Summary Pengaruh Gaya kepemimpinan Situasional(X1, X2, X3 dan X4) Terhadap kualiti perkhidmatan awam di desa miskin Kabupaten Inhil**

**Model Summary**

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	,927 <sup>a</sup>	,859	,857	3,47615

a. Predictors: (Constant), X4, X2, X1, X3

Nilai R = 0,927, angka ini menunjukkan pengaruh yang cukup kuat dari angkubah Gaya kepemimpinan Situasional(X1, X2, X3 dan X4) terhadap kualiti perkhidmatan awam di desa miskin Kabupaten Inhil. Nilai Determinasi (R<sup>2</sup>) sebesar = 0,859.Ertinya angkubahGaya kepemimpinan Situasional (X1, X2, X3 dan X4) dapat menerangkan angkubah kualiti perkhidmatan awam sebesar 85.9%, sedangkan sisanya 14,10% diterangkan oleh variabel lain yang belum dikemukakan dalam penyelidikan ini

**Jadual 2.**  
**Hasil Analisis Regresi Coefficients**

Coefficients<sup>a</sup>

Model	Unstandardized Coefficients		Standardized Coefficients	t	Sig.
	B	Std. Error			
1 (Constant)	18,975	,992		19,120	,000
X1	,284	,056	,256	5,090	,000
X2	,286	,053	,256	5,402	,000
X3	,233	,037	,339	6,285	,000
X4	,222	,075	,135	2,951	,003

a. Dependent Variable: Y

Dari Jadual diatas, di ketahui bahawa nilai a (konstanta) adalah sebesar : 18,975, nilai b<sub>1</sub> adalah sebesar 0,284 sedangkan nilai b<sub>2</sub> adalah sebesar 0,286, nilai b<sub>3</sub> adalah sebesar 0,233 dan nilai b<sub>4</sub> adalah sebesar 0,222 Sehingga diperoleh persamaan regresi : Y = 18,975 + 0,284 X<sub>1</sub> + 0,286 X<sub>2</sub> + 0,233 X<sub>3</sub> + 0,222 X<sub>4</sub>.

Dalam persamaan tersebut diatas nampak bahawa dari angkubahbebas kesemuanya mempunyai koefisien regresi yang bertanda positif. Bererti semakin baik angkubah Gaya kepemimpinan Situasional (X<sub>1</sub>, X<sub>2</sub>, X<sub>3</sub> dan X<sub>4</sub>) maka akan mempunyai dampak positif terhadap peningkatan kualiti perkhidmatan awam di desa miskin Kabupaten Inhil.

### **Pengujian Hipotesis**

#### **1) Pengujian Hipotesis Pertama iaitu Uji Secara Simultan (Uji F)**

Untuk membuktikan hipotesis pertama, dapat dilihat hasil Uji F yang dimaksudkan untuk membuktikan signifikansi pengaruh secara simultan angkubah Gaya kepemimpinan Situasional (X<sub>1</sub>, X<sub>2</sub>, X<sub>3</sub> dan X<sub>4</sub>) terhadap peningkatan kualiti perkhidmatan awam. Menunjukkan bahawa hipotesis yang diajukan terbukti kebenarannya. Untuk mengetahui nilai Fhitung, maka dilihat pada hasil Uji F dalam tabel Anova seperti berikut :

**Jadual 3**

**ANOVA Pengujian Statistik Uji F Pengaruh Gaya kepemimpinan Situasional (X1, X2, X3 dan X4) terhadap kualiti perkhidmatan awam di desa miskin Kabupaten Inhil.**

**ANOVA<sup>b</sup>**

Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	20916,336	4	5229,084	432,741	,000 <sup>a</sup>
	Residual	3443,833	285	12,084		
	Total	24360,169	289			

a. Predictors: (Constant), X4, X2, X1, X3

b. Dependent Variable: Y

Berdasarkan jadual 3 di atas dapat dilihat bahawa  $F_h = 432,741 > F_t = 2,300$ , dengan kata lain bahawa Hipotesis diterima. Karena  $F$  hitung lebih besar dari  $F$  tabel yaitu 432,741 lebih besar dari 2,300 atau nilai  $Sig. F (0,000)$  lebih kecil dari  $\alpha = 0,05$  maka model analisis regresi adalah signifikan. Hal ini berarti  $H_0$  ditolak sehingga dapat disimpulkan bahawa kualiti perkhidmatan awam dapat dipengaruhi secara signifikan oleh angkubah Gaya kepemimpinan Situasional (X1, X2, X3 dan X4).

**2) Pengujian Hipotesa kedua iaitu Secara Parsial ( Uji t )**

Seterusnya untuk membuktikan hipotesis 2 dapat dilakukan pengujian nilai  $t$  yang dihasilkan dibandingkan dengan nilai  $t$  tabel dengan signifikansi alpha 0,05 df =  $N-k-1 = 290-2-1= 287$  dalam Jadual menunjukkan  $t$  tabel = 1,960.

Untuk menyimpulkan hipotesis tersebut maka kriteria yang digunakan iaitu jika nilai  $t$  hitung  $>$  dari  $t$  tabel maka hipotesis nol ditolak ertiinya menerima hipotesis yang menyatakan adanya pengaruh signifikan antara angkubah bebas (X) terhadap dependen (Y) dan sebaliknya, jika nilai  $t$  hitung  $<$  dari tabel maka hipotesis nol diterima ertiinya menolak hipotesa yang menyatakan adanya pengaruh signifikan antara angkubah bebas (X) terhadap dependen (Y). selanjutnya diuraikan perbandingan hasil perhitungan uji  $t$  masing-masing variabel dengan nilai  $t$  tabel seperti yang terlihat pada tabel berikut :

**Jadual 4.  
Perbandingan antara Nilai thitung dengan nilai t tabel**

No	Angkubah	T hitung	T Tabel	T sig	$\alpha$
1	Gaya Arahan	5.090	1,960	0,000	0,05
2	Gaya Perundingan	5.402	1,960	0,000	0,05
3	Gaya Keterlibatan	6.285	1,960	0,000	0,05
4	Gaya Delegasi	2.951	1,960	0,003	0,05

Berdasarkan jadual di atas, maka dapat dihuraikan perbandingan t hitung dengan t tabel dari masing-masing angkubah tersebut iaitu:

**1) Gaya Arahan Kepemimpinan Situasional (X1)**

Pada angkubah Gaya Arahan kepemimpinan Situasional, diketahui nilai thitung sebesar  $5,090 > t$  tabel, yaitu sebesar 1,960 yang bererti pengujian hipotesis  $H_0$  ditolak dan menerima  $H_a$ . Hal ini menunjukkan bahawa secara parsial atau secara sendiri-sendiri (dengan pengujian hipotesis ( $\alpha$ ) 5 %), maka angkubah Gaya Arahan kepemimpinan Situasional (X1) berpengaruh secara signifikan terhadap kualiti perkhidmatan awam (Y) pada desa miskin Kabupaten Inhil.

**2) Gaya Perundingan Kepemimpinan Situasional (X2)**

Hasil uji regresi didapati bahawa Pengaruh antara X2 (gaya perundingan) dengan Y (kualiti perkhidmatan awam) menunjukkan t hitung = 4,300. Sedangkan t tabel sebesar 1,645. Karena t hitung lebih besar dari t tabel iaitu 4,300 lebih besar dari 1,645. maka pengaruh X2 (gaya perundingan) terhadap kualiti perkhidmatan awam adalah signifikan. Hal ini berarti  $H_0$  ditolak sehingga dapat disimpulkan bahawa kualiti perkhidmatan awam dapat dipengaruhi secara signifikan oleh gaya perundingan

**3) Gaya Keterlibatan Kepimpinan Situasional (X3)**

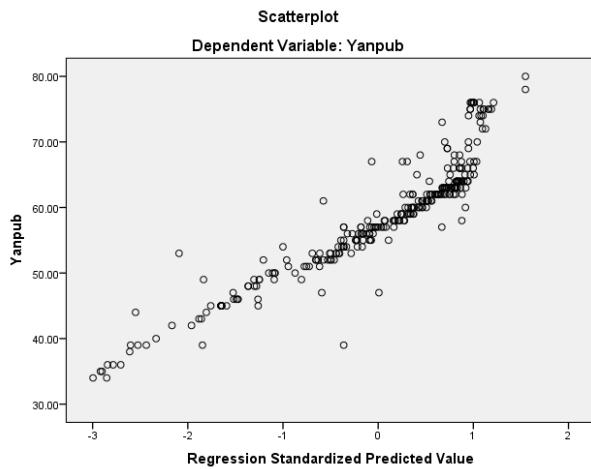
Hasil uji regresi didapati bahawa Pengaruh antara X3 (gaya keterlibatan) dengan Y (kualiti perkhidmatan awam) menunjukkan t hitung = 4,300. Sedangkan t tabel sebesar 1,645. Karena t hitung lebih besar dari t tabel iaitu 4,300. lebih besar dari 1,645. maka pengaruh X3 (gaya keterlibatan) terhadap kualiti perkhidmatan awam adalah signifikan. Hal ini berarti  $H_0$  ditolak sehingga dapat disimpulkan bahawa kualiti perkhidmatan awam dapat dipengaruhi secara signifikan oleh gaya keterlibatan.

**4) Gaya Delegasi Kepimpinan Situasional (X4)**

Hasil uji regresi didapati bahawa Pengaruh antara X4 (gaya keterlibatan) dengan Y (kualiti perkhidmatan awam) menunjukkan t hitung = 4,300. Sedangkan t tabel sebesar 1,645. Karena t hitung lebih besar dari t tabel iaitu 4,300. lebih besar dari 1,645. maka pengaruh X4 (gaya delegasi) terhadap kualiti perkhidmatan awam adalah signifikan. Hal ini berarti  $H_0$  ditolak sehingga dapat disimpulkan bahawa kualiti perkhidmatan awam dapat dipengaruhi secara signifikan oleh gaya delegasi. .

**Ujian Homoskedastisiti**

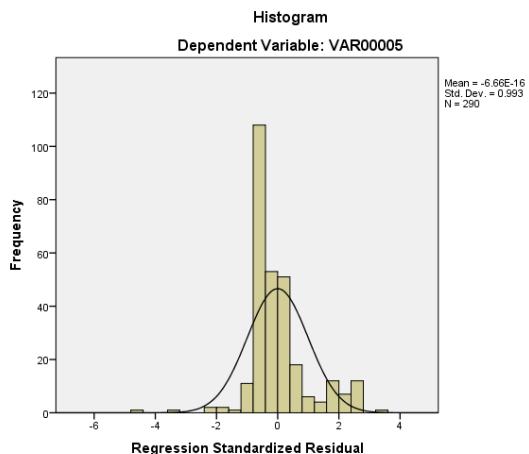
Ujian homoskedastisiti dibuat bagi mengetahui adakah dalam model yang digunakan terjadi ketidakaksamaan (heteroskedastisiti) ataukah ketepatan (homoskedastisiti) varians residual dari sesuatu pengamatan ke pengamatan yang lain. Model regresi yang baik adalah bahawa iaanya tidak memiliki heteroskedastisiti. Dari grafik terlihat bahawa titik menyebar secara rawak dan tidak membentuk suatu pola tertentu yang jelas, serta tersebar sama ada di atas maupun di bawah angka 0 pada sumbu Y. ini bermakna bahwa tidak terjadi heteroskedastisiti pada model regresi, sehingga model regresi boleh digunakan bagi memprediksi variabel bersandar (kualiti Perkhidmatan awam) berdasarkan masukan dari variabel bebasnya.

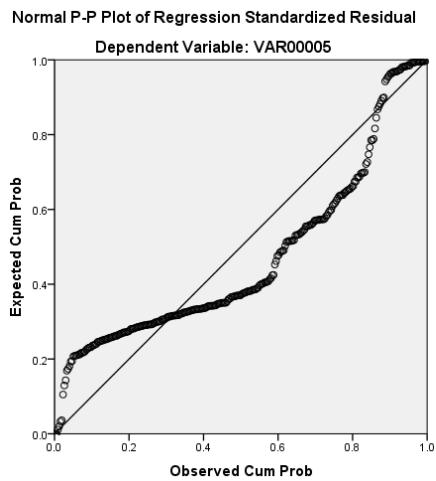


### **Ujian Normaliti dan lineariti**

Ujian Normaliti dan linearity data merupakan persyaratan yang tidak boleh ditinggalkan bagi keperluan ujian regresi dan multiregresi. Dalam kajian ini persyaratan klasik ini telah dibuat dengan menggunakan program SPSS *Kalmogorov- Smirnov Z*. keputusannya menunjukkan bahwa semua data variabel adalah normal dan linear, seperti terlihat dalam Grafik 2 di bawah ini.

**Grafik 1 Histogram Keluk Normaliti data kajian**





Gaya kepimpinan yang diterapkan dalam kepimpinan kepala desa di desa miskin seperti yang terlihat dalam jadual di bawah ini.

**Jadual 5 Gaya kepimpinan kepala desa di miskin**

NO	GAYA KEPIMPINAN KEPALA DESA DI DESA MISKIN	AVG	STD	RANK
1	Gaya Arahan	3.77	0.93	1
2	Gaya Perundingan	3.76	0.82	2
3	Gaya Keterlibatan	3.72	0.88	3
4	Gaya Delegasi	3.77	0.93	1

### 3. PERBINCANGAN

Berdasarkan tugas pokok kepimpinan kepala desa adalah melakukan tugas penyelenggaraan pemerintahan desa dan kepimpinan kepala desa melakukan pembinaan kepada staf bawahan. Hubungan kepimpinan kepala desa dengan staf bawahannya seyogianya terjalin dengan baik terutama dalam melaksanakan tugas pembangunan desa pemerintahan, dan memberikan kualiti perkhidmatan awam kepada masyarakat desa.

Berdasarkan hasil Uji F membuktikan signifikansi pengaruh secara simultanangkubah Gaya kepemimpinan Situasional (X<sub>1</sub>, X<sub>2</sub>, X<sub>3</sub> dan X<sub>4</sub>) terhadap peningkatan kualiti perkhidmatan awam. Gaya kepemimpinan Situasional kepala desa mempunyai pengaruh secara simultan untuk meningkatkan kualiti perkhidmatan awam di desa.

Sedangkan dari hasil uji t bahawa angkubahgayaarah, angkubah gaya perundingan, angkubah gaya keterlibatan, angkubah gaya delegasi secara parsial memang mempengaruhi pembangunan dalamkualitiperkhidmatan awamdi desa. Hasil uji t ini menunjukkan bahawa ke empatangkubah bebas tersebut telah mempengaruhi pembangunan desa dalamkualitiperkhidmatan awam. Kepimpinan kepala desa yang memberikan perkhidmatan kepada warga menerapkan gaya kepimpinan yang sesuai dengan kondisi dan kesiapan dan kemampuan staf yang membantu pimpinan. Gaya kepimpinan apapun yang diterapkan ketua desa dalam memberikan perkhidmatan kepada warganya telah memberi pengaruh terhadap pembangunan desa terhadapkualitiperkhidmatan bagi warganya.

## KESIMPULAN

Secara majoritigayakepimpinan telah diterapkan oleh kepala desa di desa miskin dalam melaksanakan pembangunan desa terhadap peningkatan kualiti perkhidmatan awam di desa miskin memilih menggunakan gaya kepimpinan gaya arahan dan gaya delegasi. Dengan pengertian kepimpinan kepala desa menerapkan gaya arahan dengan cara lebih banyak memberikan arahan dalam melaksanakan tugas pentadbiran di desa, selain itu kepala desa juga menerapkan kepimpinan dengan gaya delegasi yang memberikan kepercayaan penuh kepada bawahan dalam melaksanakan tugas pentadbiran guna memberikan perkhidmatan awam secara berkualiti.

Dikatakan bahwa sebanyak 86% (R Square)angkubah bebas iaitu, Gaya arahan, Gaya perundingan, Gaya keterlibatan, Gaya delegasi, memberikan kontribusi secara bersama-sama dapat menjelaskan angkubahterikatkualitiperkhidmatan awam.Dengan perkataan lain dapatdijelaskan bahwakoefisien determinasi menunjukkan semua gaya kepimpinan yang diterapkan kepala desa mempunyai pengaruh secara terhadap kualitiperkhidmatan awam, sehingga dengan perkhidmatan tersebut sebagai warga desa memperoleh perkhidmatan dari kepimpinan kepala dasa.

Kepimpinan kepala desa dalam menyelenggarakan tugas pemerintahan desa mempunyai tanggungjawab yang besar melaksanakan tugas pemberian perkhidmatan kepada warga desa. Dalam melaksanakan tanggungjawab kepimpinan kepala desa tersebut telah menerapkan gaya arahan, dan gaya delegasi.Pelaksanaan perkhidmatan masyarakat desa dipengaruhi oleh kepimpinan dari kepala desa. Gaya arahan, dan gaya delegasi merupakan kedua-dua gaya kepimpinan kepala desa yang memberi pengaruh terhadap kualitiperkhidmatan kepada warga desa. Gaya kepimpinan yang diterapkan kepala desa tersebut mengikuti kematangan staf bawahan.Penerapan gaya kepimpinan kepala desa dalam perspektif *situational leadership*yang meletakkan gaya kepimpinan dan kematangan bawahan kerajaan desa dalam memberikan perkhidmatan masyarakat desa di Kabupaten Indragiri Hilir.

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# **ENVIRONMENTAL POLICY AND MANAGEMENT IN THE CONTEXT OF SECURITY AND ECONOMIC DEVELOPMENT IN MALAYSIA<sup>1</sup>**

Raman Mariyappan<sup>1</sup>

## **ABSTRACT**

This paper looks at the policy implications on environmental issues in Malaysia in order to enjoy its security and development without jeopardizing its natural environment. In doing so, this paper is divided into four topics. First, the meaning of environment in security and development is deliberated to determine the changes due to economic development. Secondly, the environmental policies and management in maintaining security and in promoting development without seriously damage the environment. Thirdly, appropriate incorporation of national, regional and global resources to support such policies are recommended for due consideration by policy makers. Fourthly, the future challenges and problems are considered in environmental policies and management in Malaysia. Studies have shown that developed countries with exception of United States and a number of European countries (Thomas Sterner, 1999), had sacrificed their environment in order to achieve the present economic success. Malaysia has achieved significant economic growth during the last two decades<sup>1</sup>, which secures security and further development. Security and economic development can be jeopardized, if implementation of environmental policy and management is not properly addressed. Malaysia experienced a unique situation, where a significant economic development has been achieved without sacrificing most natural environment. But, the recent shift towards heavy industrial such as automobile and oil refinery has created new environmental problems. If above development trends continues, the present balance between economic development and natural environmental sustainability cannot be maintained in the longer term. The government's prime concern is to formulate appropriate macro economic policies for the prevention, protection and preservation of existing environmental qualities in the country. The rational for the introduction of environmental-related taxes are examined in this paper. So in-order minimizes the environmental problems, environmental taxes and charges can be used to set a planned economy. Increasingly concerned being expressed about the increasingly serious threats to the environment, natural resource base, and human health posed by rapid economic growth. The Government needs to respond to these environmental threats with effective policies that strive to integrate economic and environmental policy making. However, political scenario paints a different picture, balance economic and environmental considerations and to turn environmental programs into concrete action is emerging only slowly.

## **THE MEANING OF ENVIRONMENT IN SECURITY AND DEVELOPMENT**

The concepts of environmental security and environmental conflict have been increasingly discussed during the last few years. This is partly because of the environment may become relatively more important as a cause of conflict. Conflict may become war within a state or between states. Alternatively, even if fighting does not occur, there may be trade wars, or breakdown of co-operation between different groups of people. The tensions between nations of the North and the South for example, at UNCED, reduced the possibility of

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reaching international agreements on environmental issues.

In this broader security context, state's compliance with their international environmental obligations has become a more critical issue in international affairs than ever before. This is evident from the attention the subject received during UNCED as well as the negotiation of recent landmark environmental treaties, including the 1987 Montreal Protocol on substances that deplete the ozone layer and the 1992 Conventions on climate change and Biological Diversity.

Three factors underlie this increased concern with compliances. First, the growing demands and needs of states for access to and use of natural resources, complete with a finite, and perhaps even shrinking, resource base, lay the groundwork for increasing inter-state tension and conflict. Second, as international environmental obligations increasingly affect national economic interests, states that do not comply with their environmental obligations are perceived to gain unfair competitive economic advantage on other states. Finally, the nature and extent of international environmental obligations have been transformed in recent years as states assume greater environmental treaty commitments.

On the global level the WTO Committee on trade and the environment is struggling to make programs on developing guidance to the contracting parties to the WTO on a number of contentious issues, such as on specifying exactly in what cases trade measures might be justifiable in support of environmental policy objectives.

Trade liberalization entails the reduction of import tariffs and the phasing out of subsidy payments and tax exemptions given to exporting industries. It is part of a package of broader policy, measures designed to harmonize regulations and standards between countries and to facilitate economic and social interactions between countries. Trade Liberalization can result in structural effects (shift in economic activities from one sector to another) and scale effects (increase in existing activities.)

Economic Liberalization and free trade has positive and negative environmental impacts. The attempt to introduce a carbon dioxide/ energy tax in all member countries of the European Union failed in 1995. Economic Integration and Free Trade was always considered as environmental pressures. All ASEAN countries have various environmental laws and sustainable development programs in place. In general, such laws and regulations have been and are being developed with little involvement of either the general public or political parties. Definition of environmental policy objectives and the formulation of environmental policy instruments in ASEAN countries remain almost entirely a top-down process and are largely the result of the individual preferences of political leaders.

The concepts of environmental security and development are not complete without including EIA. EIA is considered as one of the most important instruments that can be used to evaluate the impact of a development towards environment and mankind. EIA requirements for deciding the type of development projects that should be funded through public and private investments in getting increased. EIA instruments would go far in assuring improved integration of environment and economic objectives. Economic valuation of noncommercial use of natural resources can help in establishing baselines for EIA that weigh market returns of investment against losses incurred from environmental degradation and public health.

## **THE ENVIRONMENTAL POLICIES AND MANAGEMENT IN MAINTAINING SECURITY AND IN PROMOTING DEVELOPMENT WITHOUT SERIOUSLY DAMAGING THE ENVIRONMENT**

One of the most pressing issues of global change research focuses on the human management of natural land cover or its conversion for human use. While much anthropogenic land use takes place at the scale of small individual units of production, its impact is global and cumulative. It is also clear that in the 20th century anthropogenic land use has accelerated, with complex and important implications for micro and landscape-scale environmental degradation (Blaikie and Brookfield 1987; Turner 1991) and for more global processes of environmental change (Turner et al. 1993).

As Turner has argued, there are two kinds of global change important to the consideration of human land use: "systemic" global environmental changes (biogeochemical and hydrological cycles, for example), and "cumulative" global changes (changes in soil composition or biodiversity) (Turner 1990). To this we add the argument that human land use is interesting in its own right because it provides the interactive medium by which human societies and biophysical dynamics of the biosphere co-mingle. Land use, in all its complexity, also feeds back into multi-scale social driving forces such as population, agricultural development, built environment, and so on.

One of the new and controversial findings of the 1970s has become one of the commonplaces of current landscape scale ecology; that local ecological change must be thought of in terms of more general environmental impact (Holling 1986). This observation seems particularly valid for land use and land cover change, as they are demonstrably local phenomena with global impacts. Land use change is typically thought of as having global impact in the cumulative sense with respect to biodiversity, soil degradation, and desertification. In addition, it has a direct global impact with respect to open biogeochemical cycles (those that include an atmospheric component, including the hydrologic cycle) and albedo effects. In recent years, the human management strategies or land cover and use have also taken on such a multi-scale aspect, or at least aspire to.

This paper is intended as partial initial framework discussion for a comparative analysis of human dimensions of land cover and use change. It is designed explicitly to serve several somewhat distinct objectives:

- to establish a linkage between biophysical and human aspects of land cover and use;
- to suggest a framework for an eventual global typology of land use situations and dynamics;
- to link the analysis of human dimensions to global land classification and land cover modeling efforts; and
- To provide a first step in determining what regions of the world might be given priority in future empirical research on global land cover and use change.
- to establish the impacts and causes of impacts of land use changes

It is also clear that the study of the human dimensions of land use and cover change offers the opportunity to study the interaction of human management and natural ecosystem performance over different time scales, which is one of the most interesting and pressing themes of our time.

### **Past, current, future land use and land use management**

What is the value of history to ecology? More specifically, what can historical, time-series date tell us that is relevant to current land management? Land use is a function of culture and settlements pattern as well as environmental characteristics (Meinig 1968; Rappaport 1968; Bennett 1976; Robbins et al. 1983). The interactions of social, economic and ecological factors are described in a large, diverse literature. Measures of social and economic conditions that have been shown to influence or be correlated to land-use patterns include historical land use (Tunner and Meyer 1991; Svisky 1993). Land use changes can be linked and must be linked to environmental tragedies. Many do not understand the simple concept of land use changes that can result in environmental disasters. Land use changes can be defined according to the aspects of law, economy, sociology and geography.

In this paper, the environmental tragedies due to wrong understanding of environmental security and development will be studied according geography terminology. According to Sanderson & Prithchard (1993) land, use changes can be defined as change of original land cover to a new landscape. Even a small change to the land cover can categorize as land use changes. Land use changes occur due to many factors, but, the most influencing factor must be human intervention, such as agriculture, urbanization, building of infrastructure (roads, dams) and recreational activities.

Over one-third of the land, area of the world is in cropland or pasture, and a third is still covered in forests and woodlands. The two dominant land use activities are forestry and agriculture. While increasing amounts of land have been and will continue to be lost to cities, infrastructure and various forms of permanent degradation brought about through desertification, erosion, salinity, toxic waste and mining, it is successful agriculture and forestry that will ultimately decide whether life on earth can be sustained.

Recognizing the importance of studies in land-use (such as logging, ranching, agriculture, wildlife preserve, urban settlements) and land-cover (such as forests, grassland, cropland, wetland, non-biotic construction) change for understanding global environmental change, the international Geosphere Biosphere Programme (IGBP) and the international Human Dimensions Programs on Global Environmental Change (IHDP) formed an ad-hoc working Group in 1991.

Every city or region must make decisions about how to use land and where to place houses, schools, libraries, airports, hospitals, prisons, power plants, roads and airports. Often there is a great deal of controversy over land use decisions. For example: -

- Residents do not want factories, prisons or airports near their homes.
- Developer argues for zoning laws permitting them to build multi-unit housing on agricultural lands.
- The utility company and homeowners debate the safety of building a nuclear power plant on a known earthquake fault.
- Commuters and landowners often disagree on plans for widening or building new highways or rapid transit systems.

Land uses changes mainly controlled by an important factor, which is fast population growth, especially in the developed world. In just over 50 years, the world's population will have increased from just over 5 billion to 10 billion; twice as many mouths to feed, twice as many families needing energy, clean water, fibers, paper, vegetables oils, timber, and shelter. In the last 50 years, the World's population has doubled from about 2.5 billion. History shows that our ingenuity and strong instincts for survival will drive us to meet our immediate needs; we have been remarkably successful, even if this has been achieved at costs to the environment. Populations have more or less stabilized in the industrialized countries, but continue to grow in the emerging and developing nations.

The World's population is urbanizing faster than it is growing. The majority of people in industrialized countries and Latin America already live in an urban environment, so it is in Asia and Africa where urbanization will increase most rapidly. People who live in urban areas have different, often more demanding, patterns of consumption of food, building materials, water and energy; they have higher expectations for a better quality of life.

In April this year, the UNCSD agreed to establish an Inter-Governmental Panel on Forests to promote international consensus, cooperation and action on forest management. In his concluding remarks, the Chairman of CSD underlined:-

*"An integrated approach to the planning and management of land resources was presented as a cornerstone in combating deforestation, desertification and drought; promoting sustainable agriculture, rural and mountain development; the conservation of biological diversity and the sustainable management of all types of forests".*

Sustainable patterns of production and consumption are popular concepts that are universally accepted as and the ideal towards which we should move. They are not a Utopian plateau upon which, once achieved, we can rest. Population growth, natural and man-made disasters, fluctuations in weather patterns and commodity prices, and rising expectations will require constant vigilance, maintenance and adaptation. Old technologies and some of the new ones will prove deficient in some way, as the sensitivity of our monitoring techniques improve our tolerance to imperfection decreases and our demands increase.

Many aspects of sustainability are measurable and monitorable – such as land use, biodiversity, vegetation, land productivity and pollution levels – but others are about opinion, democracy and choice. Social and economic, institutional and financial criteria will increasingly dominate decision-making on sustainability. Acceptable indicators or standards can be negotiated amongst stakeholders. The decisions made by societies on what we should sustain, where, how, for whom and for how long will have an increasing influence on land use practices. In the United Kingdom, the decisions in land use and the ownership of forests are increasingly influenced by public, often urban, opinion. It is the role of science and technology to help meet human needs, and realize their aspirations and goals – sustainable.

### **Causes of land use changes**

Deforestation and agriculture activity is the two main contributors towards land use changes. Historically, forests have usually lost ground to more intensive and quicker-yield forms of land use. Some destruction of forests has been accidental as a result of disaster and fire;

some has been caused by distorting policies that have encouraged people to over-exploit or destroy forest; and some from needs for timber and fuel, but the over-riding cause of deforestation has been the need for agriculture land to produce food, oils, beverages, fibers, latex's and other biological products. But simply understanding the causes of contemporary deforestation will not necessarily provide us with the solutions we seek.

There are many criteria used for assessing sustainability-ecological, economic, social and institutional. It is possible to identify some essential elements without which the prospects for sustainable land use are poor;

- A thorough knowledge of the nature, extent, state and best management practice for the land resources; and the means to detect and monitor the impact of change;
- A range of tested technologies and options for land use that will meet human needs and aspirations;
- Effective means to monitor the impact of development activities on the key elements of sustainability;
- The involvement and support of local communities and other stakeholders and potential beneficiaries;

If current land use cannot satisfy the needs and expectations of communities, it stands little prospect of being sustainable. A dynamic state of land use can be described as sustainable, provided it does not destroy or permanently degrade the basis of its productivity.

We are hampered by a lack of absolute performance measures for forestry. For forests, the objectives are less clear. The multiple functions and values of forests are seldom realized by an individual or single community. The stakeholders who value forests as sequestrates of carbon, modifiers of climate and weather patterns or resources of plants with potential pharmaceutical use are different to those who need firewood, fiber, food and timber, i.e. the values they give them are frequently different. These constituencies want different types of forests and forest products to those who simply want clean water and recreational facilities.

Forests and agriculture are integral parts of a land use 'continuum'. The original balance and distribution were determined by climate and geology; it is now decided by people, individually and collectively, responding to external factors, ownership and their own wishes to develop and improve the quality of their lives. It is a complex model and one that varies between countries, regions and communities.

Decisions and policy makers should try to understand, quantify and optimize these interactions. Many of these interactions are physical; others relate to social and institutional relationships. We know that forests have a major impact on the hydrology and hence land use of areas beyond the forest; the flow, silt load and seasonal reliability of surface water, springs and depth of ground water cannot only have a major impact on the time to rectify these mistakes, but can influence the incidence of water-related disasters and tragedies.

Most evidence comes from policy or market failure, where policies designed to benefit or regulate one aspect of economy impact badly on forestry. The boom in cassava production in Thailand as a result of preferential prices in Europe for cassava starch in the 1970s and early 1980s, resulted in a good deal of forest invasion and degradation. The clearing of land for cultivation greatly increased soil erosion on the sloping sandy soils of north and eastern

Thailand.

Consideration of land cover and land use change has been dominated by a number of stereotypes, from the “hamburger steer” model of deforestation to the population-driven slash-and-burn of primary forest, to the trade-connected destruction of natural vegetation for forest products extraction. In turn, these stereotypes have operated within at least three meta-stereotypes, humanist, ecological determinist, and co-evolutionist, each of which embodies significantly different approaches to the system dynamics of land cover change.

Humans act on a passive nature. Much of the large literature on land tenure, agrarian structures, and rural development operates from a human centered perspective, without regard to ecological determinants, or operating under the apparent conviction that human technological drivers can generally overcome natural obstacles to settlement. Within this optic, political and social structures constitute the principal constraints on development, which are tempered by a durable techno-optimism (Blakie and Brookfield, 1987). The environmental constraints on human activity may be acknowledged, but the origin or variability of those constraints is seldom questioned. Typically, this results in increased brittleness in managed landscapes, with management schemes tending to be ratcheted upward in the service of social and economic goals.

Classifications of land use typically focus on the human objective or product (agriculture, timber, and settlement). Land cover change occurs both as direct result of human activity (deforestation), or as a result of human activity mediated through the biophysical realm (groundwater withdrawal leading to a lowered water table leading to reduced stream flow and altered vegetation), or through a complex feedback of human activity on the biophysical world, impinging again on human activity, which then directly alters land cover (human introduction of rinderpest, change in wild herbivore population, advance of woodland with tsetse, leading ultimately to mechanized clearing; Sinclair 1979).

Natural dynamic cycles of disturbance both influence human use and determine the ways in which human disturbance will affect the system. For many societies, the rhythms of life set almost entirely by natural phenomena on time scales corresponding to diurnal, lunar and solar cycles.

### **Impacts of land use changes**

Positive comments, whether it is gradual or catastrophic, are necessary for environmental change to occur. Since all environmental components are part of comment loops, each may be involved in exerting stress and may be recipients of the resulting strain. Either individually or in a group, the role of environmental components in initiating stress and ultimate change will vary in magnitude both spatially and temporally. The outcome will depend on the internal resilience of the given environmental system. The human impact on environment is chiefly due to the need to manipulate energy. A distinction is drawn between solar-powered ecosystems, human-subsidized solar-powered ecosystems and fuel-powered urban-industrial systems. Humans manipulated the transposing ecosystem process by transforming into agro-systems by channeling energy into specific plant or animal harvest for human consumption.

Latter has become increasingly necessary in order to sustain population growth and urban industrial systems, and involves a considerable addition of fossil-fuel energy. The emergence of fuel-powered urban-industrial systems, a process that began with the

industrial Revolution, generated new agents of environmental change, e.g. large-scale mineral extraction and fossil-fuel consumption. Moreover, there was shift in the distribution of population from rural areas to urban centers. Mineral extraction created environmental change by disfiguring landscapes and polluting drainage network. Such impacts tend to be local in contrast to the global impact fossil-fuel use. Expansion of urban and industrial areas created new phenomena, i.e. flash floods and mud flood.

The extent of human ingenuity employed in the manipulation of ecosystems and the resulting range of agro-systems are quite remarkable. Some agricultural systems may rely almost entirely on solar energy whereas others are characterized by a massive fossil-fuel energy subsidy. Whatever forms it takes, agriculture is major agent of environmental change, possibly the most significant agent. The nature and organization of agricultural systems are responses to cultural stimuli, which operate within the constraints of the physical environment. The stimuli may include population growth rates, availability of markets, and the need to generate foreign currency and the desire for food security, which relates to political superiority.

The responses may include increased energy inputs through scientific and technological developments, e.g. pesticides and fertilizers, an increase in land clearance and a decrease in the length of fallow periods. The practice of agricultural caused the removal of a significant proportion of topsoil, which resulted in land degradation. This increases the siltation in the river systems, which can contribute to flash floods and mud floods. Arguably, land degradation is the single most pressing current global problem. As a result of remote sensing evidence we know that since 1945 1.2 billion ha, an area roughly the size of China and India combined, have been eroded at least to the point where their original biotic functions are impaired. Decline in potentially cultivable land leads farmers to cultivate steeper and steeper slopes. This may cause lands slides on hill slopes.

Landslide may not be as spectacular or costly as earthquakes, hurricanes or some other natural disasters. However, landslides are known to cause just as much if not more damage as any other geological hazard. We should know, as Malaysia has had its fair share of catastrophic landslides, putting aside property damage, it is the loss of lives that is most devastating. Back in December 1993, the Highland Tower tragedy claimed the lives of 48 men, women and children (including an infant). One of the three blocks of condominium at Highland Tower in Hulu Kelang, Selangor toppled following a massive landslide, which swept away the foundation of the building?

The mass movement processes that are most common in the Wairoa District are shallow slip and earth flow erosion. There is considerable evidence for frequent shallow slips under natural conditions (Clough, Hicks, 1992). Slipping is induced by short intense rainstorms or prolonged wet weather. The magnitude of slipping in any event is complex. Slipping under pasture occurs more intensely than under forest for storm events of the same magnitude. Therefore, average levels of slipping under pasture are between two and ten times greater than under indigenous forest or scrub (Clough, Hicks 1992).

In June 1995, the infamous Genting bypass landslide took the lives of 21 people. The incident gained notoriety after Works Minister Datuk Seri S.Samy Vellu attributed the cause of landslide to an "act of god." In August the following year, an orang Asli settlement in Pos Dipang, Perak was swept away by a torrent of water and debris from a nearby hill. The incident claimed 44 lives, and caused extensive damage to the settlement. Another case of

"divine" intervention, perhaps? Events that are even more devastating can be traced throughout history. An incident in Aberfan (pronounced Abervan ) in 1966 is a classic example of how indiscriminate mining resulted in the loss of life of over too children and adults.

Aberfan in Cardiff, Wales, was at one time a peaceful hillside town until coal was discovered in the mid 1800s. From then on, shafts were sunk to mine coal waste sky high. Some of the piles, known as tips, reached over 50m in height. These tips of coal waste were a disaster waiting to happen. On October 21, 1966, one of the tips started to move down the hill. A slow, almost unnoticeable slide then came crashing down within minutes, engulfing a school and a number of farm houses. In its aftermath, 144 people died, of whom 116 were children.

Landslide occurs when masses of rock, earth or debris move down a slope. Landslides may be very small or very large, and can move at slow to very high speeds. They are triggered by storms, fire and human interference with the land. Landslides occur as a result of rainstorm, earthquakes, volcanic eruptions, and various human activities.

Mudflows (or debit flows) are rivers of rock, earth, and other debit saturated with water. They develop when water rapidly accumulates in the ground, such as during heavy rainfall. They change the earth into a flowing river of mud or "slurry". Slurry can flow rapidly down slopes or through channels, and can strike with little or no warning at avalanche speeds. Slurry can travel several kilometers from its source, growing in size as it picks up trees, cars, and other materials along the way. Mudflows tend to flow in channels, but will often spread out over a flood plain. They generally occur in places where they have occurred before.

A mudslide one type of landslide, is a sinkhole. Steep hills and mountains are often the sites of land and mudslides. Many things weaken slopes on these hills, and mountain. Erosion by rivers, glaciers or ocean waves and fire leave slopes bare and vulnerable to heavy rain. Snowmelt can saturate the ground, and earthquake weakens the structure of the slope. Volcanic eruption produces loose ash falls that deposits debris on slopes. The weight of snow, stockpiling of ore, waste piles, and even building can put stress on weak hillsides.

Once a slope is weakened, almost anything can set a landslide off. Rain, earthquakes, and even blasting are common causes. If the hillside is dry, dirt and rocks can tumble the grade. If however, the slope is saturated with water, a mudslide occurs. This more destructive flow can pick up rocks, trees, houses and cars. As the debris, moves into river and streambeds, bridges can become blocked or even collapse, making a temporary dam that can flood neighboring areas.

Land management often causes landslides, mudflows and debris flow problems. Improper land-use practices, particularly in mountain, canyon and coastal regions, can create and accelerate serious landslide problems. Landslides happen in areas that have very weak or stressed material resting on steep slopes. Even gentle hills can slide if the conditions are right. If you are in area that has a history of landslides, be aware of the signs that will alert you to the possibility of a landslide.

The causes of artificial landslide lie in the way soil has been cut or banked. The speed of a landslide varies greatly, ranging from a slow rate of one cm a year to a speed of several meters a day. The speed can change over a period of time. In the case of landslide covering a wide area, several slides may take place at the same time, each one having its own rate of slippage.

In May 1970, an earthquake in Peru claimed about 70,000 lives, of which 20,000 perished as a result of the debris avalanche from the north peak of Nevado Huascarán. During the period 1971 -75, some 19,000 lives were lost in earthquakes, tsunamis, volcanic eruptions, landslides, and snow or ice avalanches. About 84% of the casualties were attributed to earthquakes and 14% to landslides.

Annually, direct or indirect costs of landslides in the US have been estimated to exceed US\$1 billion. Landslides and mudflows sometimes strike without warning signs, only taking notice when it is too late. The force of rocks, soil, or other debris moving down a slope can devastate anything and everything in its path. Landslides should never be taken lightly.

### **The Malaysian Experience**

Efforts at managing the environment in this country was started since a few decades ago, especially through legislative measures after the Department of Environment was set up in 1975. Increased development in all sector of the economy, especially in manufacturing and heavy industries during the last three decades not only led to increasing environmental degradation, but the problems also became very varied. The introduction of planning measures incorporating environmental input in project development through environmental impact assessment (EIA) and followed by the concept of sustainable development influenced the management efforts and environmental quality in this country. Although there have been failures and a number of success in EIA, it is envisaged that at the turn of the century, new environmental issues beside persistent old issues will phase added challenges in environmental management efforts.

It has been more than twenty-five years since the Department of Environment was formed to handle environmental issues in this country. In fact, efforts at managing the environment were started by British more centuries ago. The Matang Mangrove Forest Reserve situated in Perak is the living example of the British efforts. The principles that govern the concept of sustainable development highlight the needs to include environmental consideration are all development undertaking (World Commission of Environment and Development 1987). The subsequent inclusion of the concept of sustainable development in the National Environmental Policy objectives and prioritized by the Department of Environment in its efforts at managing the environment certainly augur well for the environment right into the new millennium. However, with the present systems of governance and environmental management is the country really prepared to manage the environment is the country really prepared to manage the environment to face challenges in the new millennium taking into account that the country is striving to be a fully developed nation by the year 2020.

An organized and committed effort on the part of the government to manage environment in Malaysia was started a few years after the 1972 Stockholm Conference on Human Environment through the formulation of the Environmental Quality Act, 1974, followed by the setting up the Division of Environmental (presently known as the Department of Environment) in 1975. The inclusion of the National Environmental Policy Objectives for the first time in the third Malaysia's five-year development plan (Malaysia, 1976), further shows the government's concern for the environment alongside the efforts to develop the nations economy.

One of the steps taken to ensure policy is carried out according to the set objectives is by formulating laws. Laws are essential in guiding enforcement efforts and in the formulating

subsequent policies in carrying out environmental requirements (Environmental Protection Agency 1992.) Environmental legislation has long been used in Malaysia as one of the strategies to manage the environment. To date there are more than 45 pieces of environmental legislation available in Malaysia.

Most of the legislation is not formulated to deal with the environment in general. Most of them seek to regulate human activities that may directly or indirectly affect the quality of the environment. Some are preventive in nature for the purpose of environmental deterioration. Some of the environmental legislation is in fact environmental resources legislation. Most of the environmental-related legislation is actually natural resources laws that are 'use-oriented'. They are designed for the maximum exploitation and development of natural resources. Environmental legislation is; resource-oriented', which are designed for the national conservation of natural resources in order to prevent their depletion and degradation. Thus, most of the legislation formulated before the Environmental Quality Act, 1974 do not contain criteria and standards. Even those that contain standards such as the Mining Rules, 1934, were inadequate.

There is no question of overlap between the state enacted legislation as most of them are legislation related to natural resources which are under the jurisdiction of the individual state. However, there is certain Federal Legislation which overlaps with each other and also with state enacted legislation.

The environmental Quality Act, 1974, which was made to protect the environment in general contains provisions which touch on matters which are under state jurisdiction especially regarding matters connected to natural resources. Only provisions on air, industries and chemicals are not under the state jurisdiction. The overlap in the provisions over matters related to water and air pollution is very clear between Environmental Quality Act and the Local Government Act, 1976 and the Street, Drainage and Buildings Act, 1974. The provisions in the latter Acts, which are made for adoption and used by the local authorities, enable the local authorities to take legal action and polluters within the local authority areas.

There is also overlap between Environmental Quality Act and the Natural Resources and Environmental Quality Act and the Natural Resources and Environment Ordinance, 1993. The overlap is clearly available after the Natural Resources and Environment Board of Sarawak took over the review and approval of EIA reports for prescribed activities related to natural resources and environment in Sarawak. Such a move certainly leads one to think that there exist loopholes in the environmental management mechanisms in this country, especially in relation to the legislation.

#### **APPROPRIATE INCORPORATION OF NATIONAL, REGIONAL AND GLOBAL RESOURCES TO SUPPORT SUCH POLICIES ARE RECOMMENDED FOR DUE CONSIDERATION BY POLICY MAKERS.**

##### **Drivers of Global Environmental Degradation**

Over the past two centuries, both the human population and the economic wealth of the world have grown rapidly. These two factors have increased resource consumption significantly evidently in agriculture and food production, industrial development, international commerce, energy production, urbanization and even recreational related activities.

While the global population more than doubled in the second half of the last century, grain production tripled, energy consumption quadrupled and economic activity quintupled. Within the perspective of globalization , although much of this accelerating economic activity and energy consumption occur in development world is beginning to play a larger role in the global economy and hence, having increasing impacts on resources and the environment.

The implication of human activities for the Earth system become apparent when the myriads of smaller human-driven changes are aggregated globally over long periods of time, influencing Earth System functioning as a global scale force in their own right.

Just as connections in the biophysical part of earth System link processes across long distances, socio-economic and cultural connections link human activities in widely separated regions of the planet. Urban areas, for instance, depend on large hinterlands to supply their population demands for food, fiber and other ecosystem services.

One large scale, the phenomenon of globalization is equally profound. Investment, industrialization, commercialization, and economic activity in general are increasingly operating across national boundaries and in a growing global system.

Investment decisions in Europe and North America, for example, can lead to sharp changes in the rate of deforestation in Amazonia, and to the accompanying environmental consequences. Today, urbanization and globalization will undoubtedly be profound drivers of environmental change at the global scale the next several decades.

### **Global Economy and the Sustainable Development of Natural Resources**

In the early 1990s, popular concern about mounting environmental degradation swept the global. This historical moment was crystallized in the 1992 UN World Conference on Environment and Development, known as the' Rio Summit".

The Summit coalesced around the concept of sustainable development: the idea that environmental protection could and should be built into design of economic development plans and policies, rather than be addressed as an aftermath of economic growth. The Summit produced a sweeping plan of action called Agenda 21 and called for both states and international organizations to begin implementing it.

For another direction, global conscious institution especially the General Agreement on Tariff and Trade (later the World Trade Organization) and APEC have also called for sustainable development to be incorporated within liberal trade rules.

However, despite these attempts by governments and institutions to integrate the soft law approach to sustainable development, the world still faces significant environmental problems such as shortages of clean and accessible freshwater, degradation of terrestrial and aquatic ecosystems, increases in soil erosion, loss of biodiversity, changes in the anticipated changes in fisheries and the anticipated changes in climate.

These changes are occurring above the stresses imposes by the natural variability of a dynamic planet. In 1987 the Brundtland Commission's Common Future detailed the challenges to the environment and sustainability arising from activities within particular

sectors, energy, industry, agriculture, urban systems living resources and human population. Since this report, substantial progress has been made, yet much more is needed.

In industry, for example, there have been considerable improvements in reducing and reusing materials, and reducing wastes<sup>1</sup>. This trend towards dematerialization must be accomplished globally and at much greater rate.

In the energy sector, gradual progress has been made in increasing efficiency and in developing of alternatives to fossil fuel sources, but critical air pollution and global green house gas problems resulting from fossil fuel combustion continue to grow around the world. Dramatic increases in energy efficiency decarbonization and the development utilization of new sustainable energy technologies are needed.

In agriculture, it has become common as food demand rises and less land is available for conversion, the use of fertilizers are intensified, thus mobilizing their loss to the atmosphere and waterways. Biomass burning associated with land clearing and agricultural practices in Southeast Asia in an important regional political issue, but the environmental effects are global.

Satellite imageries in February 2001 showed strong production of carbon monoxide centered in Thailand, a result of seasonal burning as part the normal agricultural practices. The carbon monoxide, an oxidizing gas that has a number of implications for Earth System functioning, on this occasion farmed a plume that extended all the way the Pacific Ocean to the west coast of North America.

There are a number of constraints towards sustainable development of the environment (natural resources). This includes:

1. Environment problem are generally borderless.
2. Environmental and resource management are largely the unilateral preserve of nation states.
3. Environmental cooperation is not truly global. Adequate structures are needed to organize international cooperation at all levels affecting the development of environmental resources.
4. Environmental problems operate within a multiple cause and affect linkages, which are not readily understood.
5. The development of an integrated scientific approach towards the goal of understanding the dynamics of the Earth System.
6. Digital divide and information dissemination, for making decisions under a wide range of uncertainties, a common knowledge base of clear, concise and unbiased scientific information must be made available to politicians, business people, environmentalists and the general public to ensure informed debates and potential response actions.

Although science has vastly improved our understanding of the nature of global change, it is much more difficult to discern the implications of the changes. They are cascading through the Earth's environment in ways that are difficult to understand and often impossible to predict.

The human driven changes to the global environment will, at least require societies to

develop a multitude of creative responses and adaptation strategies at the sources, pathways and targets in natural resources development and global trade.

### **THE FUTURE CHALLENGES AND PROBLEMS ARE CONSIDERED IN ENVIRONMENTAL POLICIES AND MANAGEMENT IN MALAYSIA**

There are major environmental problems in Malaysia and they include the following:

- i. The logging rate in Malaysia during the last decade has been around 800,000acres per annum. The ecological outcome of deforestation includes soil erosion, silting of rivers and floods, climatic change, loss of fauna and flora and disruption to the lives of rural farmers.
- ii. Soil erosion resulting from deforestations, construction projects and land development activities has silted ponds, lakes and rivers causing frequent floods and depletion of valuable topsoil. Cutting of hills and felling of trees on undulating land has also caused destruction of headwaters and silting of rivers. As a result, there is destruction of watersheds leading to reduction of water supplies in reservoirs. The Malaysian Water Association has projected a major water crisis by 2010 if water resources management is not taken seriously (New Straits Times, 1998)
- iii. There has been gradual destruction and degradation of mangroves and wetlands.
- iv. With the phasing out of traditional systems of agriculture, there is uncontrolled use of pesticides. As a result, there is the problem of contamination of the topsoil.
- v. There have been continuous loses of bio-diversity, in terms of species of animal, fish and plant life.

Other environmental issues that are of current concern within Malaysia, but which have attracted much less international attention, include

- i. atmospheric pollution by industries and vehicles;
- ii. river and coastal pollutions by industrial effluent, sewage and agricultural chemicals;
- iii. the modification of coastlines, coastal wetlands and drainage systems by reclamation and resort development; and
- iv. The raising of water tables and soil salinity by excessive run-off from irrigation systems.

### **Environmental Management System as Part of Enhancing Environmental Policy**

#### **The Scheme of Fundamental Liberties**

In Malaysia, the Malaysian Constitution does not specifically deal with the environmental rights. However, recent court decisions had indicated that the right is implicitly provided by Article 5, which guarantees right to life and liberty.

Case: *Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan [1996] 1 MLJ 261*

Gopal Sri Ram JCA in his judgment state:-

*“.. The expression ‘life’ appearing in Article 5 does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life. Of these right to seek and be engaged in lawful and gainful employment and to receive those benefits that our society has to offer to its members. It includes the right to live in a reasonably healthy and pollution free environment [the emphasis is mine].”*

It must be pointed out that although the above case was purely on unfair dismissal, it defines the Article 5 on a broader view. In another case, i.e.

**Ketua Pengarah Jabatan Alam Sekitar & Anor V Kajing Tubek & Ors and Other Appeals [1997] 3 MLJ 23,** the judge pronounced that the aborigines have property rights over the Linggiu Valley and the Defendants have been deprived to the right of heritage in land, freedom of inhibition or movement under Article 9(2), deprivation of produce of the forest, deprivation of future living for himself and his immediate family and deprivation of future living for his descendants.

From these cases, it could be said that the judiciary appreciated the existence of the right to environmental protection.

#### **The Growing Awareness On Environmental Issues Among The Public, Policy makers, Academicians and International Community**

As the international community has taken its serious effort to preserve the environment since 1972 by organizing various international Summit and Conference on Environment and making declarations e.g. Stockholm Declaration 1972, Rio Declaration in 1992, Copenhagen Declaration in 1995.

Malaysia who is also signatories to Rio Declarations and to honor the commitment that our country had undertaken, it is wise if the rights is given a special treatment by declaring it as a fundamental right in this country.

There are at least 45 environment related legislation in the country. A large part of this law is sectoral in nature and is within the control of several different agencies either at federal, state or local-government level. Hence, the enforcement is rather piecemeal and does not encourage an integrated approach on environmental management. Generally, it had been accepted that the problem on the enforcement of law is hampered by the scheme of distribution of legislative and executive power between the Federation and the State.

#### **Need for Environmental Taxes**

Taxes (direct and indirect) can have incentive and disincentive effects. The main rationale for the use of environmental taxes is to raise the prices of environmentally damaging activities thereby discouraging pollution-prone activities. These taxes can provide incentives for both consumers and producers to alter their behavior towards a greater use of environmentally-friendly resources; activate innovation and structural changes; and encourage greater compliance with rules and regulations. Revenues collected through environmental taxation can be used to pay for the external or social cost of industrialization. On the other hand, tax incentives in the form of double deductions or rebates can be given

to encourage the business community to use pollution control equipment in their manufacturing activities.

The Rio Declaration of June 1992 stated that an efficient environmental tax should meet the following criteria, namely: environmental efficiency; economic efficiency or low marginal cost; administrative efficiency; and trade efficiency, that is, the tax should have minimal impact on international competitiveness. It is, however, difficult to fulfill these criterions. Environmental problems occur at different stages in the production chain and it can also be of different geographical character. The problem can be of local, national, regional or global character. The differences will affect approaches and choice of solutions. The methods chosen also will have its effect on location of production, trade and international competition.

The use of indirect tax system provides an alternative route for the introduction of market-based incentives for pollution control. The cost of implementation will be lower because it can use the existing administrative producers and apparatus available to the Royal Customs and Excise Department in Malaysia. For example, the use of coal with high content of sulfur causes acid rain. A tax on such usage by industry will discourage its use. But it will not prevent the use of coal by people who are unwilling to invest in technology that will minimize the impact of such pollution. So by loading a heavy tax on coal, leading to a substantial increase in its price, users may find a cheaper substitute.

### **Tax Structure and Environmental Policies**

The existing tax structure in Malaysia offers a range of possible fiscal changes that could be used to pursue environmental sustainability. The conventional method of pollution control is based on regulating the choice of technology or levels of emission. In pursuing environmental sustainability, both direct and indirect taxes should be re-examined to accommodate new tax variants that could be used to curb environmental problems whilst allowing for continued economic development in Malaysia.

**Direct taxes.** Direct taxes can be used to provide individuals with incentives to perform specific one-off acts, for example, encouraging house-holds to invest in energy efficient equipment. Expenditure on energy-saving equipment should be wholly deductible against the income of individuals. Companies too may be given accelerated depreciation allowance if they invest in energy-saving technology. However, it should be noted that the use of direct taxes normally requires extra administrative mechanism for the enforcement and verification of the individual's entitlement to the incentives.

**Indirect taxes:** The use of the indirect tax system provides an alternative route for the introduction of market-based incentive for pollution control. The cost of implementation will be lower because the existing administrative procedures and apparatus available to the Royal customs and Excise Department in Malaysia may be used. For example, the use of coal with high content of sulfur causes acid rain. A tax on the use of coal by industries will discourage its use but it will not prevent its use by industries unwilling to invest in technology that will cause a minimal amount of pollution. It is anticipated that by levying a tax on coal, it will ultimately lead to an increase in its price and users may then be inclined to find cheaper substitute.

**Input taxation:** The application of input taxation as an instrument of environmental policy will be most suitable where relationship between input use and pollution is stable and where the basic technical choices affecting pollution do not involve the possibility of ' effluent

cleaning'.

Imposition of tax on production inputs may dissuade the use of polluting materials in production, but provide no incentive to clean up effluents from the process. For instance, a tax on sumptuous coal in an attempt to curb acid rain may cut the amount of such coal, but it would not encourage those who continue to use it to do so in a way which minimizes the resultant effluent. Likewise, a tax on petrol may dissuade car use, but would not encourage the fitting of catalytic converters, which substantially reduce the emission of certain types of pollutant from car exhausts.

#### **Barrier to Environmental Taxes**

There are, of course, barriers to the imposition of environmental taxes. A question frequently raised regarding all taxes, particularly environmental taxes, is whether they would undermine the competitiveness of the domestic industry. Environmental taxes would not severely impose a competitive disadvantage if imposed on the household sector or on that portion of the business sector that does not export its products or services. There are numerous other barriers to the introduction of environmental taxes. These include the political will to introduce unpopular taxes that do not directly benefit consumers and producers; impact of taxes on maintaining employment levels in labor intensive industries; burden of taxes on low-income groups; and maintaining revenue. Furthermore, it is not easy to evaluate the impact of a newly introduced environmental taxes and its effectiveness cannot be always identified.

#### **National Environmental Policies**

Early environmental legislation in Malaysia was primarily concerned with forestry and mining matters. Soil conservation and health, the latter particularly concerned with the eradication or control of insect-borne diseases, notably malaria, were also the subject of environmental legislation (Aitken *et al.*, 1982).

Environmental problems in Malaysia have not been totally neglected in the past. Twenty-five years ago, a national policy to deal with environmental issues was formulated with the introduction of the Environmental Quality Act 1974. This move led to the establishment of the Department of the Environment in 1975. The Third Malaysia Plan, 1976-1980 (Government of Malaysia, 1976) too addressed some of the environmental issues. The first paragraph of that chapter stated the following: 'Environmental improvement and protection will receive the full attention of the Government in the planning and implementation of programmes in the Third Malaysia Plan'. In 1989, Malaysia sought to establish itself as a country committed to environmental issues when it initiated the Langkawi Declaration on the Environment at the Commonwealth Heads of Government Meeting (CHOGM). In addition, under the umbrella of the Association of Southeast Asian Committee on Science and Technology, projects were initiated within the ASEAN Environmental Programme. Three years later, Malaysia convened a conference at Kuala Lumpur, attended by representatives from 55 nations, in order to set the Third World agenda for the earth Summit held in Rio de Janeiro in June of that year. The Kuala Lumpur Declaration stressed the linkage between environment and development and called upon the advanced countries to adjust their consumption and production patterns towards environmentally sound development.

#### **RECOMMENDATION**

This section recommends a seven- point environment improvement strategy, strategy, including environmental education, the use of liberal tax incentives and encouraging the

application of advanced technology.

#### **Industry – Targeted Tax Relief**

The negative effects of environment taxes are that they precipitate the incorporation of the costs of environmental services directly into the prices of the goods, services or activities which cause term. On the other hand, the positive effect is that taxation tools can be used as a mechanism to provide incentives for both producers and consumers to cause a change in their behavior towards a more 'eco-efficient' use of resources, to stimulate innovation and structural changes; and to reinforce compliance with regulations. Likewise, industry-targeted tax relief can be designed to preserve the incentive to invest in new technology and to substitute labor and capital for energy. Moreover, carefully targeted relief can eliminate competitive impacts with lower revenue loss.

#### **National Accounting System Needs To Be Reformed**

There is a lack of regulation prescribing environmental practices and / or requirements for corporation such as the need to disclose environmental and social issues in their financial reports (Kasipillai et al., 2000). By adopting experiences of other advanced of other advanced countries, the practical indicators of the use of resources and environment should be defined in some key areas on step-by step basis, and be integrated into the existing national accounting system. This is to make sure that the national accounting system will in line with sustainable development and it could be gradually perfected. Environmental problems are management issues as such accountants must be encouraged to ascertain and allocate environmental costs so that products are priced on true cost.

#### **Application of Marginal Cost Principal**

Environmental taxes should be levied on all enterprises that cause pollution, and the tax levied should be based upon the cause of damage pollution. In order to reduce management cost involving environmental taxation, other ways of raising environmental tax should be explored. The marginal cost principle should be used to price electricity, water conservancy, urban pipeline gas, centralized heating supply, use of solar heater, wastewater and garbage treatment, and transportation infrastructure construction. Taxation incentives or special funds should be set up to encourage investment in energy-efficient factories and facilities.

#### **Education the public on Environmental Taxation**

All corporate citizens should be encouraged to participate in the decision – making process of sustainable development and in environmental education of their employees. This is especially important for environmental impact assessment, for environmental protection and for urban development. Non-governmental organizations (NGOs) should be encouraged to play a bigger role in environmental protection. Criticisms made by NGOs on environmental degradation should be well received and acted upon by the Malaysian Government.

#### **Resource Pricing and Practical Environmental Economic Policies**

The resource pricing system should be adjusted and taken into consideration in implementing environmental economic policies. Resource prices should be able to reflect the true production and environmental cost and also follow the market rules. This would help to achieve effective resource management. This kind of adjustment should be reflected in economic planning, so to encourage the saving of water, electricity and raw materials, and efficient use of resources.

### **Environmental Management system should Be Improved**

The checking system of environmental performance should be strengthened. This system may be adopted for the protection of land and mineral resources. By doing so, the capacity of government at various levels in managing the population, resources and environment could be enhanced. The adoption of voluntary certified standards of environmental management for industries, of the type of ISO 14000 and EMAS (Environmental Management and Audit Scheme), should be encouraged.

### **A Case for Carbon Tax**

Road transportation is recognized as the most polluting industry in Malaysia. According to the Environmental Quality Report (1997) covering the years 1993- 1997, motor vehicles contributed to 81 percent of the country's air pollution. In numerous countries, the pattern of imposing tax on energy sources differ broadly between different forms of energy. An option for a developing country like Malaysia is to introduce carbon tax. The tax is tied-up to the carbon content of different energy sources and is intended to reflect the use of the specific energy source that discourages carbon dioxide into the atmosphere and thus contribute to the greenhouse effect which inevitably results in global warming. If the users of motor vehicles had to pay taxes in their daily life, for example carbon tax, it is expected that there would be a decrease in air pollution caused by carbon dioxide as users of motor vehicles would strive to use alternative fuel to avoid paying taxes. Further, it is anticipated that this move will eventually create in the users in the users and awareness of the negative effects the use of carbon dioxide has on the environment.

If individuals had to pay taxes daily life, for example carbon tax, it can be recognized that the more tax is imposed on use of motor vehicles, the more it has effects on air pollution, so that these individuals could be more concerned about the air pollution problem. The tax rate can be increased gradually over the years. Individuals would be more prepared for the measures against introduction of high rates during the initial period of low rate. As with other environmental taxes, its introduction would be more feasible as part of a package of measures.

### **CONCLUSION**

A major challenge facing the Malaysian government is to provide a stable environment without hampering the industrial progress of the country. An effective way of addressing the environmental degradation is for the government to enlist the assistance of the both the public and private sectors. Punitive regulations alone will be less effective than when combined with collaboration with the public sectors actively setting standards and guidelines, monitoring itself, and establishing fair and efficient enforcement systems.

The paper highlights the severity of environmental issues in a developing country such as Malaysia. It would be a costly mistake if governments ignore the impact of environmental degradation on economic sustainability. Extensive research is needed to device alternative tools to deal with the varying problems of protecting and enhancing the environment. Naturally, to safeguard the interest of current and future generations, it is crucial that every effort should be made to protect the environment while pursuing a strategy of sustainable development. For all practical purposes, it is the environmental degradation associated with

environmental externalities or spillover effects of the use or misuse of environmental resources which requires all pervasive and effective public policy intervention. Corrective measures are required for environmental up gradation, while preventive measures are needed for environmental protection.

An agenda to protect the environment spelt out by the National Economic Recovery Plan of Malaysia (1998) can be a useful starting point in evolving an environmental policy. A comprehensive taxation policy should be pragmatic with recognition that environmental issues are cross-sectoral and complex. Within the next two decades, corporate leaders as well as policy makers would, perhaps, be unable to say whether or not a particular industry is 'sustainable' or not, but they would become increasingly sophisticated in terms of their ability to assess whether or not it is moving in the right direction. Unlike financial reporting where reporting developments are often resisted, environmental taxation remains an active area of experimentation and innovation, particularly in the context of sustainable development.

In the final analysis, the success of remedial measures initiated by the government to compensate for the depreciation of environmental assets does not depend on isolated factors, but on a complex combination of circumstances. While full voluntary effort by each and every citizen to preserve the environment remains an elusive dream of every government, it is nevertheless prudent to take every practical measure to arrest its decline.

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# THE IMPACT OF INTERNATIONAL LEGAL FRAMEWORK – THE RECOGNITION OF SECOND MEDICAL USE

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## ABSTRACT

This paper analyses the impact of international legal framework on the pharmaceutical patent and second medical use. The provisions under the Trade-Related Aspects of Intellectual Property Rights (“TRIPS”) Agreement generally focuses on the pharmaceutical patent in relation to the access to medicines and not specifically addressing issues on the medical innovation involving first and second medical use. Although Doha Declaration on the “TRIPS” Agreement and Public Health equally recognizes on the importance of medical innovation, the issue on medical innovation is not further analysed in relation to the second medical use. The provisions of the “TRIPS” Agreement open a flexible option to the member countries to exclude method of medical treatment from patentability. Although excluding method of medical treatment seems to be as a flexible option to countries to prevent evergreening patents, it further adds to the challenge of overlooking the importance of the second medical use type of patents. The author will also analyse another important international legal framework on the European Patent Convention (EPC) which emphasizes on the new uses of known substances. However, the Article 54(5) of the EPC only impliedly recognizes first medical uses. The question on whether EPC recognizes second medical use is still ambiguous in the international legal framework notwithstanding its importance in the pharmaceutical and medical field.

**Keywords:** TRIPS Agreement, method of medical treatment, second medical use. European Patent Convention, pharmaceutical patent

## 1. INTRODUCTION

In relation to the patent law itself, it is well known fact that domestic legislations are based on the international treaties such as the Trade-Related Intellectual Property Rights “TRIPS” of the World Trade Organisation (WTO). We can observe that provisions under the “TRIPS” discusses generally on pharmaceutical patent and does not specifically address the ambiguity existing in the first and second medical use. The development of new medicines well appreciated in the Doha Declaration on the “TRIPS” Agreement and Public Health. The development of new medicines can only be achieved through recognition of first and second medical use. The provisions of the “TRIPS” also opens an option to the member countries to exclude method of medical treatment which can be misunderstood as excluding first and second medical use.

The provisions of the “TRIPS” relating to the pharmaceutical patent and second medical use are also examined. The important agreements under the “TRIPS” will be looked into and

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interpreted accordingly. The Doha Declaration on the “TRIPS” and Public Health will be analysed as well. The role of the international organizations such as World Health Organisation (WHO) will be discussed and suggestion will be provided on how to improvise their role in the challenging area of pharmaceutical patent and second medical use. The issues to be taken into considerations are patentability of new uses of known substances which covers first and second medical use and method of medical treatment. The patentability of new substances and method of medical treatment must be differentiated to achieve the objective of the Doha Declaration on the TRIPS and Public Health which encourages development of new medicines.

Subsequently since the TRIPS overlooked the specified provisions on new uses of known substances and does not provide any specific definition on new uses of known substances which indirectly obliges the member states of the WTO to adopt provisions in the EPC 1973 for new uses of known substances. However the definition of new uses of known substances under the EPC is still unambiguous and need to be amended by the member countries who have adopted to this provision.

## **2. PARIS CONVENTION<sup>1</sup>**

Before the implementation of the TRIPS Agreement in 1994, the international intellectual property is given less importance (Pazderka and StegeMann (2005). With membership of the Paris Convention of Industrial Property of 1883, issues such as national treatments are discussed. In relation to the Paris Convention, issues such as patent protection on pharmaceutical are left to member countries to decide and implement their own patent law. The Paris Convention of 1883 is less authoritative before the implementation of the TRIPS in 1994.<sup>1</sup> On the 125<sup>th</sup> anniversary of signing the Paris Convention, the previous Director of General of World Intellectual Property Organisation (WIPO), Dr Kamil Idris stated as follows; “the principles enshrined in this landmark treaty are as valid today as they were a century and a quarter ago”. The fact that every subsequent treaty relating to industrial property has been inspired by the Paris Convention is testimony to the foresight of policy makers at that time and to the enduring relevance of the intellectual property system (Seville, 2013). The failure to revise Paris and Berne Convention encouraged developed countries to include TRIPS as part of Uruguay Round of multilateral trade negotiations, on matters of intellectual property (Malkawi, 2010). The United States, was the first country to include intellectual property rights part of the negotiating process. The developed countries noticed the neglected status of intellectual property rights and then proposed minimum standards of intellectual property right which must be followed by each member country.

In relation to patents under WIPO, the relevant agreement is Paris Convention for the Protection of Industrial Property (Paris Convention) in 1883. The existence of Paris Convention is said due to difficulty obtaining patents in foreign countries, for instance difference treatment in national and foreign applicants. Besides by having international convention such as Paris Convention, sufficient protection can be given to foreign investors related to intellectual property and not trade issue.

According to Article 2(1) of the Convention which states; “Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all other countries of the Union the advantages that their respective laws not grant, or may hereafter grant, to nationals, all without prejudice to the rights specially provided for by this Convention.<sup>1</sup> This implies that Paris Convention does not set minimum standards unlike TRIPS. In relation to

patents there is no specific standard of protection implied in the Paris Convention. For example there are no provisions on the requirement of patentability, what constitutes eligible subject matter. Under Paris Convention, members are free to set their own standards of patent protection in their own national laws which will apply to other inventors of other members of the Union.<sup>1</sup> So if a pharmaceutical product is excluded in a specific country, inventors from other country cannot able to secure their invention on the product.

### **3. TRIPS AGREEMENT**

The “TRIPS” Agreement negotiated in the 1986 to 1994 Uruguay Round introduced intellectual property rules into the multilateral trading system for the first time. TRIPS established out of Uruguay Round of the General Agreement on Tariffs and Trade (GATT) (Henderson, 1997). For nearly fifteen years United States relied on GATT on free trade and reduction of tariffs (John A. Harrelson, 2001). The focus of GATT is on trade of counterfeit goods and now it extends from trade of counterfeit goods to intellectual property law of participating members (Dilip K. Das, 2005).

The TRIPS agreement is part of other three main areas in the WTO in relation to the trade in of goods and services. Other subjects of negotiation include trade on counterfeit goods which is given importance in the Uruguay Round. Besides, with a proper implementation of intellectual property law in the international level international trade in counterfeit goods can be prevented.

In the early stage of negotiating developing countries questioned GATT’s power to deal with intellectual property when such issue is excluded or out of its jurisdiction. Developing countries of an opinion that WIPO is a more suitable organization which has the jurisdiction to deal with matters related to intellectual property rights. After several discussions on GATT, WTO was formed in 1994. Once members signed, TRIPS came force in January 1995. According to the Article 2(1) of the TRIPS members shall comply with Article 1-12 and 19 of the Paris Convention. Thus, every member countries are obliged to implement these articles in domestic level to implement these articles in domestic level, even though the member country is not signatories to the Paris Convention.<sup>1</sup> The Paris Convention for the Protection of Industrial Property is part of the TRIPS where often a pre-existing system for intellectual property system. Besides, TRIPS often treated as modern or new system on intellectual property protection (Seville and Yu, 2010)<sup>1</sup> As we can observe TRIPS have taken lead in term of discussion in relation to the intellectual property system. WIPO also must take the lead and responsibility with cooperation from the WTO with a more specific explanation of the international treaties on the requirement of patentability, disclosure requirement and undisclosed data information.

The TRIPS Agreement said to be the most difficult negotiation at the Uruguay Round politically and technically. During the Uruguay Round, stronger intellectual property rights and issue of transfer of technology was the main issue raised by developing countries. The paragraph in the Punta del Este Ministerial Declaration launched in Uruguay Round worded as follows: (Correa, 2007). “In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, and the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines. Negotiations shall aim to develop a multilateral framework of

principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.”

The TRIPS Agreement states principles and standards to ensure the availability of a minimum level of protection for IPRs (Duffield and Suthersanen ,2008).The question is whether the minimum standard required by the TRIPS can be an advantage for the recognition of new uses of known substances. However the inventor should not abuse the minimum standards allowed by the TRIPS. The minimum should be applied carefully by the national patent legislations. The TRIPS standards are minimum to be applied by the WTO members and even if these standards does not lead to harmonized system, the WTO members still have the obligation to apply this minimum standards independently according to their level of development.<sup>1</sup> There is no special and differential treatment given to developing countries and Least Developed Countries (LDCs) except for the transitional period. Furthermore, certain industries such as semiconductor industries can apply more stringent IP standard compared to the pharmaceutical industry which is more sensitive towards intellectual property rights(Qureshi, 2003). Although TRIPS Agreement states the minimum standards of the intellectual property rights, the Agreement overlooked the specified provisions on new uses of known substances and does not provide any specific definition on new uses of known substances which indirectly obliges the member states of the WTO to adopt provisions in the European Patent Convention1973 for new uses of known substances. It also can be argued that by having minimum standards under the TRIPS any type of new uses of known substances can be recognized, and this further will encourage “evergreening” patent and innovations which is not genuine or not worthy. However the definition of new uses of known substances under the EPC is still unambiguous and need to be amended by the member countries which adopted to this provision. The question arises also whether it is suitable for developing countries members to adopt developed country standards such as the European Union.

The TRIPs Agreement takes into account the legislative flexibility in member countries. Each of the members can adopt intellectual property protection to suit the need of their respective countries with a condition that minimum standards under the paragraph 1 of Article 1 of the TRIPS Agreement are complied. The Article 1 of the TRIPS Agreement read as follows: ‘Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.’ The word minimum itself implies that TRIPS Agreement only requires less or normal protection on the intellectual property protection and it solely depends on the member countries to adopt stringent or relaxed approach in means of protecting the invention itself. The Article 1 paragraph (3) also states member countries should also meet the criteria for eligibility for protection under Paris Convention (1967), the Berne Convention (1971), the Rome Convention and Treaty on Intellectual Property in Respect of Integrated Circuits, in which all the member of the WTO are also members of the those conventions.

The subject of patenting pharmaceutical products has been the most controversial issue during the Uruguay Round.<sup>1</sup> as most of the developing countries did not provide pharmaceutical product protection. For example, India being major producer of generic medicines was also forced to implement patent protection in 1 January 2005. On the other hand, Malaysia did not face any controversial issue in relation to acceptance of

pharmaceutical product protection. This might be due to the still blooming generic pharmaceutical industry in Malaysia which is not a big player as India yet. However, in order to protect our local generic pharmaceutical industry, Malaysia should adopt more specific provisions on first and second medical use as currently the provisions of section 14(1) are far-fetched. The more specific provisions on the new uses of known substances especially on the second medical use which prevent "evergreening" patents which does not deserve the additional 20 years of monopoly which will prevent generic producers from relying on the data and producing similar invention.

The reason Malaysia have not faced any major controversial issue is due to the mere implementation of the provisions of Article 54(5) of the European Patent Convention.<sup>1</sup> It is not an obligation for Malaysian patent legislation to adopt provisions under European Patent Convention as similarly adopted in the United Kingdom.

### **3.1 The objective of the TRIPS Agreement**

Article 7 of the TRIPS Agreement constitutes on the objective of the TRIPS which need to be complied by the national patent legislations of member countries.<sup>1</sup> The Article read as follows; 'the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to the balance of rights and obligations(Pazderka and Stegemann ,2005). This implies that intellectual property protection not only should recognize technological knowledge or transfer of knowledge to those who can benefit, but also recognizing the contributions of inventors or patentee (Matthews and Munoz-Tellez, 2006).<sup>1</sup> The question whether transfer of technology can be accessed through failure to work the patent. Intellectual property has two objectives such as follows; i) rewarding the inventors for his innovation; ii) promoting interest of business or public via access to science, technology and culture (Gervais, 2008). The balance between right of the inventor and the interest of the user of the technology or public interest often tested. For example, for certain life-saving pharmaceutical product the public interests are said to be greater or given more importance. However, it is important to note by excluding patent protection which might constitute the patent as less important or significant in the pharmaceutical field. Article 7 on the objective of the TRIPS should significantly take into account while interpreting other articles in the TRIPS Agreement.

It was submitted that, incremental innovation that does not promote technology transfer should not be recognized. Technology transfer can be promoted through patent specification considering stages in the drug development process. The Article 7 of the TRIPS emphasizes on the transfer of technology that must emphasize win win situation between producers and user of the knowledge. For example, incremental innovation which has significant advantage compared to the prior art existing invention can transfer knowledge to the generic producers to produce medicine that has better safety and quality medicines. However "evergreening" or incremental product which does not prove any significant benefit or improvement over the prior art can block generic producer from entering the market. The objectives of the TRIPS Agreement are often overlooked as balance between intellectual property objectives such as innovation and public health which is difficult to be achieved. According to Ms Prangtip Kanchanahattakij, First Secretary Permanent Mission of Thailand to the United Nations and other international organizations in Geneva in her speech on perspectives on intellectual property and public health which she addresses two issues as follows; i) to balance intellectual property objective such as innovation and trade and taking

into account development objective such as public health needs. ii) access to care and treatment. The improvement of current substance such as first medical use and second medical use often considered as evergreening product or monopoly and threat to public health needs. The improvement of the current substance which is beneficial such as modifications of the current substance can reduce adverse drug reactions or substance A which is proved to be useful to treat another disease X from the known disease Y, which is non-obvious from the person skilled in the art should be looked into as significant and genuine innovation to improve quality of medicines in the pharmaceutical industry. In order to recognize the importance of technological innovation in the pharmaceutical industry, the research and development towards better, effective and safe medicines need to be look into. However issues such as exchange information on the drug prices and TRIPS flexibilities are often discussed where solutions in the development of new medicines are overlooked.

Another important principle and part of objectives under Article 7 is Article 8 of the TRIPS Agreement. Article 8(1) of the TRIPS Agreement read as follows; 'Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement. Article 8(2) of the TRIPS also emphasizes that consistent property rights by the patentee or if patentee performs any action that unreasonably restrain trade or adversely affect the international transfer of technology. The importance of Article 7 and 8 of the TRIPS Agreement can be observed in the paragraph 19 of the Doha Declaration which stated that the responsibility of the Council of the TRIPS to examine the relationship of other relevant new development such as traditional knowledge and folklore. However the TRIPS Council needs to take into account objectives and principles under Article 7 and 8 of the TRIPS Agreement. New developments on medicines should be looked as major component under pharmaceutical patent which should be addressed at the national and international level. The first medical use, second medical use and the incremental innovation is still unsettled issue or overlooked issue under the TRIPS Agreement. In order to recognize the importance of innovation in the pharmaceutical industry, data submitted by the pharmaceutical companies to ensure safety, quality, efficacy are important to stimulate or encourage health related research and development. Thus, the technological development in relation to the pharmaceutical industry can be achieved through the worthy type of data submitted to the drug regulatory agencies.

According to Dr Ng Soo Chin said during the discussion on discovering a new drug and its effects on prices, she further stated that "We also take cognizance that innovation and new discoveries need to be rewarded (Ng, 2013). Furthermore, taking into account the high cost that will incur in the developmental and research stage as in order to establish a particular which is safe, efficacious, good which is not necessarily better than the previous drug, the three stages of clinical trial need to be conducted.

### **3.1.1 Requirements of patentability**

The basic treaty needs to be analysed in relation to the patentability is Article 27 of the TRIPS Agreement which discusses on patentable subject matter. The article 27(1) of the TRIPS Agreement read as follows ;'Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether product and processes, in all fields of technology , provided that they are new or proves novelty, involve an inventive step and are capable of industrial application. The Agreement does not define what novelty and an

invention is. The simple and plain wording of Article 27.1 gives the member countries of the WTO to define novelty within their own legal system.<sup>1</sup>

The concept of novelty further examined in the EPC. The EPC considers an invention ‘to be new if it does not form part of the state of the art’ on the priority date, which is held to include everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application (Dutfield and Suthersanen, 2008). This means invention which is made publicly available may form the state of the art whether or not the invention have been described in writing or orally. However the question arises whether the concept of novelty has been narrowly interpreted. However, to demonstrate lack of novelty, a person skilled in the art would have to be able to discover the composition or the internal structure of the product and reproduce it without ‘undue burden’.<sup>1</sup> The compatibility of novelty requirement<sup>1</sup> under TRIPS with the national legislations will be determined in the chapter four on pharmaceutical patent.

The second requirement under patentability is inventive step which must be non-obvious to the person skilled in the art. The test developed by the courts while discussing the inventive step requirement is the judgment of a person skilled in the art. The question is on whether same standard applied particular technology related field such as semiconductor technology, pharmaceutical industry, computer-related technology which has its own challenges. For example in order to prove non-obviousness to the person skilled in the art in the pharmaceutical industry, there are few experts such as pharmacologist, toxicologist, chemist or physician that need to take part in the process to decide whether a particular invention is obvious or not. The statutory test for inventive step has been adopted from the case of *Windsurfing v Tabur Marine* (1985),<sup>1</sup> of termed as “Windsurfer Test”. In order to determine the obviousness Court in Appeal in the United Kingdom, the case of Windsurfing stated four step evaluation questions as follows:

- (i) What is the inventive step involved in the patent?
- (ii) At the priority date, what was the state of the art relevant to the step?
- (iii) How does the step differ from the state of the art?
- (iv) Without any knowledge of the alleged invention taking into differences which would have been obvious to the skilled man or whether they require any degree of invention.

In addition, an invention must also be ‘capable of industrial application. Under the section 16 of the Malaysia Patents Act 1983 industrial application is defined as follows‘ an invention shall be considered industrially applicable if it can be made or used in any kind of industry. However types of invention that can be used in the industry not further explained in the TRIPS Agreement. The types of invention that can be made or used in any kind of industry are left to the discretion of the judges in the case laws.

In relation to the Article 27 of the TRIPS Agreement, developing countries should adopt patent system that suits their country needs (Cann, 2004). For instance patents should be granted only for new drugs that represent breakthrough development rather than lower level improvement. According to Professor Ruth L. Gana, TRIPS Agreement imposes a set of minimum intellectual property standards and does not impose judicial history of the Western world. However adoption of strong patent protection by the pharmaceutical companies is still ongoing debate. According to view of the developed countries, strong patent protection often associated with development of new medicines and increases opportunities for local scientists to develop own drug instead of being dependent on the patented drug.

### **3.1.2 Exclusion of patentability inventions.**

The patentability requirement under Article 27.1 of the TRIPS is not absolute and exclusions of patentability of invention with consideration to several factors as discussed in Article 27.2 of the TRIPS. Article 27.2 specifies exclusions to patentability that any member countries may but obliged to establish or adopt in their domestic law.

The Article 27.2 of the TRIPS Agreement read as follows; ‘Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ‘ordre public’ or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law. The word ‘ordre public’ is linked to security reasons, such as riot or public disorder, and inventions that constitute criminal or offensive behavior. However, the word ‘ordre public’ or morality can be vague and being dependent on their perception of national patent offices and judges (Correa, 2007). Article 27.2 often applied taking into account the paragraph 4 of the Doha Declaration on the TRIPS Agreement and Public Health.<sup>1</sup> However under paragraph 4 of the Declaration focused has been made merely on public health and promotion to access to medicines. The protection of public health should also take into account development of medicines as balance between development of new medicines and access to medicines equally important in order to achieve improved public health and better and quality of access to medicines.

The exclusion of patentability which is said to protect human and public health must take into account the benefit of future medical innovations which will improve the quality of health through quality medicines. The TRIPS Agreement does not explain further types of new uses of known substances which can be granted protection. The exclusion of patentability under the Article 27.2 and 27.3 of TRIPS does not describe specifically on the types of new uses of known substances which can be excluded and existing ambiguity in the pharmaceutical industry still continues.

The article 27.3 also must be read together with general exclusion under Article 27.2 of the TRIPS. The exclusion requirement further explained in the Article 27.3 of the TRIPS on the types of inventions which can be included. However the exclusions of types of new uses of known substances remained silent under the TRIPS Agreement. The silence of recognition of new uses of known substances under the TRIPS Agreement might lead to ambiguity that new uses of known substances are misconceived as method of medical treatment.

Besides that, under Article 27.3 (a) of the TRIPS Agreement<sup>1</sup>, members may also exclude patentability such as diagnostic, therapeutic and surgical methods for the treatment of humans or animals (Endeshaw, 2005). Members may also exclude patentability of plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes under Article 27.3(b) of the Agreement.<sup>1</sup>

Although TRIPS permits countries to reject patentability on diagnostic, therapeutic, surgical methods for the treatment of humans or animals under Article 27.3(a) as stated above, TRIPS does not provide any guidance on the issue of new uses of known substances.<sup>1</sup> The new or second uses of patents eligibility under the TRIPS Agreement remain silent (Carolyn Deere, 2009). Since the TRIPS Agreement remained silent on the patentability of new uses of known substances, the national patent law should play an important role to guide the ambiguity existing in the patentability of new uses of known substances.<sup>1</sup>

The intellectual property protections achieved through free trade agreements (FTA). Although TRIPS Agreement was enacted taking into account trade elements, trade negotiations cannot be a benchmark to indirectly enforce coercion on the member states to comply with the favoured type of intellectual property protection.<sup>1</sup> The example of TRIPS PLUS standards are interpretation of a particular or specific phrase of the TRIPS Agreement to suit the need of the developed nation, excluding interest of developing nations (Susy Frankel, 2014).

An illustration to enforce the TRIPS PLUS can be interpreted in the meaning of the Article 27 of the TRIPS Agreement, on the requirement of patentability or patentable subject matter which is above the standards required by the TRIPS. There are types of patent which are only protected in certain member countries and not other member states, such as second and subsequent uses of known pharmaceutical compounds. For instance, US in many of their FTAs require the protection of second and subsequent uses of known pharmaceutical compounds (Bartlett Foote, 2009). For example in relation to second and subsequent uses of known compounds, Malaysian patent law follows European Patent Convention as a sole guidance.<sup>1</sup> The compliance of Malaysian patent legislation in line with the European standards is part of the objective of the thesis and one of the main issues in this dissertation that will be addressed. Furthermore, Malaysian being a developing country, it is still questionable whether developed countries standards will suit needs of a developing country.

#### **4. EUROPEAN PATENT CONVENTION**

Second medical use often misunderstood as part of method of medical treatment where cannot be granted patentability where recognition of second medical use can be challenging to the pharmaceutical industry. Some organization such as European Industrial Research Management Association of a view “new therapeutic application of known substances should not be excluded from patentability and should be recognized as valid invention(Ventose, 2011).Without recognition of new uses of known substances, pharmaceutical companies will concentrate fully on new products or compounds, which will be very expensive. In contrary, some parties of a view that exclusions of methods of medical treatment should not extend to “new therapeutic applications of known substances.” In relation to the patentability of uses of known substances it is important to draw differences between first uses and subsequent uses. New uses of known substances are important for the development of medicines yet only genuine innovation which contributes to efficacy, increased bioavailability and reduced adverse drug reactions should be recognized.

Importantly, pharmaceutical industry argument for patent protection must promote research and development in finding new uses of known drugs.<sup>1</sup> However the phrase on new uses of known drugs seems to be very general and further specific guidance must be provided by the European Patent Office or relevant national legislations that accept new uses of known substances. Innovation in the pharmaceutical field undeniable of its benefits and medical use of drugs has become part of human life. Thus patentability in relation to new uses of known substances must be strictly done with information on the clinical trials and to show how does the new use differ in term of benefit to humans compared in the prior art and whether this new uses has reduced side effect on adverse drug reactions or less toxicity.

##### **4.1 Article 54(5) EPC 1973**

The European Patent Convention is as an international treaty which emphasized specially on issues in the pharmaceutical industry. One unique character of EPC is the protection of

new uses of known substances which often said to cover first medical use. However even under the EPC recognition of second medical use is still ambiguous and without certainty to its patentability. The importance of the research and development must be taken into account by the EPC especially in the area of pharmaceutical industry. The exclusion of method of medical treatment was initially excluded from patent protection in Article 53 (c) of the EPC. The exclusion of the Article 53(c) of the EPC has made member states of the WTO to adopt and implement the exclusion of method of medical treatment in their domestic law. Article 53(c) EPC also states that exclusion of methods of medical treatment shall not apply to products, in particular, substances or compositions, for use in any of these methods. Importantly, under the EPC the substances used in treating patients are patentable notwithstanding the medical treatment exclusion.

Another important provision concerning the pharmaceutical industry can be seen in Article 54(5) of the EPC 1973 which discusses on medical uses of known substances and compositions. Thus Article 54(5) of the EPC is considered as important to encourage inventive and innovative function of the patent system. The research on further medicinal uses of the current drugs and known substances will be increased. The refusal to recognize the innovation of known substances will discourage the inventor to produce such inventions in the future. The question whether second medical use patents is part of new therapeutic of known substances is still a question to be answered. The explanation should be divided into few categories such as what constitutes first medical use followed by second medical use. It is important to note the meaning of "medicinal product". According to Article 1 of the Regulation (EC) of the European Parliament And Of The Council medicinal product defined as "any substance or combination of substances presented for treating or preventing disease in human beings or animals and any substance or combination of substances which may be administered to human beings or animals with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in humans or in animals." The phrase on "restoring, correcting or modifying physiological functions in humans or in animals are important as this implies that new uses of known substances which has genuine benefits such as reducing toxicity or long term side effects can be part of the restoring, correcting or modifying physiological function (Cook, 2010).

#### **4.1.1 Reform of the EPC.**

The Article 54(5) EPC 1973 has become Article 54(4) EPC 2000 as the removal of the Article 54(4) of the EPC 1973. The new Article 54(5) of the EPC 2000 provides that notwithstanding paragraphs (2) and (3), the provisions of the article shall not exclude patentability of any substance or composition referred to in paragraph (4) for any specific use in any method referred to in Article 53(c), provided that the use is not comprised in the state of the art. The question whether new uses includes adjustment in the dosage or treatment in the human body is a still an open-ended question. The phrase new uses whether it covers known substance to treat new disease, improvement of the current dosage or amendment to the dosage to treat a current disease or new disease, and new uses which comprise of improved or lesser side effect or toxicity, better efficacy and bioavailability of the drug( Malhotra, 2010). Thus the word new uses itself is far reaching and lead us to few options under medical treatment, which further creates ambiguity. However it does not mean just because the wording is difficult to understand or ambiguous new uses of known substances can be excluded without further clarification or justification of its importance.

The recognition of new uses of known substances is still a challenge in the pharmaceutical industry and it is still doubt whether it is left to the legislation of member countries legislation

to decide. Besides that, TRIPS Agreement does not provide any specific treaty regarding this, though working paper on the promoting medical technologies was discussed in general. However, international treaty should be developed in regard to new uses of known substances. In relation to this, new uses of known substances which discussed in relation to first and second medical use, EPC have been a benchmark for member countries domestic legislation to adopt the provisions of EPC into their national legislations.

The international context on the obligation of the member countries to adopt provisions on the new uses of known substances need to be reviewed and specific guidelines on pharmaceutical patents must be adopted by the international organizations and member countries itself in their national legislations or report. The international legal framework mainly the TRIPS and EPC are not sufficient in defining or recognizing second medical use and should be improvised.

#### **4.1.2 Comparison of Adoption of Second Medical Use in Malaysia and India**

The recognition of second medical use in the TRIPS Agreement remains silent as discussed earlier in this paper. The Patents Act 1983 of Malaysia is also silent on the recognition of second medical use. The relevant section in relation to the new uses of known substances merely adopted based on the Article 54(5) of the EPC, which states "Subsection (2) on the prior art shall not exclude the patentability of any substance or composition, comprised in the prior art, for use in a method referred to in paragraph 13(1)(d), if its use in any such method is not comprised in the prior art. Section 13(1) (d) includes exclusion of patentability for methods for the treatment of human or animal body by surgery or therapy, and diagnostic methods practised on the human or animal body. The Sec 14 (1)(d) of the Patents Act 1983 impliedly recognizes method of medical treatment as long as the use of the substance is novel. However this general provision creates ambiguity that new uses of known substances are equivalent to method of medical treatment. Article 54(5) of the EPC also can be interpreted for the first medical use, for instance use of X for the treatment of disease Y. The question on the recognition of new uses of substance to treat a new disease. For instance use of X to treat a different disease Z or improvement to treat disease Y with lesser side effects, which covers under second medical use. Second medical uses often left to courts to decide without guidance from the international treaties and domestic legislations. This paper identifies the lacking recognition of statutory and international treaties on the second medical use which is often overlooked as evergreening patent.

Furthermore in comparison with the Malaysia patent legislation, Indian legislations are discussed in this paper as a comparison for improvement for the current existing ambiguity. The Section 3(d) of the Patents Act 1970 (amendment Act 2005) recognises new uses of known substances that passed the test of enhanced efficacy. This implies to the author, as long as the efficacy test can be proven by the inventor both first and second medical use type patents can be recognized. However the Sec 3(d) of the Indian Act is not without its drawbacks where in the recent case<sup>1</sup> of Novartis, the inventor failed to satisfy the act as according to the decision held by the court the enhanced bioavailability cannot lead to enhanced efficacy. The author conducted a brief interview with a physician, and dermatologist, as according to Dr Koshy Mathen Kayalakkathu<sup>1</sup>, a physician and dermatologist increased in the bioavailability will also contribute in enhanced efficacy. Furthermore according to him, new uses of known substances which have reduced toxicity should be recognized too. He also stated that the strength of the original inventor drugs depends on the bioavailability of the drugs which is essential in the process of drug

development. Although in this paper the concept of efficacy, bioavailability and adverse drug reactions are not discussed in detail, the author wants to state that these concepts are important in the interpretation of second medical use in the domestic legislation.

##### **5. THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH**

In November 2001, the declaration of the Fourth Ministerial Conference in Doha, Qatar provides negotiations on range of subjects. The negotiations took place in the Trade Negotiations Committee and its subsidiaries. The subject matters amounting to 21 subjects which includes implementation, analysis and monitoring on the agreement of "TRIPS".<sup>1</sup> The general provisions of the Ministerial Declaration under paragraph 17 of the Doha Declaration states as follows; 'We stress the importance of the implementation and interpretation of the "TRIPS" in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines', and related to this connection separate declaration is adopted.<sup>1</sup> The separate declaration on the TRIPS Agreement and public health on paragraph 3 read as follows; 'We recognize that intellectual property protection is important for the development of new medicines. We also recognize the concerns about its effects on prices.' The development of new medicines is not explained further in the declaration.

Furthermore, under this declaration on the TRIPS Agreement and public health ministers emphasizes that is important to implement and interpret TRIPS Agreement in relation to the public health. Promoting public health need to include access to existing medicines and creation of new medicines. This implies that access to affordable existing medicines are important in relation to this declaration. However in the process of achieving affordable access to medicines, creation of new medicines should be discussed and given importance as well equally. The Doha Declaration is explained in the sense which states that 'TRIPS Agreement does not and should not prevent member governments from acting to protect public health. The Doha Declaration on TRIPS and public health on paragraph 4 states as follows; "We agree that TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members right to protect public health and, in particular, to promote access to medicines for all as per paragraph 4 on the Doha Declaration on the TRIPS Agreement and Public Health. According to the European Commission (EC) on the paragraph 4 of the TRIPS Agreement, the agreement should state on the benefit of intellectual property and public health policies and importance of both complementing each other. The EC also of the view that it is not an issue whether intellectual property overrides public health; but on intellectual property and public health can complement each other. The commission further stated intellectual property and public health should be look into as complement to each other or mutually advantage as without effective medicines, public health policies can be affected or discouraged (Correa, 2002). It further observed under paragraph 4, members should override intellectual property rights if there is a conflict between intellectual property rights and public health.

However the TRIPS flexibilities focuses and discuss more on the TRIPS flexibilities such as compulsory licensing as can be seen in paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health which states as follows: 'We recognize that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. However in relation to the TRIPS flexibilities the ways to improve development of new

medicines not look into specifically. The legal status of the declaration though is not automatic but these flexibilities can be enforced through amendment to national laws (Correa, 2004).

## **6. CONCLUSION**

In conclusion, international treaties such as TRIPS Agreement of the WTO play a significant role in promoting pharmaceutical patent and second medical use. The provisions in the TRIPS have been adopted by member countries in their national legislations. The second medical use which is often treated as less significant and often treated as purely as "evergreening" patent can be damaging to the development of medical innovation. It was proposed that second medical use can be appreciated with a proper disclosure especially on the drug development process. Since first and second medical uses are new uses of "known" substances" the evidence on the clinical trials should be submitted to show how does the current invention is superior compared to the prior art. The disclosure on the invention regarding the information on the clinical trial should be introduced in the earlier stage. It is important to note since Article 54(5) of the EPC often treated as recognition only for the first medical use, then question arises on the recognition of second medical use under this section However in the view of the author second medical use should be included as part of the Article 54(5) of the EPC.

In relation to the new uses of known substances, Article 27.1 of the TRIPS should provide guidance on the differentiation of new uses of known substances and method of medical treatment which often there is misconception on these concepts. The thesis will address differentiation of new uses of known substances or first and second medical use, and method of medical treatment in the next chapter 5. Besides that, this chapter addresses the importance of Doha Declaration on the TRIPS Agreement and Public Health which should also appreciate research and development of new medicines, as often affordability of medicines are the general issue focused without discussing specifically on the research and development of new medicines. The Doha Declaration on the TRIPS Agreement and Publication should be read together with the objectives of the TRIPS Agreement on Article 7 and 8 of the Agreement.

In addition, EPC has become a main guidance to member countries on new uses of known substances or first/ second medical use. This mere adoption of the Article 54(5) of the EPC into the national legislation needs to be carefully looked into, whether it suits the needs of the developing countries. In relation to the developing countries more specified national legislations is needed to promote technology transfer in the pharmaceutical industry, which can be a challenge. The developing countries should revise their legislations in term of second medical use and mere adoption of Article 54(5) of the EPC can be ambiguous as specifically not stating types of second medical use that can be recognized.

Last but not least, other international organizations such as WIPO and WHO should play their role accordingly. For instance WIPO can guide on the implementation of new uses of known substances specific legislations in the developing countries members. Other organizations such as WHO can emphasize on the importance of new medicines, drug resistance issues and how does new uses of known substances can benefit the public and how does proper disclosure in the clinical trial or drug development process can recognize this overlooked importance of new uses of known substances or often called as first and second medical use.. The pharmaceutical industry often faces challenges because the

development of new medicines are often overlooked or viewed as a threat to the public. The development of the new medicines said to increase the cost of medicines which will further reduce affordability of the medicines and hampering public access to these drugs.

In conclusion, it is important to note the provisions on the TRIPS Agreement should not be overlooked and interpreted in a good faith for the benefit of the developing countries. With a proper guidance from the international treaties such as WTO, WHO and WIPO can improve the current ambiguity existing in the member countries legislations. The adoption of specific legislation in relation to new uses of known substances by Indian parliament is an eye opener to the pharmaceutical industry to achieve stringent standards by achieving the term of efficacy, though Section 3(d) not without their criticism.

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TRIPS Agreement, Art 8(1)

TRIPS Agreement, Art 8(2)

TRIPS Agreement, Art 27(1)

TRIPS Agreement, Art 27(2)

TRIPS Agreement, Art 27(3)

TRIPS Agreement, Art 66.2

TRIPS Agreement, Art 68

Vienna Convention, Art 31(3) (a) (b)

# **BOONSOOM BOONYANIT LWN ADORNA PROPERTIES SDN BHD: 24 TAHUN MENITI TANGGA KEADILAN**

Khuzaimah bt Mat Salleh<sup>1</sup>  
Mumtaj bt Hassan

## **ABSTRAK**

Kes Boonsoom Boonyanit lwn Adorna Properties Sdn Bhd adalah merupakan kes yang agak kontroversi membincangkan tentang masalah fraud tanah di Malaysia. Kes ini membincangkan tentang lot tanah yang dimiliki oleh Boonsom telah dipindahkan secara fraud oleh seseorang yang menyamar sebagai Boonsom kepada pihak Adorna Properties S/B. Kes ini mendapat perhatian apabila Mahkamah Persekutuan membuat perubahan yang ketara kepada lanskap undang-undang tanah di negara ini yang mengakibatkan Boonsoom kehilangan tanahnya. Perjuangan menuntut semula tanah Boonsoom bermula pada tahun 1989 dan kemudiannya diteruskan oleh ahli keluarganya setelah beliau meninggal pada tahun 2001. Disebabkan masih belum mendapat apa-apa hasil, maka perjuangan itu masih lagi berterusan hingga ke hari ini setelah 24 tahun berlalu. Tujuan artikel ini ditulis adalah untuk mengimbau kembali kenangan tentang kehidupan Madam Boonsom dan usaha yang dilakukan olehnya bagi mendapatkan kembali tanahnya dan tindakan susulan oleh beberapa ahli keluarga Boonsom dalam meneruskan usaha itu.

## **PENGENALAN**

Umum kebanyakannya sedar dan mengetahui tentang perjalanan kes ini dan kedudukannya pada masa sekarang. Sejarah kes ini bermula apabila seorang perempuan warganegara Thailand bernama Boonsoom Boonyanit (BB) telah membeli harta tanah di Penang pada tahun 1967. Tanah berlot 3606 dan 3607 itu berlokasi di Mukim 18, Town of Tanjung Bungah (hartanah itu), Penang, Malaysia. Setelah membeli dan mendaftarkan harta tanah terbabit di pejabat tanah, BB telah mendapat hak milik tak boleh sangkal ke atas harta tanah itu. Keadaan ini bertepatan dengan peruntukan undang-undang seksyen 340 Kanun Tanah Negara 1965 (KTN). BB adalah warganegara Thailand. Beliau tinggal bersama keluarganya di No 181, Soi Samaharn, Sukhumvit Road 4, Bangkok, Thailand (Wan Sharif Wan Ahmad, 2010). BB lahir pada tahun 1915 dan bersama suaminya berhijrah dari China ke Thailand dan memperolehi cahayamata seramai sembilan orang.

Pasangan ini berkahwin pada tahun 1931 dan pada tahun 1964 suami BB iaitu Vichai jatuh sakit. Mereka bercuti di Penang dengan tujuan untuk berehat. Pasangan itu mula menyukai suasana di negeri itu dan terpikat dengan keramahan masyarakat di pulau itu. Pada tahun 1967, Vichai membuat keputusan membeli sebidang tanah (hartanah itu) di Tanjung

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Bungah dan berharap mereka akan dapat menghabiskan masa tua mereka di sana (Piya Sosothikul: facebook Justice for Boonsoom Boonyanit v Adorna Properties, 2012).

BB sememangnya bukan berasal dari keluarga kaya, justeru suami isteri ini berusaha sedaya upaya memajukan diri di tempat mereka berhijrah. Mereka menjalankan berbagai perniagaan kecil-kecilan dan seterusnya berjaya membuka perniagaan pembuatan kasut yang mana perniagaan ini diteruskan oleh legasinya hingga ke hari ini. Perkara ini didedahkan oleh cucunya Piya Sosothikul yang menceritakan tentang kegigihan seorang wanita bernama BB yang telah mengorbankan segalanya untuk keluarga.

*"Sacrifices she made for her family. Our family, like many other Chinese immigrants in Thailand in the early 1920's started with nothing. My grandma, only attended school up until 4th grade because of her family's financial difficulty, got married at the age of 16 years old. She gave birth to 9 children with the first being my dad in 1932. She was a fulltime housewife, taking care of the kids, cleaning, cooking, buying food, breast feeding, and nursing when someone was sick. It was a hardship of nonstop working 18 hours per day. My grandfather was not home much to help because he was also working 16-18 hours at a wooden factory mill to earn money for the family. My grandma had to be very frugal especially during the time of World War II when food prices were high. My dad told me that my grandma would always wait for her children eat first, and take whatever was left, and yes, many time there was none. It actually became her habit even when our family began to have money and did not have worry about having enough food on the table. My grandma would still wait for her children and grandchildren eat first, but this time, making sure that we all get to enjoy the good stuffs, and she would then eat whatever was left." (Piya Sosothikul, 2012).*

Mempunyai perniagaan yang besar sememangnya membuatkan mereka mampu untuk membeli sebidang tanah di PP untuk tempat istirehat mereka nanti. Tanah di Penang dibeli oleh pasangan pada tahun 1967 semasa percutian mereka di sana. Vichai kemudiannya meninggal dunia pada tahun 1975. Masalah mula timbul apabila pada tahun 1989, BB menyedari bahawa tanahnya telah dijual kepada Adorna Properties (AP) oleh seseorang yang menyamar/‘impostor’ sebagai Boonsoom Boonyanit. BB mendakwa dia tidak pernah memasuki apa-apa transaksi penjualan tanah berkenaan sebelum ini. Seorang warga Thai telah menyamar sebagai BB dan telah membuat pindahmilik tanah daripada BB kepada Adorna Properties (AP) dengan harga sebanyak RM1.8juta. Maka di sinilah pertikaian bermula.

#### **Sorotan kes-kes BOONSOM BOONYANIT @ SUN YOK ENG Iwn ADORNA PROPERTIES SDN. BHD**

**Mahkamah Tinggi: [1995] 4 CLJ 45, Mahkamah Rayuan: [1997] 3 CLJ 17, Mahkamah Persekutuan: [2001] 2 CLJ 133**

Pada 24 Mei, 1989: Pihak Adorna Properties (AP) telah hadir ke Pejabat Tanah Pulau Pinang untuk satu urusan pindahmilik tanah daripada BB kepada AP. Memorandum pindahmilik bertarikh 7 April 1989 itu telah siap ditandatangan oleh BB sebagai pemindahmilik. Maka, termeterilah penjanjian pindahmilik di antara AP dan BB yang menjual tanahnya dengan harga sebanyak RM1.8juta. Penjualan ini kemudiannya disedari oleh BB. BB mendakwa beliau tidak pernah menjual tanah tersebut kepada sesiapapun. BB bersama anak sulungnya Phiensak, kemudiannya mendakwa AP di mahkamah.

Pada tahun 1995 – Mahkamah Tinggi mengeluarkan keputusan memihak kepada AP berdasarkan prinsip hakmilik takboleh sangkal, AP adalah pemilik berdaftar tanah tersebut. Jadi mereka berhak kepada tanah itu. BB kalah di dalam kes ini. (BB merayu ke Mahkamah Rayuan).

Dan pada tahun 1997- Mahkamah Rayuan melalui Hakim Gopal Sri Ram memberikan keputusan kepada BB dengan mengatakan apabila sesuatu pindahmilik itu dicemari dengan fraud atau pemalsuan maka pindahmilik itu adalah batal. BB menang di Mahkamah Rayuan.(AP merayu ke Mahkamah Persekutuan).

Seterusnya pada tahun 2000 - Mahkamah Persekutuan memberikan keputusan berpihak kepada AP. MP mengatakan bahawa AP adalah *bona fide purchaser* menurut seksyen 340(3) KTN yang memberikan hak *indefeasibility of title* kepada mereka. Pihak AP dianggap sebagai pembeli yang membeli secara suci hati, justeru mereka berhak kepada tanah tersebut dan apabila ia didaftarkan, maka AP memperolehi ‘hakmilik takboleh sangkal’. Keputusan mengejut ini telah menukar kedudukan asal prinsip hakmilik takboleh sangkal tertunda yang telah lama diamalkan di negara ini menjadi hakmilik takboleh sangkal segera. Hakmilik takboleh sangkal tertunda bermaksud pembeli yang membeli daripada seorang penipu tanah tidak akan mendapat hakmilik yang sah sehinggalah dia menjual tanah itu kepada pembeli yang seterusnya. Maka pembeli seterusnya itulah yang akan mendapat hakmilik yang sah. Maksudnya hakmilik sah itu telah tertunda kepada pembeli seterusnya. Manakala hakmilik takboleh sangkal segera bermaksud pembeli yang membeli daripada penipu tanah akan mendapat hakmilik yang sah. Inilah yang ditafsirkan oleh Hakim Tan Sri Eusoff Chin di dalam kes Adorna Properties Iwn Boonsom Boonyanit. Tan Sri Eusoff Chin mentafsirkan perkataan pembeli seterusnya di dalam seksyen 340(3) sebagai pembeli yang membeli daripada penipu tanah, walhal maksud sebenar seksyen adalah pembeli kedua yang membeli daripada pembeli pertama yang membeli daripada penipu tanah. Keputusan ini dibuat selepas 7 bulan BB meninggal dunia. Akibat terkejut menerima keputusan Mahkamah Persekutuan, anak sulung BB, Phiensak kemudiannya mengalami strok dan lumpuh.

Pada tahun 2001 - Masih tidak berpuashati dengan keputusan itu, seorang lagi anak BB iaitu Kobchai mengambil tugas Phiensak telah membuat permohonan kepada Mahkamah Persekutuan untuk menyemak semula keputusan mereka (facebook: Justice for Boonsoom Boonyanit, 2012).

Dan pada tahun 2004 - Mahkamah Persekutuan membuat keputusan tanpa berpihak kepada Kobchai dengan mengatakan bahawa walaupun telah berlaku ketidakadilan, menurut mahkamah ketidakadilan itu bukanlah sesuatu yang dianggap sebagai ketidakadilan yang teruk/grave *injustice*, justeru, Mahkamah Persekutuan tetap dengan

keputusan awal mereka memberikan hakmilik *indefeasibility* kepada AP. Salleh Buang (2008) mengulas mengenai keputusan MP itu dengan mengatakan:

*"I remember well one of the occasions when the FC said that although injustice had been done to BB, it was not grave injustice. Such judicial remark led me to question whether in court's mind there were two levels of injustice, only the latter meriting some form of redress or remedy. Indeed it is a pity when the landowner's son tried to get a decision from the court in 27<sup>th</sup> August 2004 where the court said this was not a case where grave injustice had occasioned".*

Rosey Lim Chu Ai (2010) juga berkata:

*"Madam Boonyanit passed away in 2000 without getting the justice that she rightfully deserved".*

Shaila Koshy (2010) di dalam artikelnya juga menulis:

*"Boonsoom Boonyanit became embroiled in a legal controversy after an imposter sold off her land. While the Federal Court...declared the 2000 judgement against Boonsoom was wrong, her family has gained naught."*

Jan Yong (2013) juga memberikan pendapat:

*"It has given carte blance to the land fraudsters to carry out their sordid deeds".*

Penulis pula berpendapat bahawa keputusan kes Boonsoom adalah sesuatu yang merugikan pihak Boonsom dan keluarganya. Walaupun mereka berasal daripada keluarga yang kaya, harta tanah itu adalah harta milik mereka sekeluarga yang tidak boleh diambil dengan mudah. Mahkamah Persekutuan sepatutnya mengakui keputusan yang dibuat oleh Gopal Sri Ram di Mahkamah Rayuan yang pada pandangan penulis, ia adalah keputusan yang bertepatan dengan penggunaan peruntukan seksyen 340(1) KTN dan pengecualiannya di dalam seksyen 340(2) KTN. Hartanah itu sepatutnya dipulangkan kepada Boonsom dan keluarganya sejak dari tahun 2000.

Pada tahun 2005 – Kobchai bersama anaknya Prithep sekali lagi merayu dengan mengemukakan surat rayuan (facebook: Justice for Boonsoom Boonyanit, 2012) kepada Yang Berhormat Perdana Menteri Malaysia pada masa itu dan surat itu juga ditujukan kepada Ketua Menteri Pulau Pinang pada masa itu iaitu Tan Sri Koh Tsu Koon. Dakwaan juga dibuat terhadap pihak pendaftaran pejabat tanah sebagai cuai di dalam menjalankan tugas mereka. Dakwaan dibuat terhadap Pengarah Tanah dan Galian Pulau Pinang atas kesalahan cuai kerana membenarkan pendaftaran pindahmilik dua lot harta tanah di Tanjung Bungah, Penang tanpa kebenaran Boonsoom sebagai pemilik berdaftar. Kobchai memohon *special damages/gantirugi* khas sebanyak 14.6 juta sebagai harga semasa tanah dan gantirugi lain yang berpatutan. Defendan di dalam kes ini berpendapat bahawa instrumen pindahmilik tanah dibuat dengan betul dan wajar dan ia telah didaftarkan menurut Akta Hakmilik Tanah Pulau Pinang dan Melaka 1963.

Akhirnya pada 2010 - Kes Tan Ying Hong lwn Tan Sian San (2010) 2 MLJ 1, Mahkamah Persekutuan di dalam kes ini memutuskan bahawa tuanpunya tanah berhak mendapat kembali tanah mereka yang telah diambil secara fraud. Di dalam kes ini juga MP memutuskan bahawa keputusan yang dibuat di dalam kes Boonsoom Boonyanit adalah *erroneous, abvious and blatant* (perkataan asal yang digunakan). Hakim Mahkamah

Persekutuan, Tan Sri Arifin Zakaria juga mengatakan bahawa keputusan Mahkamah Rayuan di dalam kes OCBC (M) Bhd Iwn Pendaftar Hakmilik, Negeri Johor Darul Takzim (1999) 2 MLJ 511, adalah tidak sah atau salah disebabkan hakim telah salah mengaplikasikan prinsip hakmilik takboleh sangkal tertunda di dalam kes tersebut.

Pelbagai reaksi timbul selepas keputusan besar di dalam kes TYH pada 2010. Roger Tan (2010) berkata keputusan ini adalah satu kemenangan kepada semua tuan punya tanah di negara ini dan ia sememangnya dinantikan oleh semua walaupun terpaksa menunggu selama lebih 9 tahun (*nine grueling years*) untuk menerima keputusan sedemikian. V Ambalagan (2010) turut berkata:

*"The court ruled that where property was transferred illegally, the original owner is entitled to its return if he can prove that it was acquired through fraud or forgery."*

Seterusnya pada 2011 – Kobchai kemudiannya membawa kes terhadap pihak Pejabat Tanah dan Galian Pulau Pinang setelah menyedari mereka sekeluarga mempunyai peluang untuk menang hasil daripada keputusan Mahkamah Persekutuan di dalam kes Tan Ying Hong (2010) itu. Sebagai respon terhadap dakwaan ini, Pesuruhjaya Kehakiman pada masa itu, Vazzer Alam Maidin berkata walaupun Pengarah Tanah dan Galian cuai di dalam hal ini, tindakan yang dibawa oleh Kobchai ini telah melepassi had masa yang sepatutnya. Vazeer menambah, had masa yang diperuntukkan untuk membawa kes terhadap jabatan kerajaan adalah 36 bulan dan Kobchai telah pun melepassi had masa 3 tahun daripada tahun terakhir mereka menerima keputusan daripada Mahkamah Persekutuan (MP) pada tahun 2001. Justeru tuntutan itu telahpun melebihi had masa (Salleh Buang, 2010). Kobchai pula berpendapat had masa itu sepatutnya bermula daripada tahun 2010 apabila MP menyatakan bahawa keputusan MP pada tahun 2000 di dalam kes BB adalah dibuat secara salah. Justeru tuntutan baru itu belum lagi melebihi had masa. Pendapat itu bagaimanapun ditolak oleh Vazeer dengan mengatakan bahawa tempoh adalah bermula pada tahun 2000 semasa Hakim MP, Tan Sri Eusoff Chin memberikan penghakimannya pada tahun 2000 dahulu dan bukannya keputusan MP pada tahun 2010.

Dan pada tahun 2012 hingga sekarang - Beberapa lagi tindakan susulan dibuat untuk mendapatkan kembali hak mereka yang telah diambil 24 tahun lepas, satu perampasan tanah yang tidak dibayar dengan apa-apa gantirugi dan tanpa apa-apa jaminan, perjuangan berterusan sehingga ke hari ini mereka masih lagi berusaha mendapatkan balik hak mereka atau sekurang-kurangnya satu remedii atau pampasan daripada ketidakadilan itu.

Pada 21 Mac 2013, Kobchai telah menghantar surat peribadi/rayuan kepada Dato Aziz Kasim, Setiausaha Sulit Perdana Menteri Malaysia menceritakan tentang kemelut yang dihadapi oleh keluarganya akibat daripada kehilangan tanah tersebut. Di dalam surat tersebut juga dinyatakan kronologi tentang kehilangan tanah bermula dari tahun 1989 sehinggalah ke tahun 2013. Dengan rasa rendah diri juga Kobchai memohon pertolongan daripada Yang Berhormat Perdana Menteri Malaysia untuk campurtangan di dalam kes yang telahpun berlarutan sehingga 23 tahun ini. (facebook: Justice for Boonsoom Boonyanit v Adorna Properties, 2012).

Satu lagi surat rayuan dihantar pada 3 April 2013 kepada Ketua Menteri Pulau Pinang, Lim Guan Eng di mana ia juga menceritakan kisah yang sama. Di dalam surat tersebut Kobchai juga menyatakan tentang keputusan di dalam kes Tan Ying Hong yang mengulas tentang kesilapan yang berlaku di dalam kes BB. Kobchai juga turut menyatakan keputusan Hakim Tan Sri Zaki Tun Azmi di dalam kes tersebut yang mengatakan bahawa penghakiman di

dalam kes BB adalah terlalu *abvious* dan *blatant*. Beliau mengatakan bahawa ketidakadilan yang berlaku telahpun dipulihkan apabila keputusan kes Tan Ying Hong dikeluarkan sedemikian. Kobchai memohon supaya Ketua Menteri itu memberi kerjasama yang sewajarnya di dalam menangani masalah yang dihadapi.(facebook: Justice for Boonsoom Boonyanit v Adorna Properties, 2012).

Pelbagai usaha dan tindakan dilakukan oleh keluarga BB di dalam mendapatkan keadilan yang sewajarnya. Setelah segala usaha yang dibuat belum menampakkan hasilnya, maka ahli keluarga BB iaitu cucunya, Piya dan Prithep Sosothikul telah mewujudkan akaun facebook "*Justice for Boonsoom Boonyanit v Adorna Properties*" bertujuan untuk mewarwarkan kepada umum tentang perjuangan mereka sekeluarga dalam menuntut keadilan bagi nenek mereka. Laman mukabuku ini telah menerima sebanyak 7 ribu pengunjung dalam masa 3 bulan dan sokong yang amat kuat daripada banyak pihak . Keadaan ini amat mengagumkan Kobchai dan dia amat teruja dan berbesar hati dengan sambutan rakyat Malaysia yang simpati dengan nasib mereka sekeluarga.

Pelbagai usaha kemudiannya dijalankan demi mendapat perhatian daripada pihak kerajaan supaya prihatin dengan kes yang dihadapi mereka sekeluarga. Piya Sosothikul bersama dengan sepupunya Prithep, anak Kobchai telah mengadakan sidang akhbar pada 12 Mac 2013 di Kuala Lumpur bagi menerangkan keadaan sebenar yang sedang berlaku. Pelbagai usaha dan kempen dilakukan supaya umum mengetahui tentang kes yang berlaku dan mereka sekeluarga memerlukan sokongan yang kuat daripada orang ramai dalam membantu mereka mencapai keadilan. Jika dilihat kepada kedudukan kewangan keluarga mendiang Sosothikul pada masa ini, mereka sebenarnya tidak menghadapi apa-apa masalah kewangan sehingga perlu membuat tuntutan tanah bernilai jutaan ringgit. Akan tetapi perjuangan ini perlu (Jan Yong, 2013) demi mendapatkan keadilan bagi pihak nenek mereka Boonsoom Boonyanit yang telah diambil haknya beberapa tahun dulu tanpa adanya pampasan atau remedи dibayar atas kehilangan tanah itu. Jika mereka mengambil sikap berdiam diri ia akan menunjukkan bahawa mereka tidak peduli dan bersetuju dengan apa yang berlaku (Salleh Buang, 2008). Dan pastinya kejadian seperti ini akan berulang lagi pada masa akan datang disebabkan tiada pengawasan dan pengawalan daripada pihak berkuasa. Akibatnya mangsa yang terlibat terbiar tanpa mendapat apa-apa pampasan dari pihak kerajaan.

Kemelut kes mendiang BB berjuang mendapatkan balik tanah miliknya selama lebih 23 tahun sememangnya suatu jangka masa yang panjang (Jan Yong, 2013). Tapi mereka tidak berputus asa dan masih berusaha hingga ke hari ini berjuang mendapatkan keadilan. Keadilan bagi nenek mereka dan seluruh keluarga Boonsom dan mewakili orang lain yang juga teraniaya akibat dari masalah penipuan tanah seperti mereka. Jika mereka berjaya di dalam tuntutan mereka, maka orang lain yang teraniaya juga bakal menerima kelebihan yang sama. BB sememangnya tidak bernasib baik (JK Sathiaseelan, 2006) kerana tanah yang dibeli telah dijual tanpa pengetahuannya pada tahun 1989 dengan harga RM1.8 juta. Pihak AP selaku pembeli tanah tersebut telah menjual tanah itu kepada syarikat lain apabila melihat kepada seriusnya masalah yang timbul berkaitan tanah itu. Syarikat tersebut kemudiannya membangunkan tanah itu dengan mendirikan dua buah bangunan tinggi di tapak tanah tersebut (facebook: Justice for Boonsoom Boonyanit v Adorna Properties, 2012). Melalui maklumat di dalam laman facebook JFBB, tanah tersebut dianggarkan bernilai tinggi sehingga RM40 ke RM50 juta pada masa sekarang.

Kobchai sesungguhnya amat mengharapkan supaya adanya campurtangan daripada pihak kerajaan dalam hal ini dan jika mereka mendapat gantirugi yang setimpal dalam bentuk wang, maka ia akan didermakan semuanya kepada rakyat Pulau Pinang dan pusat-pusat kebijakan yang mana mendiang ibunya menjadi penaung sehingga sekarang. Akhirnya Kobchai amat berharap agar pihak kerajaan mempertimbangkan rayuannya itu dan memberikan peluang kepada mereka mendapatkan keadilan daripada masalah ini.(facebook: Justice for Boonsoom Boonyanit v Adorna Properties, 2012).

#### **Keadilan/Gantirugi untuk Boonsoom Boonyanit@Sun Yok Eng**

Mengimbas kembali keputusan Mahkamah Persekutuan di dalam kes Tan Ying Hong lwn Tan Sian San (2010) 2 MLJ 1, Tun Zaki Azmi di dalam penghakimannya berkata adalah menjadi kewajipannya untuk menyatakan semula kedudukan undang-undang yang ada kerana kesilapan yang berlaku di dalam kes Adorna Properties adalah sesuatu yang *abvious and blatant*. Apabila meneliti semula perkataan yang digunakan oleh hakim tersebut, sememangnya telah berlaku ketidakadilan yang nyata (Roger Tan, 2010) terhadap BB. Hakim Gopal Sri Ram di dalam kes Au Meng Nam lwn Ung Yak Chew [2007] 5 MLJ 136, di dalam kenyataannya mengatakan keputusan Hakim Mahkamah Persekutuan Tan Sri Eusof Chin (Boonsoom Boonyanit lwn Adorna Properties [2001] 1 MLJ 241, memberikan hak kepada AP adalah sesuatu yang tidak sepatutnya dan keputusan kes dibuat secara *per incuriam*. Iaitu tanpa melihat kepada kedudukan undang-undang yang betul.

Jika dilihat kepada kes Boonsoom, pada peringkat pertama kes, beliau telah berjaya membuktikan bahawa elemen fraud wujud di dalam transaksi penjualan tanah itu, dia juga membuktikan bahawa dia tidak berada di tempat kejadian semasa transaksi itu berlaku, dia berada di Thailand pada masa itu. Boleh dikatakan semua beban pembuktian telah dapat dibuktikan oleh BB tapi nasib tidak menyebelahinya (Salahuddin dan Amalina, 2008) apabila MP membuat keputusan memihak kepada AP dan mengatakan bahawa mereka memiliki hakmilik tak boleh sangkal setelah menjadi pemilik berdaftar tanah tersebut. Inilah yang dikatakan bahawa keadilan itu buta/*justice is blind*. Akan tetapi keadilan menurut Richard Teo (2010) seharusnya tidak terlalu buta. Richard Teo berkata:

*"Justice cannot be so blind. After knowing that an injustice has occurred it cannot be so oblivious to the plight of Boonsoom whose land was transferred to another party through fraudulent means. Boonsoom has every right to expect the judiciary to correct the injustice. The common adage that justice must not only be done but must be seen to be done is certainly applicable in this instance."*

Justeru siapakah yang perlu membuka jalan supaya keadilan itu tidak buta. Itulah tanggungjawab orang yang mengamal undang-undang, orang yang mahir undang-undang untuk melakukan penambahbaikan dan pembaharuan terhadap kedudukan undang-undang yang ada pada masa ini.

Wan Sharif Wan Ahmad (2010) juga memberi komen selepas penghakiman kes Tan Ying Hong lwn Tan Sian San (2010) 2 MLJ 1, dengan berkata :

*We would add that the judgement, for finally clearing off the controversies plaguing Adorna Properties, must rank as one of the most acclaimed to have been delivered from the bench of the Federal Court in this decade".*

Wan Sharif mengatakan bahawa keputusan di dalam kes TYH adalah di antara keputusan yang terbaik telah dibuat oleh Mahkamah Persekutuan di masa ini. Keputusan ini sebagai satu langkah yang baik dalam menangani kes fraud tanah selepas ini. Setelah satu dekad berlalu bermula dari tahun 2000 hingga 2010, keputusan MP di dalam kes TYH telah membuka lembaran baru di dalam bidang undang-undang tanah (Roger Tan, 2010). Roger Tan yang juga wakil Majlis Peguam Malaysia berharap mahkamah di Malaysia akan menghormati dan mengikuti keputusan yang dibuat oleh mahkamah paling berkuasa di Malaysia pada masa itu. Dia juga berharap semoga tidak ada hakim yang akan menyimpang daripada keputusan tersebut disebabkan terdapat dua keputusan yang “*conflicting*” daripada Mahkamah Persekutuan. Ini adalah kerana keputusan yang dibuat pada hari tersebut dianggap telah *overrule* atau *reversed* keputusan di dalam kes Boonsoom Iwn Adorna Properties.

Walaubagaimanapun, keputusan itu dilihat sekadar membetulkan keputusan di dalam kes BB sebelum ini, tetapi bukan sebagai satu keputusan membayar gantirugi kepada keluarga BB yang telah kehilangan tanahnya (Salleh Buang, 2010). Pemilik tanah/kepentingan mampu mendapatkan balik tanah mereka sekiranya pindahmilik berlaku atas dasar fraud atau pemalsuan. Mereka boleh menarik nafas lega kerana tanpa kesilapan di pihak mereka, tanah yang ditipu perlu dikembalikan semula kepada mereka. Situasi seolah-olah telah kembali seperti sebelum kes Boonsoom dahulu. Cuma di sini, apa yang ingin disentuh adalah bagaimana dengan nasib kes Boonsom yang masih dalam proses berjuang menuntut keadilan mereka? Mereka juga inginkan keadilan setelah hak mereka dirampas begitu sahaja tanpa adanya pampasan atau gantirugi.

Salleh Buang (2010) berkata keputusan kes TYH pada tahun 2010 tidak begitu menolong ahli keluarga Boonsoom kerana ia hanya memperbetulkan kedudukan undang-undang yang ada, tetapi tidak mampu memulangkan balik tanah tersebut kepada mereka. Apakah lagi membayar apa-apa gantirugi. Ini terjadi disebabkan negara Malaysia tidak menyediakan apa-apa tabung gantirugi/pampasan bagi kes fraud tanah di negara ini Salleh Buang (2007). Salleh Buang berkata lagi, *security of tenure* mempunyai dua rupabentuk iaitu jaminan perundangan dan jaminan ekonomi. Jaminan perundangan sahaja tidak cukup kecuali ia disertai dengan jaminan ekonomi yang bermaksud, jika seseorang itu kehilangan tanah tanpa kesilapannya, maka dia berhak mendapat gantirugi atas kehilangan itu. Fakta itulah yang tidak terdapat di Malaysia sama ada oleh kerajaan negeri atau kerajaan pusat sendiri. J Baalman (1974) ada berkata:

*“The act of the state in declaring titles to be indefeasible has its concomitant in the provision of state remedies for persons who thereby suffer loss”.*

Begitulah rupabentuk sebenar Sistem Torrens yang diamalkan sepenuhnya oleh negara Australia sebagaimana disebut oleh J Balmann. Pendaftaran hakmilik menjanjikan hakmilik tak boleh sangkal terhadap penama berdaftar dan jika pemilik tersebut kehilangan tanahnya tanpa kesilapannya sendiri, maka dia berhak dibayar gantirugi oleh pejabat pendaftaran tanah (Ainul, 2008). Fakta ini menunjukkan tentang jaminan yang diberikan oleh pihak berkuasa tanah bahawa mereka memberikan servis yang terbaik dalam mendaftarkan hakmilik tanah seseorang iaitu pendaftaran membawa kepada hakmilik takboleh sangkal. Jika mereka salah mendaftar hakmilik, maka mereka akan membayar gantirugi atas kecuaian itu. Akan tetapi di Malaysia hanya dua fakta sahaja yang dijamin oleh kerajaan, tetapi tidak kepada keadaan yang ketiga iaitu gantirugi kehilangan tanah. Kerajaan Malaysia menjamin setiap pendaftaran akan mendapat hakmilik takboleh sangkal, tetapi jika pihak

kerajaan cuai mendaftar, mereka tidak akan membayar gantirugi (Sharifah Zubaidah, 2008). Jika mereka cuai mendaftar, sememangnya mereka perlu membayar gantirugi kerana ini adalah prinsip penting di dalam Sistem Torrens. Kerajaan perlu bertanggungan atas kecuaian mereka. Ini adalah kerana setiap dokumen yang dikumpul adalah dihantar ke pejabat pihak yang berkenaan untuk diteliti sebelum didaftarkan (SY Yong, 1974). Meskipun kebanyakan kecuaian adalah tidak disengajakan, tapi sebagai pihak kerajaan, mereka perlu bertanggungan (Judith Sihombing, 1995). Apa perlu sesuatu pendaftaran itu dibuat dengan pihak kerajaan, jika mereka tidak dapat menjamin kedudukan sesuatu hakmilikan itu?

Salleh Buang (2008), seterusnya memberikan contoh wilayah Ontario di Kanada yang mengamalkan sistem tabung pampasan tanah. Beberapa prosedur perlu dilalui sebelum pampasan boleh dipohon oleh pemilik sebenar tanah. Antaranya ialah, penuntut telah melalui beberapa saluran tuntutan seperti tuntutan sivil, tuntutan jenayah atau tuntutan insuran hakmilik. Jika mereka tidak berjaya di dalam tuntutan tersebut, akhirnya mereka boleh memohon daripada tabung pampasan. Berbalik kepada kes BB, jika Malaysia mampu mengamalkan prinsip tabung pampasan (Shukri Ismai, 2012) di dalam kes fraud tanah, maka sememangnya keluarga BB mampu untuk mendapat keadilan kerana mereka telah meniti tangga menuntut keadilan ini sekian lama semenjak 24 tahun dahulu. Tapi apakan daya, nasib belum menyebelahi mereka. Segala usaha yang dilakukan selama ini belum lagi membawa hasil yang sepatutnya.

Kobchai di dalam surat-surat yang dihantar kepada pihak yang berkaitan benar-benar memohon supaya pihak kerajaan mempertimbangkan permohonan dan rayuan mereka. Setakat ini Kobchai belum mendapat respon yang sewajarnya daripada pihak kerajaan dalam mempertimbangkan rayuan mereka. Pihak kerajaan seolah-olah berdiam diri dalam menangani kemelut ini. Jika merujuk kepada keputusan kes Tan Ying Hong (2010) dan jika ia diaplikasikan ke atas kes Boonsoom, sudah semestinya Boonsoom berhak mendapat balik tanahnya yang bernilai jutaan ringgit itu, dan jika Malaysia mengamalkan prinsip tabung jaminan seperti kebanyakan negara lain seperti Australia dan Singapura, keluarga mendiang Boonsom berhak menuntut gantirugi yang berpatutan dengan nilai tanahnya yang hilang itu. Akan tetapi sehingga sekarang, tiada apa-apa jawapan atau respon daripada pihak atasan berhubung dengan masalah yang dihadapi ini.

Adakah wujud agenda tersembunyi di sebalik kes Boonsom ini seperti kata bidalan Inggeris, *all's not well in the House of Denmark?* Jika demikian, anak dan cucu Boonsoom perlu lebih berusaha dan lebih bersabar dalam menanti pengakhiran kisah keluarga mereka ini. Jika dilihat kepada apa yang diluahkan oleh pihak keluarga Boonsom melalui laman facebook mereka, *Justice for Boonsom v. Adorna Properties*, apa yang mereka mahu adalah keadilan. Jika keadilan itu diberikan dalam bentuk wang ringgit, maka ia akan didermakan kepada rumah kebajikan di Pulau Pinang tempat mendiang Boonsoom menjadi penaungnya. Jika benar keadaannya, pihak kerajaan sepatutnya memberikan respon kepada permohonan mereka dengan membayar gantirugi atas kehilangan tanah itu. Tetapi, sehingga sekarang belum ada tindakbalas daripada pihak kerajaan samada kerajaan pusat atau kerajaan negeri itu sendiri. Dan pada akhir Oktober 2014, Piya Sososthikul di dalam laman mukabuku *Justice for Boonsom Boonyanit v Adorna Properties S/B* meluahkan perasaannya bahawa setelah 25 tahun berlalu, mereka sekeluarga masih belum mendapat keadilan yang sepatutnya dan masih menunggu respon daripada pihak kerajaan dalam menangani rayuan mereka sekeluarga.

Dan apapun juga, pujian dan penghargaan harus diberikan kepada anak mendiang Boonsoom iaitu Kobchai dan 2 orang cucunya Piya dan Prithep atas usaha gigih mereka berusaha tanpa jemu demi mendapat keadilan bagi mendiang nenek mereka BB. Tanpa usaha mereka semua, rakyat Malaysia mungkin tidak tahu atau tidak peduli tentang apa yang dilalui oleh Boonsom dan generasinya semenjak tahun 1989 sehingga sekarang. Dan usaha itu masih lagi diteruskan walaupun sudah 24 tahun berlalu dalam meniti keadilan bagi nenek mereka mendiang Boonsoom Boonyanit@ Sun Yok Eng.

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# THREATS TO HUMAN HEALTH: RIGHT TO HEALTH VS OTHER HUMAN RIGHTS

Nor Anita Abdullah (Ph.D)<sup>1</sup>

## ABSTRACT

A right to secure a good health is a basic human right in the WHO constitution. In fact, right to good health is a standard of life to which all individuals are entitled. In the case of the occurring infectious diseases, people have been exposed to the serious public health threats. The threat presents significant risks not only to the security but also to the public health. Thus, this paper aims to identify the right to health towards the emergence issues in the context of the public health. As humans have right to the resources necessary for health, therefore, is the right to be protected is a part of the right to secure a good health when it comes to the threat of health? This paper attempts to simplify the situation in the sense of the emergence of the threats to human health, to identify the international instruments with regard to the protection of human health and to find the link between right to health and other human rights and their impacts.

**Keywords:** right, health, public health, infectious diseases.

## INTRODUCTION

Humans have a right to the resources necessary for health. The Public Health Code of Ethics affirms Article 25 of the Universal Declaration of Human Rights (UDHR), which states in part "*Everyone has the right to a standard of living adequate for the health and well-being of himself and his family...*"<sup>1</sup> Based on this article, each and every one of human being should be provided with a good health. The right to health should be considered as part of human right in which each and everyone shall enjoy it. Thus, there will be a question on who are the relevant parties to responsible to be the provider of the right. This article contends that each state has to ensure that all citizens enjoy an adequate standard of living. In order to define the standard of living, it covers food, clothing, housing, health care and social services as essential components of a standard of living adequate for health and well-being.

Human rights are generally understood as the basic principles in the political life of a society, such as the right to freedom of speech, freedom of religion, the right to freedom of movement and others. In general, human right is how a man treats another human being on the basis of real humanity. However, there are various concepts and definitions of human rights. Human rights can be defined as the rights and policies that must be accepted as equals, such as the right to an opinion, the protection and proper education , food, religion or belief , and so on . While according to Kofi Anan<sup>1</sup>, human rights is fundamental to human existence.. Human rights are universal, indivisible and interdependent. It is a right that make

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human is human, and based on the human rights principles, we build the sanctity of human dignity.

### **EMERGENCE OF THREATS TO HUMAN HEALTH**

Human has been exposed to the battle of war since a long time ago. Throughout the human history, human had learnt a feeling of threats out of the war. However, the experience from the past has been recorded as history where more people died due to the infliction of infectious diseases in the World War compared to die because of the war itself. The war was started with an ongoing battle where no physical weapons were used. People have been exposed to the emerging threats that exist from the naturally occurring infectious diseases which reservoir into the human population. Some of the infectious diseases were unidentified viruses or biological agents either naturally or intentionally released by someone who misuse it as weapon. Thus, it has been identified that the infectious agents that can be used to create bioterrorism has two characteristics that is self-replicating and to spread by personal contact from victims to another victims as infectious diseases.<sup>1</sup> As a worldwide of infectious disease example is smallpox. It cannot be detected within a few days and it may take weeks and maybe a few months to be identified.

Therefore, by the time when the disease is recognized, the victim was already suffered a serious illness and it may be too late to prevent from death. In Malaysia, the outbreak of Nipah viruses in 1999 took a few months before it was detected as Nipah virus. The widespread had caused not only fear and panic among the farmers who were inflicted with the viruses at that time but also disability, social disruption and economic instability. Thus, the factor has led to the belief that the viruses were able and has potential to be a threat to human health.<sup>1</sup>

The other threat is environmental pollution such as water pollution, global warming, poor air quality, acid raining, holes in the ozone, etc are among the kind of pollutions featured in the newspaper and other media.

### **THE RIGHT TO HEALTH**

The human right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to all medical services, sanitation, adequate food, decent housing, healthy working conditions, and a clean environment. The human right to health guarantees a system of health protection for all. Everyone has the right to the health care they need, and to living conditions that enable us to be healthy, such as adequate food, housing, and a healthy environment. Health care must be provided as a public good for all, financed publicly and equitably. The human right to health care means that hospitals, clinics, medicines, and doctors' services must be accessible, available, acceptable, and of good quality for everyone, on an equitable basis, where and when needed.

According to the WHO Constitution, the right to health does not mean the right to be healthy. It means that government/states guarantee everyone can be healthy as possible and to ensure all possible means to provide the guarantee of health to each and everyone. The assertion of the enjoyment of the highest attainable standard of health has led to a real integration of health as a human right. This is because right to health is a fundamental right

of every human being. In fact, WHO also introduced its goal in achieving the right to health as 'Health for All' as an attempt to increase public's understanding about right to health as part of human right in general.<sup>1</sup>

WHO constitution also listed down three types of obligations:-<sup>1</sup>

1. Respect: not to interfere with the enjoyment of the right to health ("do no harm").
2. Protect: to ensure that third parties (non-state actors) do not violate the enjoyment of the right to health (e.g. by regulating non-state actors).
3. Fulfill: to take affirmative steps to appreciate the right to health (e.g. by adopting appropriate legislation, policies or budgetary measures).

Thus, based on these three types of obligations that have been laid down by the WHO constitution, it important to ensure the right to health to the public should be a given a main concern. The right to health should be respected, protected and fulfilled. When all these three obligations are carried out, right to health will always be in priority by the authority and people will enjoy their healthy life without any hesitation. To this end, the WHO works to improve methods of health care and to create standards of health care for the international community. WHO also works to improve the capacity of health care organizations within the developing world, both by direct funding and by the facilitation of private-public partnerships. Finally, WHO maintains a position as the primary international organization responsible for monitoring and recording of global health statistics and trends.

### **Key Aspects of the Right to Health**

The right to health is an inclusive right. We frequently associate the right to health with access to health care and the building of hospitals. This is correct, but the right to health extends further. It includes a wide range of factors that can help us lead a healthy life. The Committee on Economic, Social and Cultural Rights, the body responsible for monitoring the International Covenant on Economic, Social and Cultural Rights calls these the "underlying determinants of health". They include:

- Safe drinking water and adequate sanitation;
- Safe food;
- Adequate nutrition and housing;
- Healthy working and environmental conditions;
- Health-related education and information;
- Gender equality.

The right to health contains freedoms. These freedoms include the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilization, and to be free from torture and other cruel, inhuman or degrading treatment or punishment.

The right to health contains entitlements. These entitlements include:

- The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health;
- The right to prevention, treatment and control of diseases;
- Access to essential medicines;

## **Right to Health under International Law**

Under international law, there is a right not merely to health care but to the much broader concept of health. Because rights must be realized inherently within the social sphere, this formulation immediately suggests that determinants of health and ill health are not purely biological or “natural” but are also factors of societal relations. The first notion of a right to health under international law is found in the 1948 Universal Declaration of Human Rights (UDHR), which was universally announced by the UN General Assembly as a common standard for all humanity. UDHR sets forth the right to a “standard of living adequate for the health and well-being of himself and his family, including . . . medical care and . . . the right to security in the event of . . . sickness, disability . . . or other lack of livelihood in circumstances beyond his control”.<sup>1</sup>

In the modern interpretation , there are three important documents in respect of the Human Rights Universal Declaration of Human Rights 1948 , the International Covenant on Civil and Political rights in 1966 and the International covenants Rights Economic , Social and Cultural Rights, 1966 In both these international covenants, rights human – right is not limited in such matters as the rights available under the law of civil and political rights , namely the right to freedom of speech, freedom of religion , freedom of assembly and association , freedom from torture and equality and rights under the social rights , cultural and economic rights such as education, employment and recreation, enjoy the minimum rights such as health , shelter and a safe environment. The concept of the social contract outlining the relationship between the members of the society in which every member of the release of certain individual rights to social security, which is the definition of public interest is a basic human right.

## **INTERNATIONAL INSTRUMENTS OF PROTECTION TO HUMAN HEALTH**

### i. Food and Agriculture Organization of the United Nations (FAO)<sup>1</sup>

The FAO was established by the UN in 1945 to improve and increase agricultural production and help alleviate the problems of famine and malnutrition. The FAO provides assistance grants to states to help them increase their food production, and gives advice to states on efforts that can improve the productivity of their land and help to relieve the pressure of starvation in their country.

### ii. The Global Fund to Fight AIDS, Tuberculosis and Malaria

Established by mandate of the UN in 2001, The Global Fund to Fight AIDS, Tuberculosis and Malaria serves to distribute funding to nationwide projects in countries with a high disease burden. Public, private, and governmental groups may apply for funding to facilitate the development and improvement of the health infrastructure within their country. Grant applications may involve partnership of public, private and governmental groups but all applications must be administered by a group within the country of interest and all applications must be targeted at improving treatment and prevention nationally for AIDS, tuberculosis, or malaria.

### iii. United Nations Children's Fund (UNICEF)

Established by mandate of the UN in 1946 UNICEF works to improve the welfare of children throughout the world. UNICEF promotes educational initiatives for children and helps to reduce child and infant mortality through direct intervention in countries where children suffer from disease, malnutrition and war. UNICEF funds and collaborates with government and non-profit groups to shape nations' policies in favor of the welfare and health of children.

iv. United Nations High Commissioner for Refugees (UNHCR)

The UNHCR was established by UN mandate in 1950 to serve as the UN's instrument for refugee protection. The UNHCR was an extension of a similar commission founded in 1921 by the League of Nations. Refugees' access to health care is compromised because they are not citizens of the country in which they are forced to reside. Therefore, it falls upon the UNHCR to guarantee that the needs of displaced peoples are met regardless of their nation of origin or status within their nation or residence. UNHCR works side by side with relief agencies and governments in attempts to improve the quality of life and safety of refugees. This is achieved through both efforts to reform policies in the refugee's native country to make the return of the refugees possible, and also by providing direct response to emergencies.

#### **THE LINK BETWEEN THE RIGHT TO HEALTH AND OTHER HUMAN RIGHTS**

Human rights are interdependent, indivisible and interrelated.<sup>1</sup> This means that violating the right to health may often impair the enjoyment of other human rights, such as the rights to education or work, and vice versa. The importance given to the "underlying determinants of health", that is, the factors and conditions which protect and promote the right to health beyond health services, goods and facilities, shows that the right to health is dependent on, and contributes to, the realization of many other human rights. These include the rights to food, to water, to an adequate standard of living, to adequate housing, to freedom from discrimination, to privacy, to access to information, to participation, and the right to benefit from scientific progress and its applications. It is easy to see interdependence of rights in the context of poverty.<sup>1</sup>

For people who live in poverty, their health may be the only asset on which they can draw for the exercise of other economic and social rights, such as the right to work or the right to education. Physical health and mental health enable adults to work and children to learn, whereas ill health is a liability to the individuals themselves and to those who must care for them. On the other hand, individuals' right to health cannot be the best achievement to a person without realizing the importance of other rights such as the rights to work, food, housing and education, and the principle of non-discrimination. Promoting and protecting health and respecting, protecting and fulfilling human rights are inseparably linked: Violations or lack of attention to human rights can have serious health consequences. For example, there will be harmful traditional practices, slavery, torture and inhuman and degrading treatment, violence against women and children.<sup>1</sup>

In this sense, it is important to determine the relationship which involves the positive and negative impacts of health policies, laws, programs, and practices on human rights. The challenge is to negotiate the optimal balance between promoting and protecting public health and promoting and protecting human rights. In order to accomplish this aim, it would be necessary that respective authority would provide an adequate right to their national

health policies, laws, programs and practices to national and international human rights instruments. In fact, it is unavoidable connection between health and human rights. The central idea of the health and human rights approach is that health and human rights act in association. Promoting and protecting health requires unequivocal and real efforts to promote and protect human rights and dignity. In other words, the enjoyment of health is necessary to exercise human rights; and at the same time, exercising human rights positively contributes to the enjoyment of health. For example, the enjoyment of physical and mental health is essential for exercising the right to work; and at the same time, exercising the right to work contributes positively to the enjoyment of physical and mental health of human being.<sup>1</sup>

### **IMPACTS OF VIOLATION OF RIGHTS TO HUMAN HEALTH**

Some examples of the impact of violations of human rights on health are obvious; for example, a person who is tortured will experience health problems as a result. Besides, when too much focuses given on the underlying conditions that create health and well-being unveil that many of these conditions are human rights issues. The most reflective and fundamental state is social and economic status. It is proven that lower socio-economic status has been repeatedly linked to poorer health.

Although the enjoyment of the highest attainable standard of health as a fundamental right of every human being was articulated for the very first time in the WHO Constitution in 1946, the right to health remained vague in terms of its scope, content, and practical application for decades, largely due to Cold War politics. But there is new momentum on health and human rights. Dr Gro Harlem Brundtland, Director-General, WHO once said that “since the beginning of this millennium, the human rights movement has witnessed extraordinary developments in advancing the right to health, giving us an excellent opportunity to promote and protect the health of populations throughout the world”.<sup>1</sup>

### **CONCLUSION**

In recent years, international law has developed expeditiously with respect to the normative definition of the right to health, which includes both health care and healthy conditions. Having a right to health also implies having a right to participate in decisions affecting one's health. Thus, the links will always exist between right to health and also other human rights. Both of these are complementary approaches for defining and advancing human being. Furthermore, as human beings, the health is a matter of daily concern. Regardless of our age, gender, socio-economic or ethnic background, we consider our health to be our most basic and crucial asset.

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# RISK MANAGEMENT IN MALAYSIAN COMMERCIAL BANKS

AUYONG Hui-Nee<sup>1</sup>

## ABSTRACT

The main purpose of this study is to examine the risk management practices used by Malaysian banks. A content analysis was conducted to 9 commercial banks listed in Bursa Malaysia. This study tries to ascertain the transparency and public disclosure and the understanding of the bank's risk profile. Furthermore, the Malaysian banks have implemented some effective risk strategies and risk management frameworks. In addition, the credit risk exposure methods are still underused by the Malaysian banks. Similarly, collateral and guarantees continue to be the most commonly used risk mitigation methods to provide support to credit facilities in Malaysian banks. The paper discusses and analyses the current practices in risk management of Malaysian banks. It identifies the tools used in managing credit risk, market risk, liquidity risk and operational risk by Malaysian banks.

**Key words:** Malaysian banks, risk management, risk management practices

## INTRODUCTION

Risk is an uncertain future events that could influence the achievement of objectives, and uncertainty includes events caused by ambiguity or a lack of information. In banking institutions, the risk is a major component. Several methods are used to classify the risk. The first is to differentiate between financial risk and business risk. The business risk is related to the activity of the company itself and focuses on the factors affecting the product and / or the market. Financial risk refers to potential losses in the financial markets caused by fluctuations in financial variables (Jorion and Khoury 1996). It is associated to leverage leading to the risk that the debts and obligations are not consistent with the elements of the assets (Gleason, 2000). Another way is to decompose the risk on systematic risk and unsystematic risk. Systematic risk is related to the state of the economy in common, while unsystematic risk is linked to a specific company. Although unsystematic risk can be relieved by diversifying the portfolio, systematic risk does not improve diversification. Nevertheless, portions of the systematic risk can be reduced through mitigation techniques and risk transfer.

In current speedy business environment, banks are exposed to a few types of risks: credit risk, liquidity risk, market risk, operational risk, etc. Due to such exposure to various risks, effective risk management is needed. Managing risk is one of the basic tasks to be executed, once it has been identified and known. The focus of good risk management is the identification and treatment of risks. Its objective is to add maximum sustainable value to all the activities of the organization IRM (2002). Larger and more profitable banks have lower

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systemic risk and additional equity capital reduces systemic risk only for banks that are constrained by regulatory capital requirements (Lehar, 2004).

The global financial crisis was characterized by market volatility, a lack of liquidity in many financial markets and enhanced systemic risk. This trouble has underscored the critical importance of risk management. Many institutions are rethinking their risk management governance models. An active role was undertaken in providing oversight of risk management, establishing the risk management policy and framework and approving the institution's risk appetite. Policymakers and bankers need to recognise the limitations of rules-based regulation and restore a more discretionary and holistic approach to risk management (Honohan, 2008).

According to Jorion (2009), risk models largely failed due to unknown unknowns which include regulatory and structural changes in capital markets in 2008. He stressed that risk management systems need to be improved and place a greater emphasis on stress tests and scenario analysis, which can only be based on position-based risk measures. He concluded that the Lehman Shock (crisis) has reinforced the importance of risk management.

The main motive to adopt risk management does not mean to minimize risk; in fact, its purpose is to improve the risk-reward trade off and to avoid probable failure in the future. Vigorous risk management practices of the banking institutions are important for both financial stability and economic development. The improvement of adequate capacity to gauge risks is also essential for banks to successfully accomplish their positions in financing economic activities. Risk management is the identification, assessment, and prioritization of risks followed by coordinated and economical application of resources to minimize, monitor, and control the probability and/or impact of unfortunate events or to maximize the realization of opportunities. As prudential rules applied by banking institutions are lagging behind compared to international standards, work has been undertaken by the Bank Negara Malaysia (BNM) for the implementation of Basel III in the Malaysian banking sector. The application of prudential arrangements aimed to improve the culture of risk in Malaysian banks and promotion of rules and practices of good governance.

The Bank of International Settlements (BIS) introduced an enhanced framework for capital adequacy regulation through Basel II comprising **three pillars**. The first pillar provides a minimum capital measurement framework for credit and operational risks. The second pillar focuses on strengthening the supervisory process, particularly in assessing the quality of risk management in the banking institutions. The third pillar specifies minimum disclosure requirements on capital adequacy to enhance market discipline. The first phase began in January 2008 where all banks will adopt the standardized approach for credit risks and basic indicator approach for operational risks. The second phase of implementation commenced in January 2010 and banking institutions are required to submit parallel calculation of capital adequacy (BNM, 2008).

The Asian Financial Crisis 1997-1998 has drawn attention to the shortcomings of the banking sector and also the weaknesses of Malaysian corporate governance practice. The rate of BNM net non-performing loans (NPLs) was relatively high at 13.2% in 1997-1998 (Ibrahim, 2011). In a research to study the significance of implementing the code and rules of corporate governance, Abidin and Ahmad (2007) selected three companies, Perwaja, Renong (now part of the UEM Group) and **Malaysian Airline System** (MAS) (also known as

Malaysian Airlines now). Abidin and Ahmad (2007) argued that the state ownership in all the three companies created close relationship between business and politics, and that this could easily cause fraud and corruption in the trustee system and offer much freedom to the businessman to act above the corporate law. They found that Perwaja had not only failed to gain any profit since incorporation, but suffered losses of RM2.95 billion and at the same time owed banks another RM7 billion. Perwaja was also facing colligations of corruption and mismanagement in tender and contract awarding. In another case, the problems happened in Renong has revealed the malpractice of corporate governance. The Asian Financial Crisis which led to Ringgit depreciation. It has also increased the amount of Renong accumulated debt between RM20–28 billion which constituted more than 5% of loans by Malaysian banking systems (Gomez, 2002: 102; Thomas, 2002: 154). While in the third case, MAS was also faced with internal management problems. Prior to the Asian Financial Crisis, MAS had already suffered huge debts caused by the management under Tajudin Ramli. This had put MAS at risk during the crisis as all their transactions were done in US dollars. Consequently, the Asian Financial Crisis affected both MAS and Tajudin badly due to the significant increase in debts. As a result, Abidin and Ahmad (2007) found that companies which are involved in corporate malpractice but have good relationship with states will always be excluded from the legal corporate action.

The Asian Financial Crisis is led government to adopt corporate reforms. Since 1998, government and private sector had chosen to enhance the corporate law in order to improve the level of corporate governance in the country. The Malaysian Code on Corporate Governance (Code), first issued in March 2000, marked a significant milestone in corporate governance reform in Malaysia. The code of corporate governance, which included the principles and best practices in the corporate governance, were established for the corporate participants. This code essentially aimed to encourage transparency management of a company. The Code was later revised in 2007 (2007 Code) to strengthen the roles and responsibilities of the board of directors, audit committee and the internal audit function. The Bursa Malaysia and Securities Commission (SC) had gazetted new rules for the public listed companies. They were required to disclose their financial status, shareholders structure and loan position on a quarterly basis. A company's manager is subjected to penalty or jail sentence if they fail to comply with the rules. The Malaysian Code on Corporate Governance 2012 (MCCG 2012) focuses on strengthening board structure and composition recognising the role of directors as active and responsible fiduciaries. They have a duty to be effective stewards and guardians of the company, not just in setting strategic direction and overseeing the conduct of business, but also in ensuring that the company conducts itself in compliance with laws and ethical values, and maintains an effective governance structure to ensure the appropriate management of risks and level of internal controls. (Securities Commission, 2012)

Malaysian Institute of Corporate Governance (MICG) was established in March 1998 following recommendation by the High Level Finance Committee on Corporate Governance. It is a non-profit public company limited by guarantee, with founding members consisting of the Federation of Public Listed Companies (FPLC), Malaysian institute of Accountants (MIA), Malaysian Association of Certified Public Accountants (MICPA), Malaysian institute of Chartered Secretaries and Administrators (MAICSA), and Malaysian Institute of Directors (MID). MICG's mandate is to raise the awareness and practice of good corporate governance in Malaysia. The government had granted a warrant amounting to US\$100,000 to MICG to conduct research and training program in order to improve the corporate governance standard and quality. In August 2000, Minority Shareholder Watchdog Group

was established as a government initiative to encourage the company to comply with the principles of corporate governance and to improve the awareness among the minority shareholder about their rights and the appropriate methods to enforce their rights, also as part of a broader capital market framework to protect the interests of minority shareholders through shareholder activism.

According to Ibrahim (2011), following the Asian financial crisis, the concerted efforts taken by the Bank Negara Malaysia (BNM) to enhance the credit risk management infrastructure and underwriting practices, and attributed to banking institutions that have been actively managing their balance sheets and asset quality through stringent provisioning policies and write-offs of irrecoverable loans, the net NPL ratio improved to 2.1% as at September 2009 from 4.6% recorded at the beginning of 2007. As a result, the financing loss coverage ratio for the banking system as a whole rose to about 90% of NPLs as at September 2009 (1997-98: 55.1%).

In March 1, 2013, BNM issued guidelines on Risk Governance (RG). The guideline is the final piece of the jigsaw in bringing together the other guidelines on risks into a complete and cohesive risk management framework. One of the key principles underlying the RG guidelines is the creation of a Chief Risk Officer (CRO) role. As expected, results from Aebi, Sabato, and Schmid (2011) indicate that banks, in which the CRO directly reports to the board of directors and not to the CEO (or other corporate entities), exhibit significantly higher (i.e., less negative) stock returns, ROA, and ROE during the crisis. Hence, Malaysian banks should further implement a vigorous framework that ensures stringent control to manage with any situation of stress. Financial institutions should alert that the risk management is needed to face against crisis.

The present study analyses the riskmanagement practices of Malaysian banks. It identifies the tools and methods used in managing credit risk, market risk, liquidity risk and operational risk by Malaysian banks.

#### **LITERATURE REVIEW**

Risk management in Banks has attracted deep interest from the academics; there are quite a number of researches have looked from the theory into the riskmanagement practice within the banking sector as well as corporate world especially as an aftereffect of landmark cases e.g. the Bankruptcy of Orange County (1994), the Asian Financial Crisis (1997), the Bankruptcy of Lehman Brothers (2008).

Refer **Table 1** for an overview of the number of banking institutions under the purview of Bank Negara Malaysia as at 12 November 2013. The Malaysian banking system comprises of commercial banks, international / Islamic banks and investment banks.

**Table 1. List of Licensed Banking Institutions in Malaysia (As of 12 November 2013)**

Banking Institution	Malaysian-Controlled Institution (L)	Foreign-Controlled Institution (F)	Total
Commercial Banks	8	19	27

Islamic Banks	10	6	16
International Islamic Banks	0	56	56
Investment Banks	13	0	13

Source: Bank Negara Malaysia

The Malaysian banking landscape includes twenty-nine bank centred around the Central Bank of Malaysia or Bank Negara Malaysia (BNM). These banks are divided into 8 local commercial banks (all 8 are listed on the Bursa Malaysia), 19 foreign-controlled commercial banks, 16 Islamic banks, 56 international Islamic banks (all foreign-controlled) and 13 investment banks (all local Malaysian-controlled).

The study includes all 8 Bursa Malaysia listed local commercial banks. The content analysis was conducted in March 2014. This study provides a portrait of the state of risk management in Malaysian banks through content analysis of respective annual reports 2013.

## RESEARCH FINDINGS

This section presents the findings obtained from the content analysis. These results covered in four sub-sections: credit risk management, market risk management, operational risk management and liquidity risk management

Risk management is a crucial part of any organization's strategic management. It is the process whereby organizations methodically address the risks associated to their activities with the aim to achieve sustained benefit. The requirement for enhanced risk management has made banks to adopt suitable techniques. Banks have set up a committee that is responsible for identifying, monitoring, and controlling different types of risks. The Malaysian banks established some appropriate risk management environment. This practice was adopted essentially by the banks. Economic capital reflects an institution's actual risk profile and hence is an important tool for allocating capital and for assessing risk-adjusted performance (DELOITTE 2011). Larger institutions understand and calculate the economic capital associated with each of the major risk types they face. The results in **Table 2** show that the Malaysian banks have implemented or are in the midst of implementing mechanisms for economic capital calculation for major risk such as credit risk, market risk and liquidity risk.

### Credit risk management

Credit risk is among the largest risk that banks face. Credit risk arises due to bank borrowers may not be able to fulfil their contractual obligations. This concept and the features of a sound credit risk management process are discussed in the Basel II. The main objective of the framework is to further strengthen the soundness and stability of the international banking system via better risk management, by bringing regulatory capital requirements more in line with current bank good practices. The foundation of credit risk management is the establishment of a framework that defines corporate priorities, loan approval process, and credit risk rating system; risk adjusted pricing system, loan-review mechanism and comprehensive reporting system (David, 1997). Credit risk management function has extended its focus to include both issuer and counterparty risk as a result of write-down

(losses) in their investment and trading portfolios. Stress testing becomes an essential method that exams the elasticity of the banking institutions vis-à-vis adverse economic and market conditions. It is a tool to make measures to cope with possible events. Stress testing credit risk is an essential element of the Basel II framework.

### **Market risk management**

In implementing Basel II, several institutions were employing a range of approaches to comply. In managing market risk in the wake of the turmoil in the financial markets, Basel Committee on Banking Supervision proposed in 1995 allowing banks to calculate their capital requirement for market risk with their own value at risk models, using certain parameters provided by the committee. VaR is a measure of the worst expected loss that a firm may suffer over a period of time that has been specified by the user, under normal market conditions and a specified level of confidence. Value at risk (VaR) has been considered as the long accepted methodology for assessing market risk; it has been widely used for banks' trading portfolios and for risk management purposes. VaR is an indispensable tool to control financial risks (Jorion, 1996). Berkowitz and O'Brien (2002) have evaluated the performance of banks' trading risk models by examining the statistical accuracy of the VaR forecasts. In this current survey, market VaR is extensively used by Malaysian banks. Besides VaR is useful, institutions employ other tools such as stress tests and scenario analysis to assess market risk. Basel Committee states that stress testing supply a complementary and independent risk perspective to other risk management tools like value-at-risk. Stress test must complement risk management practices based on complex and quantitative models. It allows of possible events by considering potential large moves in market prices, volatility, leverage and time needed to liquidate assets.

### **Operational risk management**

Basel Committee believes that operational risk is a significant risk for banks and that they must hold capital to protect against losses arising. Basel II includes two simple approaches for operational risk (Basic Indicator and Standardized approach) for banks less exposed to operational risk. These approaches require banks to hold operational risk capital charge calculated as a fixed percentage of a measure of risk determined. Therefore, Basel Committee gives banks unprecedented flexibility to develop approach to calculate the capital requirement for operational risk corresponding to their business profile and underlying risks: the advanced measurement approach.

The 2008 global financial crisis moved the preparation of the New Basel Capital Accord, known as Basel III, higher up on the global regulatory agenda. In September 2010, regulators from major countries around the world approved and released Basel III. At the Seoul Summit in November 2010, the G20 discussed collaborative risk management and agreed, in principle, on the Basel III regime. Compared to Basel II, Basel III includes the following changes (Chan, Wan, and Yang, 2011):

- Enhanced quality, sustainability, and transparency of capital composition
- Enhanced capital coverage and greater capital requirements for securitized positions, trading accounts, and derivatives
- Use of a simple leverage ratio index to reduce the risks caused by errors in models and risk measurement
- Efforts to reduce "pro-cyclical" and increase "counter-cyclical" capital buffers

- Introduction of a unified minimum liquidity criteria to cover liquidity risk that was not addressed by Basel II
- Requires systematically important financial institutions (SIFIs) to increase capital and liquidity, and implement additional supervision policies to curb the “external effect” those institutions have on the global economic system when they are in trouble.

### **Liquidity risk management**

Liquidity risk is among the major risks faced by banking institutions. It involves fund increases in assets, manage unplanned changes in funding sources and to meet obligations when required, without incurring additional costs or inducing a cash flow crisis. Recent global financial crisis exposed major weaknesses in the functioning of the global financial system. The difficulties experienced by some banks were due to lapses in basic principles of liquidity risk management. In response, as the foundation of its liquidity framework, the Committee of Basel in 2008 published *Principles for Sound Liquidity Risk Management and Supervision*. The objective of the reform is to strengthen global capital and liquidity regulations with the goal of promoting a more resilient banking sector, and to accumulate an adequate cushion of high-quality liquid assets to enable an institution to survive. More and more banking institutions are concentrating on liquidity risk management policies, tools and procedures. Banks that relied more heavily on core deposit and equity capital financing – stable sources of financing – continued to lend relative to other banks. Banks that held more illiquid assets on their balance sheets, in contrast, increased asset liquidity and reduced lending. Off-balance-sheet liquidity risk materialized on the balance sheet and constrained new credit origination as increased take down demand displaced lending capacity (Cornett, McNutt, Strahan and Tehranian, 2011).

On the other hand, the goal of achieving transparency has become even further challenging in these few years as banks' activities have become more sophisticated and vibrant. Basel Committee define transparency as public disclosure of reliable and timely information that keeps market participants better informed about the way a bank is managed and governed. Transparency enables users of information to make an accurate assessment of a bank's financial condition and performance, business activities, risk profile and risk management practices (Basel Committee on Banking Supervision [BCBS], 1998). Pillar 3 of Basel II for enhancing transparency in banking postulate that market discipline can be strengthened and therefore banks' excessive risk taking reduced by greater disclosure. In the situation where banks control their risk, enhancing transparency may be beneficial that transparency may force banks to behave more prudently.

BNM has issued the Capital Adequacy Framework which includes the components and the requirement outlined under Basel III. Generally, the implementation of the Basel III guidelines aims to strengthen the capital components of banking institutions in order to be more resilient to financial stress. The main requirements under Basel III include: Higher minimum common equity and Tier-1 capital, Capital conservation and counter-cyclical buffer, Leverage ratio, and Phasing out of certain types of capital instruments. The Basel III Tier I equity ratio, Tier I capital ratio and total capital ratio requirements are 7.0%, 8.5% and 10.5% respectively. BNM has announced that these additional requirements (in addition to Basel II) shall be implemented in phases, starting from 2013, with full adoption scheduled in 2019. The implementation of Basel III in Malaysia commenced with effect from 1 January 2013 under the new Basel III rules released on 28 November 2012 by Bank Negara Malaysia. The Basel III Liquidity Coverage Ratio (LCR) compliance by 1 January 2015 while

considering the requirements for the Net Stable Funding Ratio (NSFR), which comes into effect from 1 January 2018.

**Table 2. Risk Management of Key Financial Risks**

Bank	Credit Risk	Market Risk	Liquidity Risk	Operational Risk
Maybank	<ul style="list-style-type: none"> <li>- Group Collateral Management System (GCMS) facilitates revaluation of specific eligible collaterals for the use as credit risk mitigation.</li> </ul>	<ul style="list-style-type: none"> <li>- Achieved risk diversification effect in global Value-at-Risk (VaR) computation via the upgraded Kondor Global Risk engine at all Global Market Centres.</li> </ul>	<ul style="list-style-type: none"> <li>- Liquidity risk appetite is approved by the RMC while ERC and ALCO are responsible for controls.</li> <li>- Optimise cost structure.</li> <li>- Capital base per the standards of Basel III remained strong with <i>Common Equity Tier I Capital ratio</i> at 11.25%.</li> </ul> <p>With a 15.66% <i>total capital ratio</i>, sufficient capital to meet Basel III requirements.</p>	<ul style="list-style-type: none"> <li>- Group operational risk Management committee (GorMc) caters specifically to operational risk matters.</li> <li>- The Group is diligent in its pursuit to adopt The Standardised Approach (TSA) for Operational Risk Capital Charge Calculation.</li> </ul>
CIMB	<ul style="list-style-type: none"> <li>- The Credit Risk Centre of Excellence is dedicated to the assessment, measurement and monitoring of credit risk.</li> <li>- It ensures a homogenous and consistent approach: <ul style="list-style-type: none"> <li>• Credit Risk Policies and Procedures;</li> <li>• Credit Risk</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- The Market Risk Centre of Excellence reviews treasury trading strategies, analyses positions and activities vis-à-vis changes in the financial market and performs mark-to-market valuation.</li> <li>- It also coordinates capital market</li> </ul>	<ul style="list-style-type: none"> <li>- The Group maintains large buffers of liquidity throughout the year.</li> <li>- The day-to-day responsibility is delegated to the respective Country Asset Liability Management Committee (Country ALCO).</li> <li>- Management Action Triggers (MATs) have been</li> </ul>	<ul style="list-style-type: none"> <li>- The Operational Risk Centre of Excellence provides the methodology and process.</li> <li>- The Group manages operational risks through key measures i.e. sound risk management practices in accordance with Basel II, board and senior management oversight, well-defined responsibilities for</li> </ul>

	<p>Models;</p> <ul style="list-style-type: none"> <li>• Credit Risk Methodologies; and</li> <li>• Portfolio Analytics.</li> </ul>	<p>product deployments.</p> <ul style="list-style-type: none"> <li>- The Group also adopts a value-at-risk (VAR) approach in the measurement of market risk.</li> </ul>	<p>established.</p> <ul style="list-style-type: none"> <li>- CIMB Bank's <i>CET 1, Tier 1 and Total Capital ratios stood at 9.65%, 11.55% and 12.91%</i> respectively.</li> </ul>	<p>all personnel concerned, establishment of a risk management culture, and deployment of operational risk management (ORM) systems and tools</p>
Public Bank Berhad	<ul style="list-style-type: none"> <li>- Including credit concentration risk, counterparty credit risk and country risk.</li> <li>- The RM processes are strong credit culture, established credit risk policies, clearly defined discretionary powers, periodic review of credit risk rating score sheet and credit concentration model.</li> </ul>	<ul style="list-style-type: none"> <li>- The RM processes are review of economic conditions and implications, established market risk policies, prohibition of derivative trading activities, periodic assessment and edging of interest rate and foreign exchange risk.</li> </ul>	<ul style="list-style-type: none"> <li>- The RM processes are pursue growth of core customer deposits, accumulation of liquefiable assets, secure long-term funds, subsidiaries, and liquidity stress test.</li> <li>- Issued a total of RM1.95 billion of Basel III-Compliant Subordinated Medium Term Notes.</li> <li>- Has common equity Tier I capital ratio, Tier I capital ratio and total capital ratio of 8.8%, 10.5% and 13.8% respectively.</li> </ul>	<ul style="list-style-type: none"> <li>- The RM processes are day-to-day management of operational risk through comprehensive system of internal control, new product or service introduced are subject to a product evaluation process, tools are applied to identify and manage operational risk.</li> </ul>
RHB	<ul style="list-style-type: none"> <li>- Group Credit Committee.</li> <li>- Credit risk is mitigated by: <ul style="list-style-type: none"> <li>• A structured and systematic credit checking and processing.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>- Group Asset and Liabilities Committee (ALCO).</li> <li>- Market risk measures include conventional risk quantification</li> </ul>	<ul style="list-style-type: none"> <li>- Group Assets &amp; Liabilities Management Committee.</li> <li>- The Banking Group's ALCO performs a critical role in the management of</li> </ul>	<ul style="list-style-type: none"> <li>- The operational risk management framework of the Banking Group comprises a broad range of activities and element, broadly classified into:</li> </ul>

	<ul style="list-style-type: none"> <li>• A trading limit structure.</li> <li>• The daily review adequacy of collateral.</li> <li>• The requirement of upfront payment for purchase positions.</li> <li>• Suspension of clients from trading once their accounts are overdue.</li> </ul>	methodologies such as risk factor sensitivity analysis and value-at-risk (VaR) measures.	<p>liquidity risks.</p> <p>- In preparation for the impending implementation of Basel III, additional RM750 million sub-notes and USD500 million senior debt securities were issued.</p>	<ul style="list-style-type: none"> <li>• Analysis and Enhancement</li> <li>• Education and Awareness</li> <li>• Monitoring and Intervention</li> </ul>
Hong Leong Bank	<ul style="list-style-type: none"> <li>- The Bank places high emphasis on effective credit risk management.</li> <li>- Credit evaluation is managed by experienced personnel.</li> <li>- All significant credit policies are reviewed and approved by the BRMC and Board of Directors respectively.</li> <li>- The maximum exposure to credit risk for financial assets recognised in the statements of financial position.</li> </ul>	<ul style="list-style-type: none"> <li>- Market risk is primarily controlled via a series of cut-loss limits and potential loss limits, i.e. "Value at Risk" ("VaR").</li> </ul>	<p>- Capital levels are consistently strong with <i>Common Equity, Tier 1 and Risk Weighted Capital Ratios</i> at 10.2%, 11.9% and 14.8% respectively.</p> <p>- In line with Basel III Liquidity Framework observation period, the Bank has commenced the reporting of 2 key liquidity ratios, namely the Liquidity Coverage Ratio and the Net Stable Funding Ratio.</p>	<ul style="list-style-type: none"> <li>- Management oversight on operational risk management (ORM) and compliance matters are effected through the Operational Risk Management and Compliance Committee (ORMCC) whilst Board oversight is effected through the BRMC.</li> <li>- The results are reported to both the BRMC and the ORMCC. These tools are: <ul style="list-style-type: none"> <li>i) Risk Catalogue (RC).</li> <li>ii) Control Self Assessment (CSA).</li> <li>iii) Key Risk Indicators (KRI).</li> <li>iv) Loss Event Reporting (LER).</li> </ul> </li> </ul>

AMMB Holdings Berhad	<ul style="list-style-type: none"> <li>- Implemented new Probability of Default ("PD") models.</li> <li>- Developed new Retail Behavioural Scoring models and enhanced strategies for cross-selling.</li> <li>- Enhanced decision making in loan provisioning and undertaking stress testing.</li> </ul>	<ul style="list-style-type: none"> <li>- Commenced Risk Engine Replacement ("RER") Project, to be implemented in phases, with Fixed Income module to be rolled out in May 2013.</li> </ul>	<ul style="list-style-type: none"> <li>- Enhanced Assets &amp; Liabilities Management ("ALM") system and internal adoption of Basel III liquidity ratios and target.</li> </ul>	<ul style="list-style-type: none"> <li>- Introduced Operational Risk Appetite to complement the Credit Risk and Market Risk Appetite.</li> <li>- Enhanced governance in managing Key Risk Indicators.</li> <li>- Continuous program to enhance awareness in Business Continuity Management</li> </ul>
Alliance Bank	<ul style="list-style-type: none"> <li>- The core policies, together with business segment policies, require the Group to underwrite risks within the scope of risk appetite.</li> <li>- Regular credit reviews and business-specific early warning frameworks facilitate early detection of imminent problems to improve effectiveness of remedial / recovery actions.</li> </ul>	<ul style="list-style-type: none"> <li>- Market and Liquidity risks are governed by the Market Risk Management Framework.</li> <li>- Trading activities are governed by prescribed risk limits such as cash limits, sensitivity limits, loss limits and Value-at-Risk limits.</li> </ul>	<ul style="list-style-type: none"> <li>- Liquidity Risk Management Policy and Interest Rate Risk Management Policy.</li> <li>- Trading activities are governed by prescribed risk limits such as cash limits, sensitivity limits, loss limits and Value-at-Risk limits.</li> </ul>	<ul style="list-style-type: none"> <li>- Operational Risk Management framework.</li> <li>- Conduct Operational Risk Awareness programmes.</li> <li>- Risk and Control Self Assessment (RCSA).</li> <li>CSA to test / validate the effectiveness of the controls.</li> <li>- Key Risk Indicator (KRI) to monitor and manage operational risk exposures.</li> <li>- Loss Event Data Collection (LED) to collect and report loss incidents.</li> </ul>
Affin Bank	<ul style="list-style-type: none"> <li>- An independent GRM function, headed by Group Chief Risk Officer ('GCRO') with</li> </ul>	<ul style="list-style-type: none"> <li>- The Bank is exposed to market risks from its trading and investment</li> </ul>	<ul style="list-style-type: none"> <li>- The Bank adopts BNM's New Liquidity Framework</li> </ul>	<ul style="list-style-type: none"> <li>- The Bank adopts the Basic Indicator Approach for the purpose of calculating the</li> </ul>

	<p>direct reporting line to BRMC.</p> <ul style="list-style-type: none"> <li>- The Bank establishes internal lending limits and related lending guidelines.</li> <li>- The limits include single customer groupings, connected parties, and geographical and industry segments.</li> <li>- These risks are monitored regularly and the limits reviewed.</li> <li>- The credit risk exposure for derivative and loan books is managed.</li> </ul>	<p>activities.</p> <ul style="list-style-type: none"> <li>- The Bank's market risk management objective is to ensure that market risk is appropriately identified, measured, controlled, managed and reported.</li> <li>- The Bank's exposure to market risk stems primarily from interest rate risk and foreign exchange rate risk.</li> <li>- Value-at-Risk ('VaR') is used to compute the maximum potential loss amount over a specified holding period of a Trading portfolio.</li> <li>- It measures the risk of losses arising from potential adverse movements in interest rates and foreign exchange rates that could affect values of financial instruments.</li> </ul>	<p>(‘NLF’).</p> <ul style="list-style-type: none"> <li>- The Bank employs liquidity risk indicators.</li> <li>- The risk is measured monthly.</li> <li>- Conduct liquidity stress tests to gauge resilience in the event of a funding crisis.</li> <li>- In addition, the Bank has in place the Contingency Funding Plan.</li> <li>- The document encompasses strategies, decision-making authorities, and courses of action to be taken.</li> <li>- The liquidity positions in the major currencies are being closely monitored.</li> <li>- Embarked on Basel III, fulfilled the quarterly reporting requirement to BNM with regard to leverage and liquidity positions.</li> </ul>	<p>capital requirement for operational risk.</p> <ul style="list-style-type: none"> <li>- The capital requirement is calculated by taking 15% of the Bank's average annual gross income over the previous three years.</li> <li>- The Bank gathers, analyses and reports operational risk loss and 'near miss' events to Group Operational Risk Management Committee and Board Risk Management Committee.</li> <li>- As a matter of requirement, all Operational Risk Coordinators must satisfy an Internal Operational Risk (including anti-money laundering/counter financing of terrorism and business continuity management) Certification Program.</li> </ul>
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The main results of this study are:

- Malaysian bankers are aware of the importance and the role of effective risk management in improving bank performance
- Malaysian banks have implemented some effective risk strategies and effective risk management frameworks (framework, process and policies);
- Malaysian banks have a formal Risk management system in place.
- Malaysian banks implement a committee responsible for identifying, monitoring, and controlling different risks.
- Collateral and guarantees continue to be used risk mitigation methods to provide support to credit facilities in Malaysian banks.
- Value-at-Risk (VaR) is extensively used by Malaysian banks.
- Malaysian banks implement methodologies of operational risk management.
- Analysing liquidity risk management shows that Malaysian banks are strengthening their liquidity risk management.
- Malaysian banks pick up the role of transparency and market discipline to encourage the disclosure of risk information with reference to Basel III.

## **5. Conclusion**

In today's rapid business environment, risk management becomes a standard banking practices. It is a key factor in assessing the future potential of a bank and the performance of management. Many banking institutions are taking a more active role in forming the risk management policy and framework and approving their risk appetite. The study found that collateral continues to be used risk mitigation methods, and Value-at-Risk (VaR) is extensively used by Malaysian banks. Malaysian banks have also voluntary in advance disclosure of risk information with reference to Basel III. Finally, risk management should be an unceasing and evolving process in banking institutions, which should address carefully all the risks surrounding the banking institution activities past, present and future.

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# **EMPIRICAL EVIDENCE OF E-BANKING AND CUSTOMER PERCEPTION ON BANKS SERVICE QUALITY IN NIGERIA**

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## **ABSTRACT**

As competition in the financial services market increases, high street banks are faced with the strategic challenge of more effectively managing customers of varying worth through the delivery platform. The main objective of the study is to find out the relationship between E-banking and customer perception of banks service quality a chi-square was used to run and determine the level of significant relationship between dependent variable and independent variables, while regression analysis is conducted using SPSS to examine how strong the relationship between the dependent variable and independent variables, the findings show a positive relationship between E-banking and customer perception of banks service quality, therefore in line with the findings and conclusions of this study, it is recommended that there is the need to deploy more resources to improve on the existing relationship on the activities between E-banking and customer perception of banks service quality in Nigeria.

## **INTRODUCTION**

As competition in the financial services market increases, high street banks are faced with the strategic challenge of more effectively managing customers of varying worth through the delivery platform (e.g., face to face, telephone, web) most commensurate with the individual customer's relationship value. Important in this approach of customer segregation is the development and maintenance of deep relationships with profitable customers while at the same time having clearly defined strategies which will encourage lower net worth clients to embrace lower cost interfaces more easily.

For both of these approaches to work together banks must embrace technological change to both add relationship value for high net worth clients while at the same having an interface which enables effective and efficient interaction by the lower net worth base? It has been established that increasing the role of technology in a service organization can serve to reduce costs and often improve service reliability (Lee and Allaway, 2012). The motivation of cost reduction has been argued to be the primary reason for banks adopting the Internet platform in recent years (Durkin and Howcroft, 2003; Daniel, 1999). A recent focus on customer Self-Service Technologies (SSTs) draws attention to a research gap in this area and points up the importance of exploring technology in the role of service enabler and

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highlights a need for research to provide a clearer determination of good practice in the area overall ( Gwinner,Grender and Bitner, 1998; Bitner, Brown and Meuter, 2000; Sernes and Hansen, 2001).

A key managerial challenge clearly exists in establishing an ‘appropriate’ balance between remote and personal interactions through which both customer and provider needs are met to the satisfaction of both parties (Nielsen, 2002; Durkin and Howcroft, 2003; Lee, 2002).

### **RESEARCH OBJECTIVES AND HYPOTHESIS**

The main objective of the study is to find out the relationship between E-banking and customer perception of banks service quality.

H01: There is no significant relationship between E-banking and customer perception of banks service quality.

### ***E-Banking as a Dimension of Information and Communication Technology (ICT)***

There have been immense developments in Nigeria’s banking sector since the period of financial sector reforms. A key development was the entry of private banks into the market and the expansion of branches of existing banks.

This was followed by the development of new technologies to deliver financial services, such as Automated Teller Machines (ATMs), Electronic Funds Transfer at Point of Sale (EFTPOS) and other stored value cards. These cost-effective innovations and products have the purpose of reducing the pressure on over-the-counter services to bank customers. According to Abor (2004), arguably the most revolutionary electronic innovation in Nigeria and the world over has been the ATM. Another technological innovation in Nigerian banking is the various electronic cards, which the banks have developed over the years. Banks as financial intermediaries provide convenience and liquidity for their clients. The technological wave across the globe, especially the use of information and communication technologies (ICT) has affected the conduct of business generally.

In recent years, the innovation concept has inevitably been one of the most attention-drawing subjects by both business researchers and practitioners due to its wide acceptance as a strong predictor and determinant of competitive advantage for firms in the market (Bass, 1969; Rogers, 1995; Manning et al., 1995; Im et al., 2003; Singh, 2006). Most previous studies on this subject have focused on to the organizational side of innovation concept (Schumpeter, 1939; Burns & Stalker, 1961; Hull &Hage, 1982; Hamel &Prahalaad, 1994) while some others studied the classification of consumers based on the speed of adoption (Bass, 1969; Rogers & Shoemaker,1971; Rogers, 1995).

However, without declining the importance of the firms’ offers of new products and services, the perception of these by the consumers should take at least the same attention since the new products and services offered by the firms can gain importance only if the adoption by the consumers can be maintained. For this reason, how consumers perceive new products and services occurs to be an important subject; thus, one of the mainpurposes of this study is to explore how innovative financial products are perceived by consumers. Sweeny and Morrison (2004) note that many innovations have recently modified the concept of retail

banking due to new forms of distribution of financial services as well as the evolution of the twenty first century answers.

Technology banking, nowadays, is one of the most competitive markets worldwide and the firms are struggling hard to maintain customer satisfaction and loyalty in order to obtain competitive advantage (Sirohi et al., 1998). By that means, new products and services are used as important instruments even though they contain certain risks (Littler&Melanthiou, 2006). As a consequence, this study aims to explore how financial innovations are perceived by consumers, most of who are considered to be young people (Lewis et al 1994).

The framework for exploring consumer acceptance of new products is drawn from the area of research known as the diffusion of innovations. The diffusion process is concerned with how innovations spread, that is, how they are assimilated within a market (Schiffman&Kanuk, 2009). All products that are new do not have equal opportunities for consumer acceptance. Although there are no precise formulas by which marketers can evaluate a new product's likely acceptance, diffusion researchers have identified five characteristics that seem to influence consumer acceptance of new products: relative advantage; complexity; compatibility; trialability; and observability (Rogers,2005). Based on available research, it has been estimated that these five product characteristics account for much of the dynamic nature of the rate or speed of adoption (Chen &Crownston, 1997).

The concept of adopters' categories involves a classification scheme that indicates where a consumer stands in relation to other consumers in terms of time (or when they adopt a new product). Five adopter categories are frequently cited in the diffusion literature: innovators, early adopters, early majority, late majority, and laggards (Schiffman&Kanuk, 2009). The identified product characteristics that influence innovation diffusion form the basis upon which the innovative products in the banking sector. Innovators are very eager to try new ideas; accept products if risk is daring; develop more cosmopolite social relationships and easily communicate with other innovators (Schiffman&Kanuk, 2009).

The tremendous concern for investigation of the recent developments in the banking sector is closely connected with the notion that most of the new financial products and technological changes are taking place in this industry. Ncube (2007) showed that the financial sector in Africa is largely dominated by the banking sector. Nigeria is no exception with new banks entering the sector in the last 7 years. Notable among them are Stanbic Bank (the highly capitalized bank in Africa; originally from South Africa), Zenith Bank (originally from Nigeria) and Fidelity Bank Some other non-banking financial institutions like Unique Trust FinancialServices expanded so much;

Innovation is described as any good, service or idea that is perceived by someone as new (Kotler, 2003). According to Rogers (1995), innovation takes time to spread through the social system and innovation diffusion process is a new idea's becoming widespread from its source of invention or creation to its ultimate users or adopters. Baker (2002) posits that the primary drivers of innovation include, financial pressures to decrease costs and increase efficiency, increased competition, shorter product life cycles, value migration, stricter regulations, industry and community needs for sustainable development, increased demand for accountability, community and social expectations and pressures, demographic, social and market changes, rising customer expectations regarding service and quality, greater availability of potentially useful new technologies coupled with the need to keep up or exceed the competition in applying these new technologies, and the changing economy.

Customer satisfaction, recently, has become one of the most effective instruments especially for service firms to increase their market performance via customer loyalty (Jones & Sasser, 1995; Oliver, 1999). Customer satisfaction, in general terms, is defined as the concept of the ratio between the expectations before-purchase and after-purchase (Parasuraman et al., 1998; Westbrook & Oliver, 1991; Eggert&Ulaga, 2002). According to this definition, if the performance of the products and services are below customer's expectations, dissatisfaction occurs (Parasuraman et al., 1998; Woodruff, 1997).

Technology as an enabler of the delivery of superior banking services is well documented in the marketing literature. Pyun et al (2002) for example, note that banks have moved quickly to invest in technology as a way of controlling costs, attracting customers and meeting convenience and technical expectations of their existing customers. Joseph and Stone (2003) also note that the installment of customer friendly technology (such as menu-driven automated teller machines, telephone and internet banking service) has become commonplace in recent years as a way of maintaining customer loyalty and increasing market share. According to Alu (2000), information technology affects financial institutions by easing enquiry, saving time and improving service delivery. Similarly Yasuharu (2003) found that the implementation of information technology and communication networking has brought revolution in the functioning of the banks and the financial institutions. A number of studies (Balachandher et al, 2001; Idowu et al, 2002; Yasuharu, 2003) have concluded that information technology has appreciable positive effects on bank productivity, cashiers' work, banking transaction, bank patronage, bank service delivery, customers' services and bank services.

They concluded that, these have positive effects on the growth of banking. A study by Singhal and Padmanabhan (2008) on customer perception towards internet banking (a type of innovative product) provides a comprehensive framework of various factors which contribute to customers' perception such as convenience, reliability, time factor, real time access to information, faster transfer, easy to use, user friendly, low transaction fee, anytime and anywhere banking facility, among several other factors. Their empirical results showed that out of total respondents, 81% respondents felt that internet banking is very convenient and flexible banking.

And the same percentage (i.e. 81%) from total users agrees or strongly agrees that internet banking is convenient. They felt it gives benefits like no queuing in bank and one can do banking anytime and anywhere. Other empirical research findings support this construct. Abor (2004) found that 88.5% and 80.4% of customers who responded to his survey agreed that information technology innovations reduced significantly the time involved in transacting business with their banks and also ensures efficient service delivery respectively. According to Williamson (2006), internet banking provides customers convenience and flexibility and can be provided at a lower cost than the traditional branch banking.

## METHODOLOGY

The Statistical package for Social Sciences (SPSS) has been used to run the frequency distribution, which describes only one variable at a time and a cross-tabulation describes two or more variables simultaneously. Simple percentages method was employed to give the descriptive statistics of the variables .In cross tabulation, a chi-square was used to run and determine the level of significant relationship between dependent variable and one or more independent variables Regression analysis is conducted using SPSS which examine

relationship between dependent variable and one or more independent variables. The factor analysis is also used, which is an interdependent technique in that an entire set of interdependent relationship is examined without any distinction between the dependent and independent variables.

**Decision rule:**

In cross-tabulation, a chi-square test needs to be run and determine the P value i.e significant two sided. When the P value is  $< .05$ , it means that the results are significant and a relationship exists. In this case, there is sufficient evidence to reject the null hypothesis,  $H_0$  and accept the hypothesis  $H_1$ . If the P value is greater than  $.05$ , it means there is no relationship between the variables. If there is no relationship,  $H_1$  must be rejected and  $H_0$  accepted.

**Test of hypothesis;**

**HO1;** There is no significant relationship between E-banking and banking Service quality

Chi-Square Tests									
	Value	df	Asymp. Sig. (2-sided)	Monte Carlo Sig. (2-sided)			Monte Carlo Sig. (1-sided)		
				Sig.	95% Confidence Interval		Sig.	95% Confidence Interval	
					Lower Bound	Upper Bound		Lower Bound	Upper Bound
Pearson Chi-Square	583.722 <sup>a</sup>	360	.000	.017 <sup>b</sup>	.002	.031			
Likelihood Ratio	343.072	360	.731	.000 <sup>b</sup>	.000	.010			
Fisher's Exact Test	521.497			.000 <sup>b</sup>	.000	.010			
Linear-by-Linear Association	40.664 <sup>c</sup>	1	.000	.000 <sup>b</sup>	.000	.010	.000 <sup>b</sup>	.000	.010
N of Valid Cases	322								

Questionnaire administered, June; 2014

In cross-tabulation, a chi-square test needs to be run and determine the P value i.e significant two sided. When the P value is  $< .05$ , it means that the results are significant and a relationship exists. In this case, there is sufficient evidence to reject the null hypothesis,  $H_0$  and accept the hypothesis  $H_1$ . If the P value is greater than  $.05$ , it means there is no relationship between the variables. If there is no relationship,  $H_1$  must be rejected and  $H_0$  accepted. It is clearly seen from table 4.1 above the output of hypothesis one (1) that the chi-square value is significant at 0.000 ( $p < 0.05$ ).

Table 4.1 shows the results of cross-tabulation, the significance is  $0.000 < 0.05$ , hence, we can reject the null hypothesis stating that there is no significant relationship between E-banking and banking Service quality.

There is a strong reason to reject the null hypothesis which says that there is no significant relationship between E-banking and banking Service quality. Therefore it can be concluded that there is significant relationship between E-banking and banking Service quality in Nigeria.

#### **Regression analysis of hypothesis one;**

#### **Regression**

<b>Correlations</b>			
		SERVICEQUALITYBK	ELECTRONICBK
Pearson Correlation	SERVICEQUALITYBK	1.000	.356
	ELECTRONICBK	.356	1.000
Sig. (1-tailed)	SERVICEQUALITYBK	.	.000
	ELECTRONICBK	.000	.
N	SERVICEQUALITYBK	322	322

	ELECTRONICBK	322	322
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SPSS VERSION 22

Model Summary <sup>b</sup>										
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Change Statistics					Durbin-Watson
					R Square Change	F Change	df1	df2	Sig. F Change	
1	.356 <sup>a</sup>	.127	.124	.536	.127	46.417	1	320	.000	1.506

a. Predictors: (Constant), ELECTRONICBK

a. Dependent Variable: SERVICEQUALITYBK

SPSS VERSION 22

ANOVA <sup>a</sup>						
Model		Sum of Squares	df	Mean Square	F	Sig.
1	Regression	13.331	1	13.331	46.417	.000 <sup>b</sup>
	Residual	91.902	320	.287		
	Total	105.233	321			

a. Dependent Variable: SERVICEQUALITYBK

b. Predictors: (Constant), ELECTRONICBK

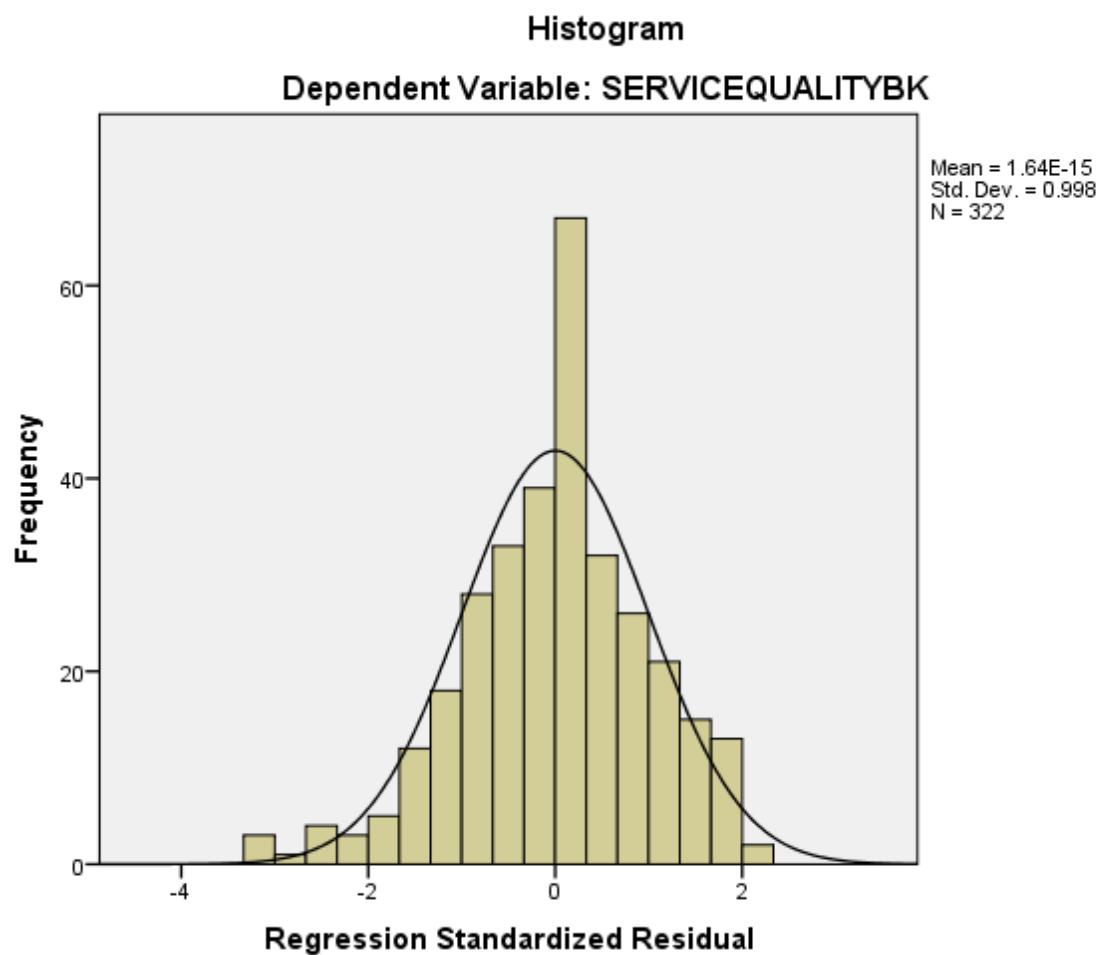
SPSS OUTPUT

Coefficients <sup>a</sup>								
Model	Unstandardized Coefficients	Standardized Coefficients	t	Sig.	95.0% Confidence Interval for B	Correlations	Collinearity Statistics	

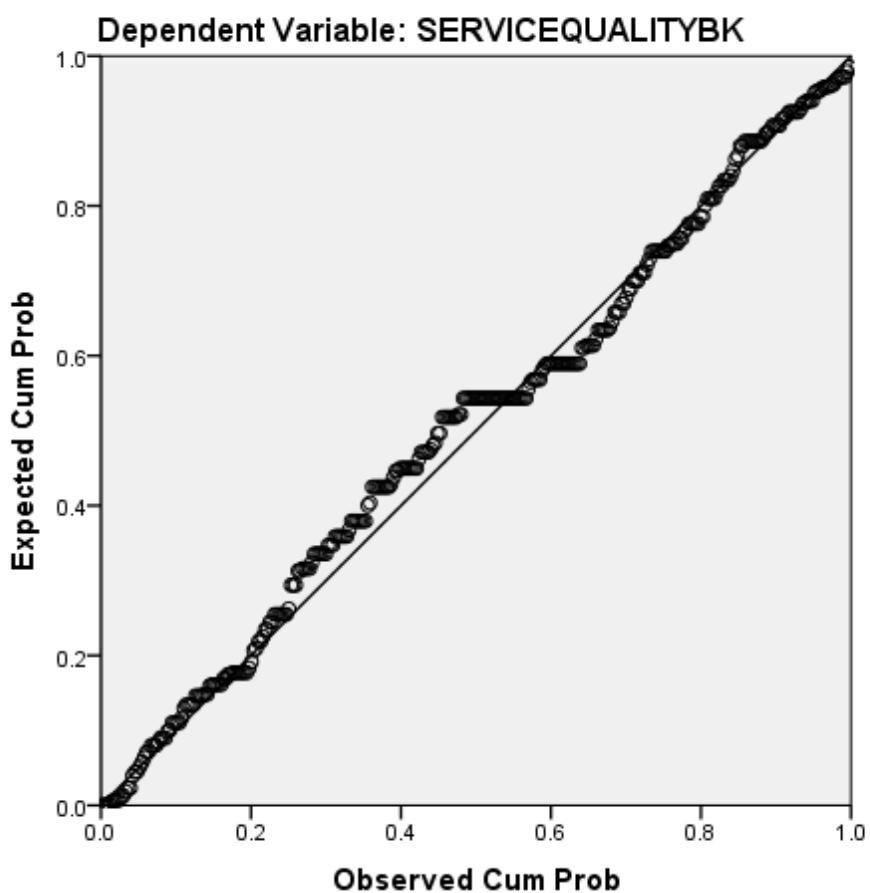
	B	Std. Error	Beta			Lower Bound	Upper Bound	Zer-o-order	Partial	Part	Tolerance	VIF
1 (Constant)	1.620	.194		8.345	.000	1.238	2.002					
ELECTRONICBK	.441	.065	.356	6.813	.000	.313	.568	.356	.356	.356	1.000	1.000

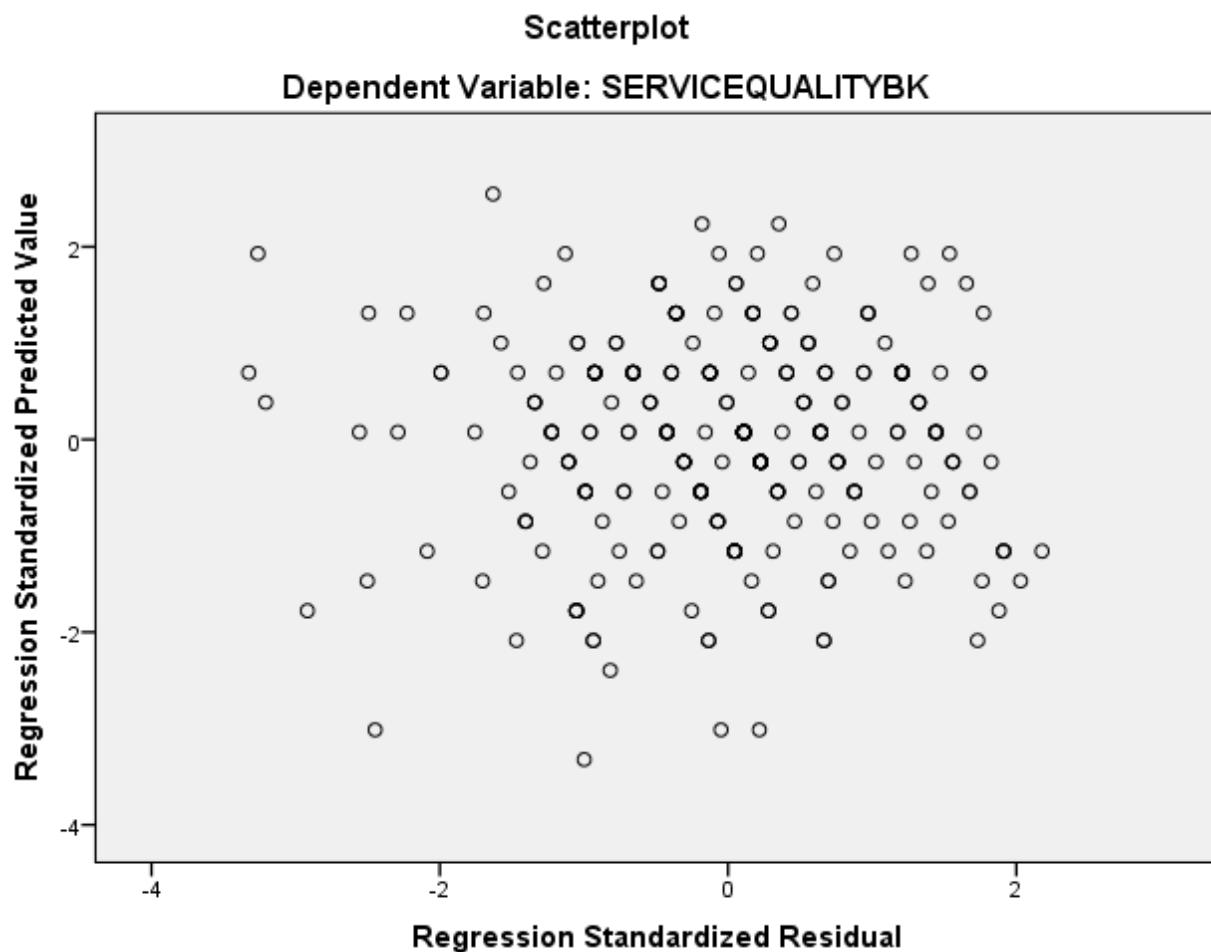
a. Dependent Variable: SERVICEQUALITYBK

SPSS VERSION 22



### Normal P-P Plot of Regression Standardized Residual





#### **RESULT AND DISCUSSION**

E-banking as one of the indicators of ICT shows positive relationship between the variables and it is statistically significant relationship at .000 and the primary data certify that. This implies that the banking service quality has provided that responsibility and it has impacted positively on the E-banking in Nigeria. From the finding of the study the P value i.e significant two sided. When the P value is  $< .05$ , it means that the results are significant and a relationship exists. In this case, there is sufficient evidence to reject the null hypothesis ( $H_0$ ), and accept the alternate hypothesis ( $H_1$ ).

All the analysis on chi-square, Regression analysis and factor analysis above have clearly shown that the P value is  $<.05$  which means that there is a very strong relationship between ICT dimensions and the banking industry in Nigeria.

## **CONCLUSION AND RECOMMENDATIONS**

The study examines the Customers Perception of Information and Communication Technology (ICT) In Selected Commercial Banks in Bauchi State. The cumulative influence of the ICT proxies on the Banking service quality in Nigeria as one of the indicators of ICT in Nigeria is significant at 1% which implies that our level of confidence on this result is as high as 99%, only 1% is revealed to be term error.

In view of the findings of this study the following conclusions were made:

E-banking has significant relationship on the Selected Commercial Banks service quality in Nigeria as one of the indicators of ICT in Nigeria. This result was in line with our expectation, as we believe E-banking would have Selected Commercial Banks in Nigeria

In line with the findings and conclusions of this study, it is recommended that:

The findings show a positive relationship between E-banking and Selected Commercial Banks, therefore, there is the need to deploy more resources to improve on the existing relationship the activities between E-banking and Selected Commercial Banks in Nigeria.

### **Limitations and suggestions for future research**

Normally no studies can undertake research without limitations and this study is not an exception. This study used quantitative technique data while future studies can use qualitative techniques of data collection in order to interview the respondents in the Nigerian banking industry.

Further studies are also required to use targeting samples other than the banking industry such as the multinational oil, manufacturing companies in the host communities.

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# SIFAT NEGARA DAN KAITANNYA DALAM MENTADBIR ISU-ISU KEAGAMAAN DI MALAYSIA

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## ABSTRAK

*Perlembagaan sesebuah negara memperuntukkan sifat sesebuah negara yang memberikan wajaran dalam amalan pentadbiran oleh pihak Eksekutif. Sesebuah negara boleh dikategorikan sebagai mempunyai Perlembagaan bersifat ‘theocratic’ sekular ataupun hibrid. Dalam konteks Malaysia, wujud juga pandangan yang mengatakan bahawa Malaysia adalah negara bersifat ‘religio-secular’. Sifat sesebuah negara adalah penting kerana ia akan menunjukkan sejauh manakah pihak Eksekutif bertindak mengawal isu-isu keagamaan dalam negara berkenaan melalui kuatkuasa undang-undang dan peraturan. Kefahaman mengenai kedudukan ini penting kerana apabila wujud suatu tindakan oleh pihak Eksekutif berkaitan isu agama ia boleh dilihat dalam konteks kesesuaian tindakan berkenaan dengan sifat negara. Tidak akan timbul perdebatan dalam masyarakat yang merasakan bahawa tindakan yang diambil itu adalah tidak wajar terutamanya bagi negara yang mempunyai masyarakat berbilang etnik sebagaimana Malaysia. Oleh itu, penulisan ini akan melihat sifat negara secara umum dan melihat kedudukan Malaysia serta justifikasi amalan pentadbiran sedia ada dalam konteks pentadbiran isu-isu agama khususnya melibatkan pemberian hak kebebasan beragama dalam Perlembagaan Persekutuan.*

**Kata Kunci:** sifat negara, pentadbiran, isu-isu agama, hak kebebasan beragama.

## PENDAHULUAN

Sifat atau ciri sesebuah negara merujuk kepada unsur asas yang wujud dalam Perlembagaan negara yang meletakkan asas kepada sesuatu corak sistem pemerintahan. Bagi Malaysia Bahagian I Perlembagaan memperuntukkan antaranya Malaysia sebagai sebuah Persekutuan dan juga agama Islam sebagai agama rasmi. Islam sebagai agama rasmi menentukan cara bagaimana isu-isu keagamaan terutama berkaitan agama Islam ditadbir dan diselesaikan dan ia memainkan peranan penting dalam penyelesaian isu berkaitan kebebasan beragama di Malaysia.

Malaysia adalah sebuah negara berbilang etnik, budaya dan agama. Menurut banci Penduduk dan Perumahan Malaysia yang dijalankan dalam tahun 2010, penduduk Malaysia berjumlah 28.3 juta. Daripada jumlah tersebut Bumiputera mewakili kumpulan terbesar (67.4%), sementara Cina (24.6%), India (7.3%) dan lain-lain (0.7%). Oleh kerana agama mempunyai korelasi yang tinggi dengan etnik (Perangkaan, 2010), maka orang Melayu

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yang merupakan etnik majoriti beragama Islam memainkan peranan penting dalam pembentukan sifat negara. Hasil dari kontrak sosial yang dipersetujui oleh tiga etnik di Tanah Melayu semasa negara hendak mencapai kemerdekaan maka wujud peruntukan mengenai Islam sebagai agama rasmi dalam Perlembagaan (Fernando, 2007). Dengan itu, sifat negara Malaysia ditentukan oleh peruntukan yang berkaitan iaitu Perkara 3(1) Perlembagaan Persekutuan. Perlembagaan Persekutuan adalah asas undang-undang dan asas pemerintahan bagi sesebuah negara. Ia merupakan dokumen yang mewujudkan sesebuah organ dalam negara dan memberikan kuasa kepada organ-organ berkenaan.

### SIFAT NEGARA MALAYSIA

Terdapat beberapa aliran pandangan mengenai sifat negara Malaysia. Perkara 3(1) Perlembagaan Persekutuan memperuntukkan; “Ugama Islam ialah ugama bagi Persekutuan; tetapi ugama-ugama lain boleh diamalkan dengan aman dan damai di mana-mana bahagian Persekutuan”. Oleh kerana kewujudan Perkara 3(1) dalam Perlembagaan Persekutuan, maka wujud perdebatan yang tidak berkesudahan mengenai sifat negara Malaysia. Ada yang mengatakan bahawa Malaysia adalah negara sekular, ada yang berpandangan Malaysia negara Islam dan ada yang mengambil jalan tengah di antara kedua-dua sifat negara tersebut. Di samping itu, ada pandangan menyatakan bahawa Malaysia adalah sebuah negara ‘*religio-secular*’ iaitu negara Islam sederhana bagi pengikut Islam manakala bagi bukan Islam menerima pakai undang-undang sekular. (Ahangar, 2008)

(Choon, 1999) pula berpendapat ada tiga jenis model Perlembagaan. Model pertama adalah model sekular iaitu yang memperuntukkan negara sekular contohnya seperti India. Model sekular ini juga merujuk kepada Perlembagaan yang tidak memperuntukkan mengenai agama langsung seperti Singapura. Perlembagaan yang tidak memperuntukkan ketuhanan atau memperuntukkan mengenai Tuhan tetapi tidak menyebut mengenai agama rasmi juga tergolong di bawah kategori ini seperti Kanada, Nigeria, Malawi, Afrika Selatan dan Australia. Model kedua adalah bagi negara ‘*theocratic*<sup>2</sup>’ (Faruqi, 2008). Negara-negara ini seperti Iran dan Saudi Arabia memperuntukkan sistem perundangan berdasarkan jurisprudens dan undang-undang Islam. Kesannya, perlembagaan sebegini memberi keistimewaan kepada agama rasmi dan sistem pemerintahan dan kerajaan serta perundangan adalah tertakluk kepada ajaran agama Islam. Model ketiga adalah hibrid iaitu berada di antara negara sekular dan ‘*theocratic*’. Perlembagaan sebegini adalah Perlembagaan yang memperuntukkan agama rasmi dan keistimewaan kepada agama rasmi tetapi tidak mencapai tahap negara ‘*theocratic*’. Perlembagaan sebegini juga mengiktiraf agama lain dan memperuntukkan kebebasan beragama. Kerajaan diberi tanggungjawab untuk memelihara agama rasmi seperti di Malaysia.

Malaysia mengamalkan sistem Persekutuan (Hussain, 1984) di mana bidang kuasa pemerintahan dibahagikan antara kerajaan pusat dan kerajaan negeri. Perkara 73 Perlembagaan Persekutuan memperuntukkan Parlimen mempunyai kuasa untuk menggubal undang-undang di peringkat pusat dan Dewan Undangan Negeri akan menggubal undang-undang di peringkat negeri. Mengenai bidang yang menentukan kuasa masing-masing diperuntukkan dalam Jadual Kesembilan. Senarai 2 adalah senarai negeri

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<sup>2</sup> Negara *theocratic* adalah negara di mana agama berkait dengan kerajaan. Secara literal bermaksud ‘pemerintahan oleh Tuhan’. Undang-undang Tuhan adalah undang-undang utama negara dan dijalankan oleh orang-orang yang merupakan ahli agama iaitu ejen kepada Tuhan di dunia.

dan perkara-perkara berkaitan agama Islam merupakan salah satu daripadanya. Sistem perundangan Malaysia adalah unik kerana mengiktiraf beberapa sumber undang-undang yang berbeza dari negara lain seperti Undang-undang Islam dan Undang-Undang Adat. Oleh kerana kewujudan sumber perundangan ini di samping sumber-sumber yang lain menunjukkan bahawa sistem perundangan Islam hanya sebahagian kecil sahaja dari keseluruhan sistem yang ada. Undang-undang Syariah bergerak seiring dengan undang-undang Sivil namun yang paling utama adalah Perlembagaan Persekutuan. Adalah jelas bahawa sistem pemerintahan sedia ada mengiktiraf pemakaian undang-undang Syariah di Malaysia.

Tun Salleh Abas dalam *Che Omar bin Che Soh Iwn Pendakwa Raya[1988] 2 MLJ 55*, mentakrifkan perkara 3(1) dengan melihat hasrat penggubal perlembagaan iaitu Islam hanya terpakai bagi undang-undang peribadi sahaja. Dalam perkara awam undang-undang sekular terpakai. Ini menunjukkan kewujudan dua bentuk undang-undang di Malaysia iaitu undang-undang sekular dan juga undang-undang Islam. Tan Sri Professor Ahmad Ibrahim tidak bersetuju dengan pandangan bahawa Islam hanya terpakai bagi undang-undang peribadi sahaja kerana menurut beliau Islam dalam Perkara 3(1) tidak hanya terhad kepada upacara rasmi sahaja tetapi sebagai ad-din iaitu cara hidup. (Ibrahim, <http://www.islam.gov.my/buu/artikel2.html>, 2008)

Keputusan Mahkamah dalam kes *Che Omar bin Che Soh Iwn Pendakwaraya* tidak lagi bersesuaian dengan situasi semasa pemakaian undang-undang Islam di Malaysia. Undang-undang Islam telah berkembang dan meliputi pelbagai bidang termasuklah ekonomi seperti perbankan Islam, takaful serta pasaran modal Islam dan tidak terhad kepada aspek kekeluargaan sahaja. Hakikatnya, selagi masyarakat Malaysia mendokong Perlembagaan Persekutuan sebagai undang-undang tertinggi negara, maka mereka perlu juga menghormati kandungan Perlembagaan itu sendiri dan memahami kedudukan agama Islam di Malaysia. Dari segi perlaksanaan Islam di Malaysia, harus diakui bahawa hanya bidang-bidang tertentu sahaja yang menggunakan pakai undang-undang Islam. Agama Islam belum lagi mencapai tahap sebagai mana difahami dalam ajaran agama itu sendiri iaitu merangkumi seluruh kehidupan manusia. Ada peraturan yang bukan berdasarkan undang-undang Islam juga terpakai di Malaysia. Oleh itu, dalam konteks Malaysia, pandangan bahawa Islam hanya bagi upacara ‘ceremonial’ sahaja adalah tidak tepat kerana pemakaian undang-undang Islam wujud di peringkat persekutuan dan negeri namun, untuk menyatakan bahawa Islam merangkumi keseluruhan kehidupan masyarakat Malaysia juga tidak tepat kerana sistem perundangan Malaysia juga mengiktiraf undang-undang Sivil.

Oleh kerana Islam mendapat tempat di Malaysia sebagai agama rasmi, maka Malaysia sudah pasti bukan negara sekular. Malaysia juga bukan negara Islam kerana tidak dinyatakan secara khusus sebagaimana Perlembagaan negara Islam yang lain juga undang-undang Sivil yang terpakai menguatkan lagi tafsiran bahawa Malaysia bukan negara Islam. Menerima pakai pandangan<sup>3</sup> yang menyatakan bahawa Malaysia adalah negara hibrid iaitu negara yang mempunyai agama rasmi iaitu Islam dan undang-undang Syariah terpakai di peringkat negeri dalam beberapa urusan memberikan wajaran kepada amalan semasa di Malaysia dalam pentadbiran isu-isu berkaitan agama Islam. Islam mendapat tempat yang istimewa dalam Perlembagaan (Aziz, 2009).

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<sup>3</sup> Pandangan Malaysia Negara hibrid dipersetujui oleh Shad Saleem Faruqi dan Hakim Mahkamah Tinggi dalam kes Lina Joy Iwn. Majlis Agama Islam Wilayah Persekutuan & Anor [2004] 6 CLJ 242.

## **KAITAN SIFAT NEGARA DENGAN PENTADBIRAN ISU-ISU KEAGAMAAN**

Sifat negara menentukan cara bagaimana sesuatu isu keagamaan ditangani dan ia akan memberikan wajaran terhadap sesuatu keputusan yang dibuat. Islam sebagai agama rasmi dan mendapat tempat yang istimewa dalam negara (Meor Atiqulrahman bin Ishak & Ors v Fatimah bte Sih & Ors, 2000) dapat dilihat dari peruntukan undang-undang juga amalan Malaysia dalam menangani pelbagai isu keagamaan. Beberapa contoh dapat dilihat dari segi pentadbiran isu-isu keagamaan dan kaitannya dengan sifat negara.

Perkara 3 Perlembagaan memperuntukkan ketua bagi agama Islam di setiap negeri dan kuasa untuk menubuhkan institusi bagi tujuan mentadbir agama Islam memperlihatkan kepentingan agama Islam dalam negara. Perkara 12 Perlembagaan Persekutuan memberarkan pihak kerajaan Pusat dan Negeri untuk membantu dalam penubuhan dan kewangan institusi agama Islam di Malaysia. Jika dilihat kewujudan Enakmen Pentadbiran Agama Islam di peringkat negeri dan Akta bagi Wilayah-Wilayah Persekutuan menunjukkan bahawa agama Islam sememangnya mendapat keutamaan di Malaysia. Di samping itu, penubuhan Mahkamah Syariah bagi membicarakan sebarang pertikaian berkaitan isu-isu yang jatuh di bawah Senarai 2 Jadual Kesembilan Perlembagaan melibatkan pihak beragama Islam merupakan pengiktirafan yang diberikan dalam memartabatkan undang-undang Syariah di Malaysia. Perkara 121(1A) meletakkan asas kukuh terhadap bidang kuasa Mahkamah Syariah di Malaysia yang tidak boleh dicampuri oleh Mahkamah Sivil walaupun ramai pihak yang terkeliru tentang perkara ini dan mendapatkan bantuan Mahkamah Sivil bagi menyelesaikan kes mereka (Mohd Ismail bin Abdul Ghani (Saravanan a/l Balakrishnan) v Ketua Pengarah Pendaftaran Negara, 2012).

Berkaitan isu kebebasan beragama, sememangnya pihak Eksekutif mahupun Mahkamah akan cuba untuk menangani permasalahan dengan mengikut peruntukan undang-undang sedia ada serta menegakkan keistimewaan agama Islam sebagai agama rasmi. Perkara 11 Perlembagaan berkaitan hak kebebasan beragama di Malaysia memperuntukkan beberapa unsur penting berkaitan kebebasan beragama. Jika dilihat dalam Fasal (4), Akta di peringkat pusat dan Enakmen negeri boleh membuat undang-undang bagi menghalang penyebaran agama selain Islam kepada orang Islam. Peruntukan ini secara jelas melarang penganut agama lain dari menyebarkan agama mereka kepada orang-orang Islam. Sembilan negeri mempunyai Enakmen bagi melarang pengembangan ajaran agama lain kepada orang Islam (Faruqi, 2008). Ajaran sesat juga merupakan satu kesalahan jenayah di bawah Enakmen Negeri.

Perkara 11(1) memperuntukkan, "Tiap-tiap orang adalah berhak menganuti dan mengamalkan ugamanya dan, tertakluk kepada Fasal (4) mengembangkan ugamanya". Wujud tiga hak perundangan dalam peruntukan ini iaitu hak untuk menganuti agama, hak untuk mengamalkan agama dan juga hak untuk mengembangkan agama. Hak yang diberikan di bawah Perkara 11(1) ini sama juga seperti hak asasi lain di bawah Perkara 5-13 Perlembagaan Persekutuan iaitu merupakan hak yang tidak mutlak dan boleh disebat. Dari segi hak mengamalkan agama, kebanyakan negara di dunia termasuk juga Amerika Syarikat mengawal hak ini agar kesejahteraan dan keharmonian sebahagian masyarakat tidak tergugat. Seseorang tidak boleh menjalankan aktiviti keagamaan sehingga mengganggu ketenteraman orang lain. Ia merupakan satu imbangan di antara hak individu untuk mengamalkan agama dan hak masyarakat untuk menikmati kehidupan yang selesa (Dworkin, 1978). Di Malaysia, setiap aktiviti keagamaan perlu dijalankan tanpa menganggu

penganut agama yang lain. Hak untuk mengamalkan agama adalah dibenarkan namun perlu diseimbangkan dengan hak masyarakat secara keseluruhan.

Dalam konteks anutan agama, walaupun peruntukan Perkara 11(1) tidak menyebut perkataan ‘memilih’ agama, hak ini tetap dirangkumi oleh tafsiran perkataan ‘menganuti’ (Re Mohd Said Nabi, Decd, 1965). Bagaimanakah isu pemilihan agama atau penukaran agama ditangani dalam konteks Malaysia yang mempunyai Perlembagaan berbentuk hibrid? Fenomena tukar agama bukan sesuatu yang asing bagi masyarakat Malaysia (Abdullah, 2004). Kepesatan perkembangan teknologi dan pengangkutan juga menyumbang kepada fenomena pilih atau tukar agama di Malaysia (Yousif, 1999). Fenomena ini menimbulkan pelbagai isu sampingan yang perlu ditangani termasuklah isu status agama, status perkahwinan, urusan pengkebumian jenazah, pembahagian harta, hak jagaan anak dan bidang kuasa Mahkamah. Oleh kerana sifat negara yang mengiktiraf kewujudan undang-undang Islam, maka masalah hanya timbul bagi kes-kes keluar atau masuk agama Islam. Penukaran agama ke agama lain selain Islam mendapat hak mutlak dan jika ada penentangan ia hanyalah dari kaum keluarga sahaja.

Kes Lina Joy Iwn Majlis Agama Islam Wilayah Persekutuan & Yang Lain [2007] 3 CLJ 557 telah diputuskan sekiranya seseorang Islam ingin menukar agama kepada agama lain dan memadam perkataan ‘Islam’ dari kad pengenalan, maka individu berkenaan perlu mengemukakan bukti perisyiharan status agama dari Mahkamah Syariah terlebih dahulu. Sekiranya tiada bukti perisyiharan status dari Mahkamah Syariah yang mengatakan bahawa individu tersebut bukan lagi seorang Islam, maka pihak Jabatan Pendaftaran Negara tidak dapat memadamkan perkataan ‘Islam’ dari kad pengenalan orang tersebut. Oleh kerana sifat negara Malaysia juga majoriti penduduk adalah Islam, maka Hakim dalam kes ini mengakui bahawa keputusan perlu dibuat secara berhati-hati (Anon, 2006). Keputusan kes Lina Joy telah diterima oleh Mahkamah Rayuan pada 3 September 2014 yang memutuskan bahawa sekiranya seseorang individu ingin memadamkan perkataan ‘Islam’ dari kad pengenalan beliau, maka perisyiharan status dari Mahkamah Syariah perlu dikemukakan ke Jabatan pendaftaran Negara ([web10.bernama.com/bernama/v7/bm/ge/newsgeneral.php?id=1065775](http://web10.bernama.com/bernama/v7/bm/ge/newsgeneral.php?id=1065775), 2014). Menurut Mahkamah Rayuan, keputusan Mahkamah Persekutuan dalam kes Lina Joy mengikat mereka. Dapat dilihat dari kes ini bahawa cara menangani isu tukar agama di Malaysia adalah unik menggambarkan kedudukan Islam dalam negara sebagai agama rasmi juga sifat negara.

Mahkamah Syariah merupakan Mahkamah yang berbidang kuasa mengadili pertelingkahan di kalangan orang Islam bagi isu-isu yang kebanyakannya melibatkan hal-hal peribadi dan kekeluargaan sebagaimana yang disenaraikan di dalam Senarai 2 Jadual Kesembilan. Kedudukan Mahkamah Syariah juga Enakmen Pentadbiran Agama Islam di setiap negeri-negeri di Malaysia adalah penting dalam menunjukkan amalan semasa negara dalam menangani isu-isu berbentuk keagamaan.

#### **ULASAN DAN PANDANGAN**

Hakikat bahawa Malaysia bukan negara sekular dan bukan juga negara Islam perlu difahami oleh semua pihak. Masyarakat Malaysia yang berbilang bangsa perlu menerima hakikat bahawa Malaysia adalah negara yang mempunyai agama rasmi dan oleh itu Islam mendapat tempat yang istimewa dalam pelaksanaan pentadbiran negara terutama di peringkat negeri. Tafsiran ini adalah selaras dengan peruntukan Perlembagaan Persekutuan yang mana Islam dinobatkan sebagai agama rasmi. Islam merupakan unsur

tradisi negara dan salah satu agenda yang terbit dari kontrak sosial dan dikanunkan ke dalam Perlembagaan Persekutuan 1957. Jika sekiranya masyarakat faham kaitan di antara sifat negara dan pentadbiran isu keagamaan melibatkan agama Islam, maka tidak akan timbul pihak yang mempersoalkan kredibiliti keputusan yang dibuat baik keputusan pentadbiran mahupun Mahkamah. Dengan cara ini masyarakat tidak akan mudah terpengaruh dengan hasutan pihak yang tidak bertanggungjawab. Islam adalah istimewa di Malaysia dalam konteks Perlembagaan dan juga amalan undang-undang. Walau bagaimanapun, agama lain juga diiktiraf wujud di bawah Perkara 3(1) dan juga istimewa kepada penganutnya namun dalam konteks Perlembagaan dan sifat negara serta amalan semasa di Malaysia, agama Islam mendapat tempat yang lebih tinggi.

## PENUTUP

Malaysia adalah negara yang menegakkan hak asasi manusia khususnya dalam konteks hak kebebasan beragama, namun hak asasi yang diberikan adalah bersesuaian dengan undang-undang negara yang ditentukan oleh sifat negara Malaysia. Kebebasan beragama dalam konteks hak untuk memilih agama yang mutlak sebagaimana yang wujud dalam instrumen antarabangsa<sup>4</sup> tidak bersesuaian dengan Perlembagaan Persekutuan dan Malaysia tidak menerima pakai standard antarabangsa dalam hal ini. Wujud wajaran terhadap amalan ini dalam konteks peruntukan Perlembagaan Persekutuan.

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<sup>4</sup> Prinsip-prinsip hak asasi manusia yang diluluskan oleh PBB melalui Deklarasi Sejagat Mengenai Hak-Hak Asasi Manusia (UDHR) 1948 Artikel 18 –“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”. Peruntukan ICCPR sedikit berbeza. Artikel 18; “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching”. Teks UDHR dari <http://www.udhr.org/UDHR/default.htm> manakala Teks ICCPR dari <http://www.ohchr.org/english/law/ccpr.htm>. Tarikh akses pada 3 Ogos 2009.

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# STRATEGI PENGELOLAAN BUDIDAYA IKAN KERAPU BERKELANJUTAN DI TELUK SALEH KABUPATEN SUMBAWA

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## ABSTRACT

Mariculture activities have complex problems as they are related to the activities in the mainland. The dynamics and complexities of problems currently confronted are dynamic process, realized as series of possible events expected to happen in the future. However, their occurrence depends on current government policies. To support the implementation of government's policy to make Saleh Bay as a center for developing mariculture, we need multi-dimensional approach. The main objective of this research is to develop a design of sustainable mariculture management at Saleh Bay, district of Sumbawa. The specific objective of the research are: (1) to analyze index and status of sustainability of mariculture management; and (4) to develop strategy for managing mariculture continuously. Some analytical tools used in this research were water suitability analysis, supporting capacity analysis, Multi Dimensional Scaling (MDS) analysis, and quantitative descriptive analysis. Status for sustainability of mariculture management for grouper culture based on KJA system at Saleh Bay, District of Sumbawa currently, according to multidimensional scale, can be categorized as "less sustainable". For the short-term and medium term scenario, its status improves from "less sustainable" to "sufficiently sustainable" and in the long-run scenario, it will increase to "very sustainable".

**Keywords:** management, grouper culture, sustainability, Saleh Bay

## PENDAHULUAN

Kabupaten Sumbawa memiliki potensi perairan budidaya laut sekitar 69% dari luasan potensi lahan budidaya laut di Nusa Tenggara Barat (Zamroni *et al.*, 2007). Teluk Saleh merupakan perairan yang menjadi prioritas pengembangan budidaya laut. Potensi perairan Teluk Saleh menyumbangkan lebih dari 70 % potensi perairan budidaya laut Kabupaten Sumbawa. Dalam 5 tahun terakhir wilayah perairan ini menyumbangkan lebih dari 45 % produksi budidaya laut Kabupaten Sumbawa (Marzukiet *al*, 2013).

Budidaya laut merupakan kegiatan pemanfaatan sumberdaya perikanan yang mampu memberikan kontribusi cukup besar terhadap pendapatan daerah, peningkatan kesejahteraan masyarakat melalui penyediaan lapangan kerja baru dan perolehan devisa negara (Mansyur *et al*, 2005). Kondisi eksisting pengelolaan budidaya KJA di Teluk Saleh menunjukkan status kurang berkelanjutan dengan nilai indeks sebesar 31,44 (Marzukiet *al*, 2014). Implementasi kebijakan pemerintah menjadikan Teluk Saleh sebagai sentra produksi pengembangan budidaya ikan kerapu di Keramba Jaring Apung (KJA), maka diperlukan strategi pengelolaan terencana agar budidaya ikan kerapu di KJA dapat berkelanjutan. Oleh karena itu penelitian ini dilakukan mengingat status keberlanjutan pengelolaan budidaya laut

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ikan kerapu di KJA saat ini dijadikan sebagai dasar dalam merumuskan strategi kebijakan pengelolaan budidaya ikan kerapu di KJA secara berkelanjutan.

## METODOLOGI

### Lokasi Penelitian

Penelitian ini dilaksanakan di wilayah pesisir dan laut Kawasan Teluk Saleh Kabupaten Sumbawa. Penetuan lokasi penelitian dilakukan secara *purposive sampling* berdasarkan pertimbangan saat ini terdapat kegiatan budidaya ikan kerapu dengan KJA.

### Jenis, Sumber dan Cara Pengumpulan Data

Data yang dibutuhkan dalam penelitian ini berupa data sekunder dan data primer. Penentuan responden dari dilakukan secara *purposive random sampling* (Walpole, 1995). Responden yang dipilih adalah pengusaha budidaya ikan kerapu sistem KJA sebanyak 4 perusahaan. Disamping itu, juga dilakukan wawancara mendalam dengan tokoh-tokoh informal maupun formal sebagai responden kunci.

## METODE ANALISIS DATA

### Analisis Keberlanjutan

Analisis keberlanjutan budidaya ikan kerapu sistem KJA dilakukan dengan metode *Rap-Insus-Grouper* (*Rapid Appraisal –Indeks Sustainability for Grouper*) telah dimodifikasi dari program RAPFISH (*Rapid Assessment Technique for Fisheriesd*) (Kavanagh, 2001; Pitcher and Preikshot, 2001; Fauzi dan Anna, 2002). Pembuatan skala indeks keberlanjutan pengelolaan budidaya laut untuk komoditi rumput laut dan ikan kerapu sistem KJA yang mempunyai selang 0 – 100 (Sosilo, 2003).

### Analisis Sensitivitas

Analisis sensitivitas dilakukan untuk melihat atribut mana yang paling sensitif memberikan kontribusi terhadap Insus-Grouper. Peran masing-masing atribut terhadap nilai indeks keberlanjutan dianalisis dengan “*attribute leveraging*”. Pengaruh setiap atribut dilihat dalam bentuk perubahan *Root Mean Square* (RMS) ordinasi khususnya pada sumbu x atau pada skala *accountability*.

### Analisis Monte Carlo

Untuk mengevaluasi pengaruh galat (*error*) acak pada proses untuk menduga nilai ordinasi digunakan analisis Monte Carlo. Menurut Kavanagh (2001), analisis “*Monte Carlo*” juga berguna untuk mempelajari pengaruh kesalahan pembuatan skor atribut, pengaruh variasi pemberian skor akibat perbedaan opini atau penilaian oleh peneliti yang berbeda, stabilitas iterasi, kesalahan pemasukan data atau adanya data yang hilang (*missing data*), tingginya nilai “*stress*” (nilai stress dapat diterima jika < 25%).

### Analisis Formulasi Strategi Kebijakan

Prioritas urutan di mulai dari atribut yang memiliki nilai RMS yang paling besar. Selanjutnya strategi yang dilakukan adalah interfensi terhadap masing-masing atribut yang disusun dalam tindakan berdasarkan prioritas jangka waktu, yaitu jangka pendek-menengah dan jangka panjang. Penentuan rentang waktu tersebut, untuk jangka pendek dan menengah adalah 1-5 tahun dan 6-10 tahun. Pertimbangan tersebut didasarkan kepada lamanya kepemimpinan dari kepala pemerintah daerah (Marzuki *et al*, 2014). Ketentuan perubahan atribut adalah untuk atribut yang diinterfensi sebagai prioritas jangka pendek-menengah,

skor dari atribut yang diinterfensi meningkat satu skala dan 2 skala atau maksimal untuk prioritas jangka menengah. Pada skenario jangka menengah, strategi yang dilakukan adalah menyusun kebijakan yang dapat dioperasionalkan dalam jangka menengah, yaitu dengan melakukan interfensi dan perbaikan dalam upaya meningkatkan nilai skala pada atribut-atribut yang memiliki nilai sensitifitas tinggi. Kebijakan operasional jangka menengah ini disusun atas dasar pertimbangan: 1) tingkat kesulitan, 2) besaran anggaran dan 3) pembangunan dan proses membutuhkan waktu dan ruang.

## HASIL DAN PEMBAHASAN

Hasil analisis *Rap-Insus grouper* terhadap atribut kunci yang telah dilakukan penambahan skor untuk melihat seberapa besar peningkatan nilai indeks dan status keberlanjutan pengelolaan budidaya ikan kerapu sistem KJA pada skenario jangka pendek, menengah dan pada skenario jangka panjang dari kondisi saat ini. Nilai indeks keberlanjutan pengelolaan budidaya ikan kerapu sistem KJA pada skenario jangka pendek dan menengah meningkat dari 39,47 menjadi 48,10 dan nilai indeks keberlanjutan pada skenario jangka panjang meningkat menjadi 70,97, sehingga status keberlanjutan pengelolaan budidaya ikan kerapu sistem KJA pada skenario jangka pendek dan menengah tetap **“Kurang Berkelanjutan”**, sedangkan pada skenario jangka panjang status keberlanjutan meningkat dari **“Kurang Berkelanjutan”** menjadi **“Cukup Berkelanjutan”**. Secara rinci nilai indeks keberlanjutan kelima dimensi pengelolaan budidaya ikan kerapu sistem KJA pada kondisi eksisting, skenario jangka pendek, menengah dan skenario jangka panjang disajikan pada pada Tabel 1.

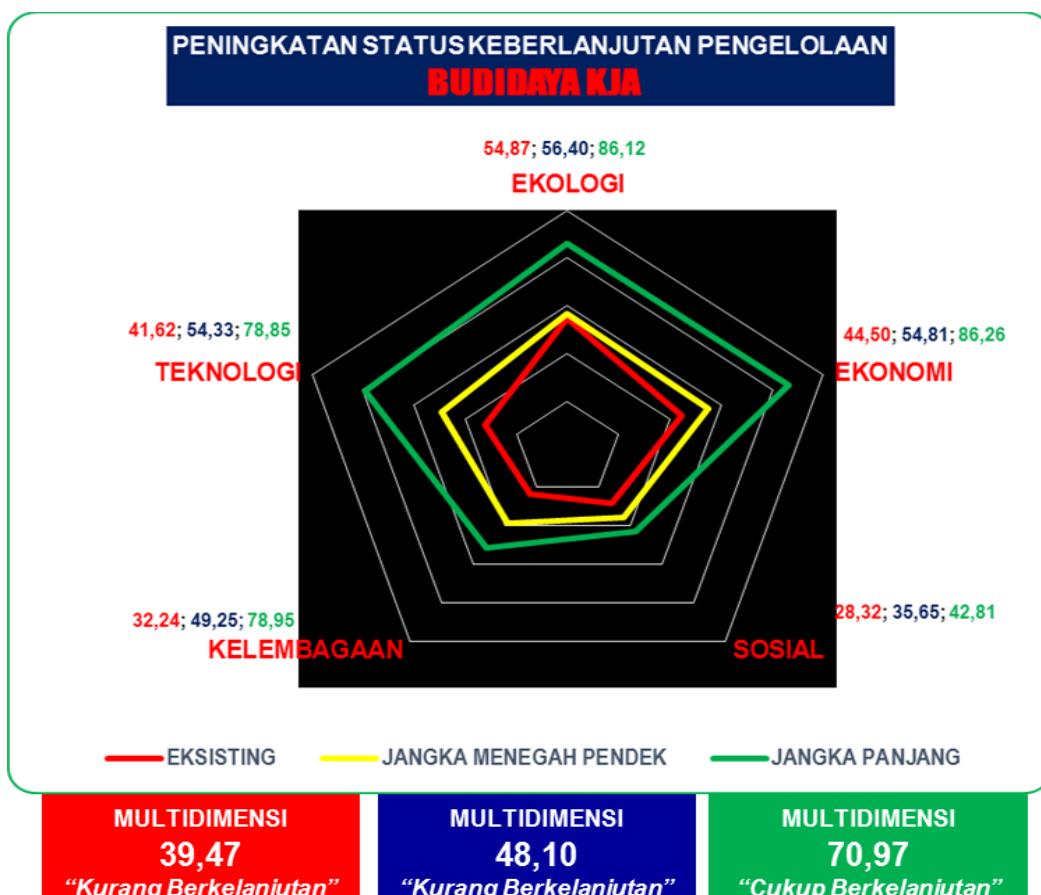
Tabel 1. Nilai indeks keberlanjutan kondisi eksisting, skenario 1, dan skenario 2 pengelolaan budidaya ikan kerapu sistemKJA di Teluk Saleh Kabupaten Sumbawa

Dimensi	Nilai Bobot Tertimbang (%)	Nilai Indeks Keberlanjutan					
		Eksisting		Skenario 1		Skenario 2	
		MDS	Bobot	MDS	Bobot	MDS	Bobot
Ekologi	23,34	54,87	15,91	52,66	16,36	60,41	24,97
Ekonomi	29,24	44,50	10,24	47,57	12,61	52,73	19,84
Sosial	15,14	28,32	5,95	35,65	7,49	42,81	8,99
Kelembagaan	10,82	23,41	3,51	38,27	5,74	52,25	7,69
Teknologi	21,46	32,24	3,87	36,44	5,91	52,77	9,47
Multidimensi		39,47		48,10		70,97	

Sumber: (Hasil Analisis, 2013)

Keberhasilan peningkatan nilai indeks keberlanjutan pengelolaan budidaya ikan kerapu sistem KJA di Teluk Saleh dari kondisi saat ini untuk jangka pendek-menengah dan jangka panjang akan sangat bergantung dar komitmen yang kuat dari stakeholder terutama pemerintah sebagai fasilitator dan regulator dalam pengelolaan budidaya ikan kerapu sistem KJA di Teluk Saleh. Namun demikian, diharapkan dengan tertanganinya atribut kunci ini akan mendorong terjadinya perbaikan atribut lain, sehingga indeks dan status keberlanjutan pengelolaan budidaya ikan kerapu sistemKJA secara keseluruhan dapat meningkat. Secara detail posisi nilai indeks keberlanjutan kelima dimensi pengelolaan

budidaya ikan kerapu sistem KJA pada kondisi eksisting, skenario jangka pendek, menengah dan skenario jangka panjang disajikan pada Gambar 1.



Gambar 1.

Diagram layang-layang (*kite diagram*) multidimensi pada kondisi eksisting, skenario 1 dan skenario 2 keberlanjutan pengelolaan budidaya kerapu sistem KJA di Teluk Saleh Kabupaten Sumbawa

#### **Strategi Pengelolaan Budidaya Laut Berkelanjutan**

Untuk memudahkan pembuatan kebijakan yang dapat mendorong tercapainya perbaikan kinerja pengelolaan budidaya ikan kerapu sistem KJA berkelanjutan, maka diperlukan indikator keberhasilan perbaikan kinerja melalui peningkatan nilai skor atribut sensitif masing-masing dimensi keberlanjutan pengelolaan budidaya ikan kerapu sistem KJA di Teluk Saleh Kabupaten Sumbawa.

Berdasarkan atribut atau faktor kunci dan indikator keberhasilan di atas, maka disusun strategi dan program implementasi pengelolaan budidaya ikan kerapu sistem KJA berkelanjutan di Teluk Saleh Kabupaten Sumbawa. Urutan prioritas strategi pengelolaan diformulasikan berdasarkan urutan dimensi yang memiliki nilai indeks terendah hingga dimensi yang memiliki nilai tertinggi. Adapun urutan prioritas dan strategi pengelolalaan

budidaya ikan kerapu sistem KJA di Teluk Saleh Kabupaten Sumbawa adalah sebagai berikut:

#### **Strategi-1.Peningkatan Kapasitas Kelembagaan**

Keberlanjutan pengelolaan budidaya laut sangat ditentukan oleh kapasitas kelembagaan pengelolaan budidaya laut, meliputi: kelembagaan pemberian, kelembagaan pembudidaya dan kelembagaan pasar. Rendahnya kapasitas kelembagaan menyebabkan perkembangan budidaya ikan kerapu sistem KJA sulit berkembang, karena tidak adanya kelembagaan yang dapat menjamin pemenuhan kebutuhan pengelolaan budidaya.

#### **Strategi-2.Peningkatan Penerapan Teknologi dan Inovasi**

Keberlanjutan pengelolaan budidaya laut sangat ditentukan oleh penerapan teknologi dan inovasi. Kondisi eksisting pengelolaan budidaya laut di Teluk Saleh Kabupaten Sumbawa secara umum dihadapkan pada permasalahan rendahnya penerapan teknologi dan inovasi dalam pengelolaan budidaya laut. Oleh karena itu, untuk meningkatkan penerapan teknologi dan inovasi, maka perlu adanya kebijakan untuk meningkatkan ketersediaan benih, penguasaan dan percepatan proses alih teknologi.

#### **Strategi-3.Peningkatan Kualitas Sumberdaya Manusia**

Keberlanjutan pengelolaan budidaya laut sangat ditentukan oleh kualitas sumberdaya manusia (SDM) sebagai pelaku pengelolaan, meliputi: pelaku usaha budidaya, pelaku usaha pemasaran dan SDM penyuluh perikanan. SDM yang terlibat dalam usaha budidaya, terdiri atas pengusaha budidaya, teknisi budidaya dan buruh budidaya. Pelaku usaha pemasaran terdiri atas pedagang pengumpul, pedagang perantara dan eksportir. Disamping itu pengelolaan budidaya laut juga melibatkan penyuluh perikanan sebagai mitra bagi pelaku usaha budidaya. Kondisi eksisting pengelolaan budidaya KJA di Teluk Saleh secara umum dihadapkan pada permasalahan rendahnya kuantitas dan kualitas SDM pelaku pengelolaan budidaya laut dan SDM penyuluh perikanan. Oleh karena itu, untuk meningkatkan kualitas dan kompetensi SDM pelaku pengelolaan dan SDM penyuluh perikanan, maka perlu adanya program-program yang mampu mengembangkan kapasitas, dan meningkatkan keterampilan, SDM pelaku pengelolaan dan meningkatkan keahlian serta kompetensi SDM penyuluh perikanan.

#### **Strategi-4.Pencegahan PenurunanKualitas Perairan**

Keberlanjutan pengelolaan budidaya laut sangat ditentukan oleh kualitas perairan untuk mendukung pertumbuhan komoditi yang dibudidayakan. Kondisi eksisting pengelolaan budidaya ikan kerapu sistem KJA di Teluk Saleh Kabupaten Sumbawa berpotensi mendapat ancaman terhadap penurunan kualitas perairan, baik yang bersumber dari pencemaran up-land dan ancaman yang bersumber dari dalam perairan. Tingginya ancaman terhadap kualitas perairan akan menyebabkan terganggunya ekosistem perairan akibat dari pencemaran dan penangkapan ikan secara destruktif, sehingga pada gilirannya akan menyebabkan kurang atau tidak berkelanjutan pengelolaan budidaya laut di Teluk Saleh

### **KESIMPULAN**

Status keberlanjutan pengelolaan budidaya ikan kerapu sistem KJA pada skenario jangka pendek dan menengah tetap “**Kurang Berkelanjutan**”, sedangkan pada skenario jangka panjang status keberlanjutan meningkat menjadi“**Cukup Berkelanjutan**”. Strategi

pengelolaan budidaya ikan kerapu sistem KJA ditentukan oleh peran atribut sensitif yang memberikan peningkatan nilai indeks keberlanjutan. Adapun strategi kebijakan pengelolaan yang dapat dilakukan untuk meningkatkan nilai keberlanjutan adalah peningkatan kapasitas kelembagaan pengelolaan budidaya laut, peningkatan penerapan teknologi dan inovasi, peningkatan kualitas dan kompetensi SDM, peningkatan pendapatan dan kesejahteraan pembudidaya; peningkatan kualitas lingkungan dan pengendalian serta penanggulangan pencemaran

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# **STRATEGI JANGKA PENDEK KEBIJAKAN PEMERINTAH KABUPATEN MALANG UNTUK PENGEMBANGAN PERIKANAN TANGKAP TUNA RAKYAT YANG BERKELANJUTAN**

David Hermawan<sup>1</sup>

## **ABSTRACT**

Sendang Biru is one of the coastal area in Malang Regency which have the biggest of tuna production in East Java Indonesia. The fishing tuna were done by artisanal tuna fisheries used small vessel and its fishing ground in fish aggregating devise (FADs) its distribution on equator area 9-12° S and 110-115° East longitude in Indian Ocean of Indonesia Economic Exclusive Zone (IEEZ) which code 71 from Food and Agricultural Organization (FAO, 2007). Productivity of artisanal fisheries is lower than the tuna potential abundance. The yield of tuna production is 1.446 ton, and Rp40.686 Million in value at the year of 2013. Base on analyzed data using RAPFISH (multidimensional scaling/MDS, leverage analysis, monte carlo analysis), and comparison pairwise analysis to asses multidimensional sustainability of yellowfin tuna fisheries showed that Rapfish index for ecological sustainability is 78.78%, whereas economical, technological, respectively social and institutional sustainability were: 72.60%, 72.56%, 39.44% and 39.57%. Multidimensional sustainability status assessment using pairwise comparison analysis showed sustainability index 69.39 %, or fairly sustainable. Based on that result the government of Malang Regency made the strategies and policies in the short time programs for developing and improving the sustainability of yellowfin tuna fisheries in Sendang Biru. The Scenario has been done to establish of social and institution dimensions is attended and improved some attributes of dimention by government of Malang Regency East Java. After improoving of social and institution dimentioan immediately the social and institution dimentioan increase to be 54.56% and 66.72% and its followed by economic and technology dimention respectively 75.64 and 81.41% therefore the yellowfin tuna fisheries of artisanal fisheries at EEZI can take place in sustainable.

**Keywords:** Sendang Biru, Yellowfin tuna, artisal Fisheries, EEZI, Small vessel, FADs.

## **PENDAHULUAN**

Kabupaten Malang merupakan salah satu kabupaten di Provinsi Jawa Timur Indonesia, yang menjadi pusat kegiatan perikanan tangkap ikan tuna, khususnya yellowfin tuna yang dilakukan oleh nelayan kecil terbesar di Provinsi Jawa Timur Indonesia. Pada tahun 2013 jumlah hasil produksi tangkapan ikan tuna tersebut adalah 1.446 ton atau senilai Rp40.686

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Miliar dari hasil armada tangkap 286 unit dengan jumlah nelayan sebanyak 1500 orang (PPI, 2014). *Fishing Ground* dari nelayan tersebut berada di perairan Zona Ekonomi Ekslusif Indonesia (ZEEI) Samudera Hindia dengan kode wilayah 71 (FAO 2007). Kawasan tersebut menjadi sentra produksi ikan tuna, karena tempatnya aman untuk bertambat dan berlabuh kapal perikanan rakyat sebab letaknya terlindungi oleh Pulau Sempu sebagai *barrier*, sehingga aman dari hembusan gelombang sepanjang tahun. Keberadaan pulau Sempu membentuk selat sepanjang 4 km, lebar 600-1500 m dan kedalaman perairan 18-50 m sehingga menjadi tempat yang cukup ideal untuk mendaratkan hasil tangkapan ikan, terutama untuk armada penangkapan nelayan kecil dengan spesifikasi armada kapal terbuat dari kayu dengan rataan ukuran panjang 16 m, lebar 3.3 m, tinggi 1.6 m, dan bobot 10 GT (Hermawan et al., 2003)

Produktivitas dari nelayan tersebut pada kenyataannya masih rendah sehingga keberlanjutannya sangat rentan. Dari hasil analisis Rapfish (Charles, 1984) indeks keberlanjutan kegiatan pemanfaatan sumberdaya ikan tuna di perairan ZEEI selatan Jawa oleh nelayan sekoci dari dimensi ekologi, ekonomi dan teknologi memiliki status cukup berkelanjutan, dengan masing-masing indeks 78.78%, 72.60%, dan 72.56%. Artinya bahwa teknologi yang digunakan untuk mengekstraksi sumberdaya ikan tuna di rumpon, secara umum tidak mengganggu kelimpahan sumberdaya ikan Yellowfin tuna yang ada di perairan ZEEI Samudera Hindia. Namun demikian, tingginya nilai manfaat dari ekstraksi sumberdaya ikan tersebut, berdasarkan dimensi sosial dan kelembagaannya masih kurang berkelanjutan, yaitu 49.44% dan 49.57% (Hermawan, 2012).

Guna mempertahankan keberlanjutan usaha perikanan tangkap yang dilakukan nelayan tersebut, maka pemerintah Kabupaten Malang melakukan strategi penentuan kebijakan untuk meningkatkan atribut yang menjadikan keberlanjutannya rendah. Kebijakan tersebut dibuat sebagai upaya untuk mendorong kegiatan perikanan tangkap dengan memperhatikan aspek-aspek ekologis (lingkungan), bersifat ramah lingkungan (*friendly fishing method*), sebagaimana yang disyaratkan dalam *Code of Conduct for Responsible Fisheries* (CCRF) dalam ketentuan FAO (1999).

## **METODE PEMBUATAN KEBIJAKAN**

Pengambilan kebijakan dan pembuatan strategi pengembangan perikanan tuna rakyat di Sendang Biru Kabupaten Malang dilakukan secara partisipasi antara nelayan sebagai pelaku sejumlah 4 orang, disamping *stakeholders* lainnya.

Penyusunan strategi tersebut dimulai dengan mengurut prioritas dalam setiap dimensi yang perlu diungkit atau diperbaiki, yaitu dengan melakukan pengurutan nilai dari indeks keberlanjutan dari masing-masing dimensi ekologi, ekonomi, sosial, kelembagaan dan teknologi yang dilakukan dengan pendekatan *Multidimensional Scaling* (MDS) dengan teknik ordinasi yang dimodifikasi dari program *Rapfish*, dikembangkan oleh Fisheries Center, University of British Columbia (Fauzi dan Anna 2002).

## **HASIL DAN PEMBAHASAN**

### **Skenario dan Strategi Kebijakan Operasional Pengembangan Perikanan Yellowfin Tuna di Sendang Biru**

Strategi yang dilakukan adalah membuat skenario dalam bentuk kebijakan operasional yang dapat dilakukan pada jangka pendek. Adapun strategi yang dilakukan adalah interfensi dan perbaikan dalam upaya meningkatkan nilai skala pada atribut-atribut yang memiliki nilai

sensitifitas tinggi dari masing-masing dimensi. Kebijakan operasional yang dilakukan pada dimensi sosial, adalah program yang berkaitan dengan peningkatan pengetahuan dan ketrampilan (*soft skill*) dari nelayan dan nahkoda kapal yang memiliki tingkat pendidikan formal rendah dan pengalaman rendah. Program yang diusulkan dalam skenario tersebut adalah pelatihan tentang penangkapan dan keselamatan melaut. Hal ini penting untuk dilakukan mengingat kapal yang digunakan adalah kapal berukuran kecil (panjang 16 m, lebar 3.5 m dan tinggi 1.2) dengan bobot 10 GT. Kapal tersebut, sangat rentan terhadap perubahan cuaca oseanografi di perairan Samudera Hindia yang sangat dipengaruhi oleh angin muson. Sedangkan pelatihan tentang penangkapan dilakukan untuk memberikan landasan mengenai perilaku tuna yang berada di rumpon dan penyampaian informasi tentang pengaruh hidro-oseanografi terhadap keberadaan ikan. Sehingga diketahui metode yang tepat, dan alat tangkap yang pas untuk menangkap ikan tuna yang berukuran sesuai dengan kriteria pasar. Pemecahan masalah adanya konflik sudah dilakukan nelayan Pekalongan dan nelayan Sendang Biru yang dimediasi oleh Dinas Perikanan dan Kelautan Pemprov Jatim dan Jateng, bahkan sudah dituangkan dalam nota kesepahaman bersama. Agar nota kesepahaman tersebut dapat berjalan dengan efektif, maka diperlukan resolusi ditingkat yang lebih tinggi, yaitu di tingkat nasional. Keterlibatan nelayan dalam pembuatan aturan atau kebijakan mengenai kegiatan tangkap sampai saat ini belum dilibatkan secara maksimal, padahal sebagai pelaku utama seharusnya terlibat langsung. Peningkatan keterlibatan nelayan, akan memberikan dampak terhadap keberhasilan penyelesaian masalah yang terjadi di area tangkap maupun di daratan, baik permasalahan yang menyangkut konflik sosial, kelembagaan, dan lingkungan akan mudah di pecahkan apabila para pelaku memahami ketentuan atau aturan yang telah disepakati bersama.

Kebijakan operasional yang dilakukan terhadap dimensi kelembagaan dilakukan kepada atribut yang memiliki sensitifitas tinggi terhadap status keberlanjutan, yaitu atribut PPP Pondokdadap dan KUD Mina dan LEPPM3 serta atribut Keberadaan PPP Pondokdadap sangat menentukan tingkat keberhasilan kegiatan perikanan tuna, karena memiliki fungsi utama dalam hal pendaratan dan pemasaran ikan. Oleh karena ikan merupakan bahan pangan yang mudah rusak, maka memerlukan penanganan cepat, higienis, aman dari benturan, terhindar dari sengatan sinar matahari dan terhindar dari organisme yang bersifat *pathogen*, seperti bakteri *salmonella* dan *e colli*. Interfensi yang dilakukan terhadap atribut PPP Pondokdadap, dilakukan dalam upaya mengefektifkan fungsi operasional dari pelabuhan perikanan pantai, seperti tertuang dalam pasal 22 Peraturan Menteri Kelautan dan Perikanan No 16/Men/2006. Dalam pasal 22 tertuang tentang prasyarat dari pelabuhan dengan kualifikasi pelabuhan perikanan pantai, yang meliputi fasilitas pokok, fungsional dan penunjang. Pada saat ini PPP Pondokdadap sedang dikembangkan, sehingga usulan pada skenario jangka pendek tersebut sangat mungkin untuk dilakukan. Sedangkan untuk kebijakan operasional yang dilakukan terhadap KUD Mina Jaya, adalah yang berkaitan perbaikan administrasi dan manajemen keuangan, dan logistik/perbekalan. Hal ini penting untuk dilakukan mengingat KUD Mina Jaya memiliki peranan yang sangat strategis, selain penyedia BBM solar, es dan bahan sembako kebutuhan melaut, peran penting lain dari KUD Mina Jaya adalah bertindak sebagai pelaksana pelelangan ikan di TPI dan pemungut uang restribusi. Pengetahuan tentang administrasi dan keuangan, logistik dan sistem pelelangan mutlak harus dilakukan, mengingat hampir semua SDM yang ada di KUD Mina Jaya masih berpendidikan rendah. Fungsi utama dari koperasi sering kali tidak berjalan, sehingga diperlukan pengetahuan tentang perkoperasian. Kebijakan operasional dari masing-masing atribut yang harus diperbaiki tersaji dalam Tabel `1

Adanya interfensi atau tindakan perbaikan pada dimensi sosial dan kelembagaan, pada skenario ke-1, mengakibatkan dampak positif terhadap atribut pada dimensi ekologi, yaitu atribut pemahaman nelayan terhadap lingkungan. Hal ini terjadi sebagai akibat peningkatan pemahaman dari nelayan terhadap sumberdaya dan lingkungan setelah adanya pelatihan dalam interfensi atribut dimensi sosial. Sedangkan perubahan pada atribut Kondisi dan kapasitas PPP Pondokdadap memiliki keterkaitan dengan atribut-atribut pada dimensi teknologi dan perubahan harga ikan pada dimensi ekonomi.

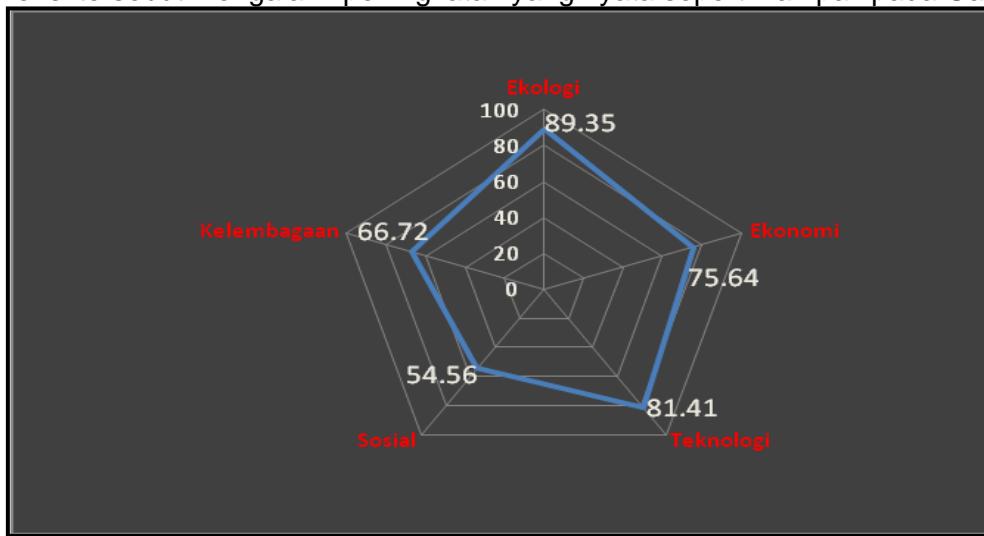
Perubahan yang terjadi pada atribut proses pengawetan dan penanganan pasca tangkap. Hal ini terjadi atas sikap nelayan, yang menginginkan adanya perubahan sistem pelelangan dan penambahan fasilitas bertambat, berlabuh, TPI, ketersediaan air, es dan care master untuk menentukan kualitas ikan hasil tangkapannya. Apabila terjadi perbaikan dalam sistem pelelangan dengan penentuan harga pokok lelang atas dasar kualitas ikan, maka nelayan akan melakukan penanganan dan pengawetan yang baik di atas kapal. Dengan dilakukannya penanganan di atas kapal, maka akan terjadi perubahan pada atribut harga dan terjadi peningkatan pendapatan pada dimensi ekonomi (Tabel 1).

Tabel 1 Perubahan kenaikan atribut dan indikator kebijakan operasioanal pada skenario jangka pendek

No	Dimensi	Atribut	Perubahan skor		Indikator Keberhasilan
			Awal	Akhir	
1	Ekologi	Pemahaman thd Lingkungan	0	1	Mengerti akan lingkungan, tidak merubah alat tangkap dari <i>hand line ke purse seine</i>
2	Ekonomi	1. Harga ikan	3	4	Harga jual ikan naik >USD \$3000 Kg.
		2. PDRB	0	2	Pendapatan dari Restribusi naik (PAD Besar)
3	Teknologi	1. Penanganan pasca tangkap	1	2	Melakukan <i>Gutting, visceral</i>
		2. Pengawetan	1	2	Adanya palka es curah ( <i>dry es</i> ) mutu ikan baik (segar, kenyal, insang dan mata merah, bau amis., mengkilat >70% untuk <i>loin</i> dan <i>steak</i> )
4	Sosial	1. Pendidikan formal Nelayan	0	1	Ketrampilan menangkap ikan meningkat hasil tangkapan baik kualitas dan kuantitasnya meningkat
		3. Keterlibatan Nelayan dlm membuat kebijakan	1	2	Mengerti dan melaksanakan peraturan
		4. Status konflik	0	1	Tingkat atau kejadian konflik rendah
		5. Pengalaman nelayan	1	2	<i>Skill</i> meningkat (tidak kecelakaan menurun)

5	Kelembagaan	Kondisi Pondokdadap	PPP	0	2	Fasilitas TPI bersih, hygienis, tingkat pencemaran rendah, tersedia air, es dan sistem pelelangan fair, ada care master, ikan tuna di grade berdasarkan standar mutu
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Penerapan kebijakan operasional jangka pendek pada dimensi-dimensi yang memiliki atribut dengan nilai sensitifitas tinggi, apabila kebijakan operasional bisa berjalan sesuai dengan skenario jangka pendek, maka tingkat status keberlanjutan dari masing-masing dimensi tersebut mengalami peningkatan yang nyata seperti nampak pada Gambar 1.



Gambar 1 Diagram layang-layang nilai keberlanjutan setiap dimensi pada penerapan kebijakan operasional jangka pendek.

Pada Gambar 1 menunjukan bahwa indeks status keberlanjutan dimensi yang memiliki indeks status dalam kategori kurang berkelanjutan meningkat menjadi cukup keberlanjutan. Perubahan yang terjadi pada peningkatan indek keberlanjutan pada dimensi sosial dan kelembagaan, berdampak positip terhadap perubahan nilai indeks status pada dimensi ekologi, ekonomi dan teknologi, yaitu yang semula memiliki kategori status cukup berkelanjutan, berubah menjadi sangat berkelanjutan

Dengan demikian, terjadinya peningkatan kategori status pada masing-masing dimensi tersebut, diikuti peningkatan status keberlanjutan secara multidimensi. Nilai indeks keberlanjutan dari multidimensi, setelah diperoleh nilai indeks sebesar 69.39% dengan kategori cukup berkelanjutan. Namun demikian, setelah dilakukan perbaikan-perbaikan pada atribut-atribut yang memiliki nilai sensitifitas tinggi dan berpengaruh secara negatif terhadap nilai indeks keberlanjutan pada skenerio ke-1, maka nilai indeks stastusnya menjadi 78.75% dengan kategori sangat berkelanjutan (Tabel2 ). Hal ini berarti, apabila dilakukan perbaikan sesuai dengan arahan kebijakan operasional tersebut, kegiatan perikanan Yellowfin tuna yang dilakukan oleh nelayan sekoci dapat diunggulkan sebagai kegiatan perikanan tuna tradisional (*artisanal*) yang berkelanjutan.

Tabel 2 Nilai indeks keberlanjutan pada skenario 1

No.	Aspek Keberlanjutan	Bobot Gabungan Penilaian Pakar (n=3)	Bobot Tertimbang	Nilai Aspek Keberlanjutan		Jumlah Nilai	
				Skenario 1	Monte Carlo	Tanpa skenerio	Skenerio 1
1	Ekologi	0.3484	0.3762	89.35	76.02	29.63	33.61
2	Ekonomi	0.2995	0.3234	75.64	73.56	23.48	24.46
3	Teknologi	0.1238	0.1337	81.41	76.7	9.70	10.88
4	Sosial	0.1016	0.1097	54.56	53.83	4.32	5.98
5	Kelembagaan	0.0529	0.0572	66.72	65.05	2.26	3.81
	Jumlah	0.9262	1.0000	367.67		69.39	78.75

Berdasarkan permasalahan tersebut, maka kebijakan yang dirumuskan pada program operasional jangka pendek dikelompokkan dan diprioritaskan sebagai berikut:

- (1) Peningkatan kualitas dan kapasitas kelembagaan pada kegiatan perikanan Yellowfin tuna di perairan ZEEI oleh nelayan sekoci PPP Pondokdadap Sendang Biru (dimensi kelembagaan).
- (2) Peningkatan kapasitas nelayan dan penyelesaian konflik (dimensi sosial).
- (3) Peningkatan kualitas ikan hasil tangkapan (dimensi teknologi).

Kebijakan peningkatan kapasitas diarahkan kepada perbaikan kualitas fasilitas tempat pelelangan ikan, penyediaan air, es dan pengawas mutu (*care master*) dan sistem pelelangan serta perbaikan manajemen KUD Mina Jaya sebagai penyelenggara lelang dan penyedia kebutuhan melaut serta penyedia modal bagi nelayan. Kebijakan tersebut mempunyai tujuan untuk memperbaiki kualitas ikan yang dipasarkan, sistem lelang yang *fair* sehingga diperoleh harga yang wajar dan terciptanya pendapatan hasil penjualan yang tinggi, sehingga sehingga pendapatan nelayan meningkat.

Kebijakan peningkatan kapasitas nelayan dan penyelesaian konflik mempunyai tujuan yaitu meningkatkan kualitas SDM nelayan sehingga memperkuat sektor penangkapan sebagaimana tersaji pada Tabel 3.

Tabel 3 Strategi dan program implementasi kebijakan pengembangan kapasitas kelembagaan, sosial dan teknologi pada kegiatan perikanan Yellowfin tuna di PPP Pondokdadap pada program jangka pendek

No	Strategi	Program	Pelaksana
1	Peningkatan kapasitas dan kualitas PPP Pondokdadap	1. Perbaikan lantai TPI dengan pemberian alas dari kayu 2. Pengadaan air bersih dan es	DPK Pemprov Jatim
2	Peningkatan kualitas SDM Pengelola PPP Pondokdadap (Petugas PPI)	3. Pelatihan manajemen pelabuhan perikanan 4. Pelatihan sistem pelelangan 5. Penyusunan pedoman dan aturan sistem pelelangan	DKP Kab. Malang, DPK Pemprov Jatim, Dinas Koperasi Kabupaten

	dan KUD Mina Jaya)	6. Efektivitas monev di PPP 7. Perbaikan catatan data hasil dan harga ikan di PPP Pondokdadap 8. Penyediaan informasi harga ikan dipasar	Malang
3	Standarisasi ikan berdasarkan kualitas	9. Penempatan care master 10. Pembuatan Perda tentang sistem dan pelaksanaan lelang 11. Pelaksanaan lelang terbuka 12. Penegakan aturan sistem pelelangan	DPK Kab Malang dan KUD Mina Jaya dan Kelompok Nelayan
4	Peningkatan Kapasitas dan kualitas SDM KUD Mina Jaya dan LEPM3	13. Peningkatan kualitas SDM melalui 14. Pelatihan tentang adminitrasi dan keuangan, logistik, koperasi dan sistem lelang 15. Pengembangan dan penguatan Modal pada KUD Mina Jaya dan LEPM3 16. Peningkatan dan pengalihan penggunaan Modal di LEPM3 kepada KUB Nelayan	Dinas Koperasi dan DKP Kabupaten Malang
5	Peningkatan kapasitas dan kualitas SDM nelayan sekoci	17. Peningkatan kualitas SDM melalui pelatihan tentang penangkapan ikan, keselamatan laut 18. Pelibatan nelayan dalam pembuatan Kebijakan	DKP Kabupaten Malang
6	Penyelesaian konflik ( <i>illegal fishing</i> ) di rumpon nelayan sekoci	19. Resolusi konflik antara nelayan sekoci dengan nelayan <i>purse seine</i> dari Pekalongan dan Muara Angke serta nelayan <i>long line</i> Benoa. 20. Pembentukan Pokwasmas bersama 21. Perlindungan dan pengaturan rumpon nelayan sekoci	KKP, DPK Pemprov Jatim, DKP Kab. Malang, Kelompok Nelayan, TNI AL, POLAIRUD
7	Peningkatan Mutu Hasil pasca tangkap	22. Pelatihan penanganan pasca tangkap di kapal 23. Pelatihan proses pengawetan ikan 24. Pelatihan dan penguatan pemasaran	DPK Pemprov Jatim, DKP Kab Malang dan Kel. Nelayan Rukun Jaya

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Meningkatnya keterlibatan nelayan dalam pertemuan formal dan penyusunan pembuatan kebijakan dapat menurunkan frekuensi konflik nelayan dan pemahaman yang tinggi dari nelayan terhadap kelestarian sumberdaya Yellowfin tuna. Sedangkan kebijakan

pengembangan teknologi penangkapan diarahkan kepada proses penanganan dan pengawetan ikan hasil tangkapan di atas kapal, sehingga diperoleh ikan yang bermutu tinggi dan memiliki nilai jual tinggi. Diharapkan dengan diperolehnya nilai jual ikan yang tinggi, akan berdampak terhadap selektivitas alat tangkap, terkontrolnya penggunaan rumpon, sehingga penerapan teknologi penangkapan yang dilakukan dapat menjaga kelestarian sumberdaya Yellowfin tuna yang berkelanjutan

Untuk mencapai sasaran sesuai dengan strategi dan kebijakan yang telah ditetapkan, maka dirumuskan program-program jangka pendek dalam pengembangan perikanan Yellowfin tuna di PPP Pondokdadap Sendang Biru. Program-program ini dibuat berdasarkan atribut-atribut sensitif yang telah diuraikan dalam analisis Rapfish dan dirasakan sangat diperlukan untuk segera dilaksanakan dalam rangka memperbaiki pengelolaan sumberdaya perikanan Yellowfin tuna di perairan ZEEI Samudera Hindia Selatan Jawa Timur. Program pengembangan perikanan Yellowfin tuna pada jangka pendeknya seperti tersaji pada Tabel 3 di atas apabila dapat dilaksanakan dengan baik, niscaya kegiatan perikanan tangkap yang dilakukan nelayan sekoci nelayan PPP Pondokdadap Sendang Biru Kabupaten Malang akan berkelanjutan.

## KESIMPULAN

Kebijakan jangka pendek pemerintah Kabupaten Malang untuk menginterfensi atribut-atribut sensitif dan menjadi kendala dalam keberlanjutan dimensi sosial dan kelembagaan, ternyata diikuti juga dengan peningkatan keberlanjutan pada dimensi ekologi, ekonomi dan teknologi. Artinya apabila pemerintah Kabupaten Malang memberikan perhatian yang serius terhadap pembangunan perikanan tuna rakyat Sendang Biru, maka ekstrasi sumberdaya ikan tuna di perairan ZEEI Samudera Hindia, selain dapat terjaga kelestarian sumberdaya ikannya juga dapat mensejahterakan nelayan.

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# **COMMUNITY-BASED HEALTH INSURANCE SCHEME AS A WAY FORWARD IN HEALTH FINANCING IN NIGERIAN RURAL AREAS OF SOKOTO STATE**

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## **ABSTRACT**

Health financing in most of Sub Saharan Africa is based on out-of-pocket payment from the rural dwellers. This out-of-pocket payment has caused lot of health problems such as premature deaths, maternal problems, deficiencies in health issues in Sub Sahara countries. This paper examines issues relating to health financing in Nigerian rural areas in order to encourage people in SSA to implement Community-Based Health Insurance Scheme in the rural areas. This is significant because it provides a chance for the people to be out of poverty as a result of high money paid whenever they are assessing health care through out-of-pocket payment at the point of service delivery. This scheme is a new area of health financing in the developing countries supported by the World Health Organization (WHO), World Bank (WB) and International Labor Organization (ILO) among others. Few of the SSA countries like Ghana, Mali and Burkina Faso are doing well using the scheme to finance health care delivery in the rural areas. In Nigeria, this concept of community-based health insurance plan is a new development. So, effort should be made to create awareness about this laudable project. The management of the CBHIS should focus on the rural dwellers on one hand, and government should provide enabling laws on the other.

**Keywords:** Health Financing, Out-of-Pocket, Sokoto, Community-Based Health Insurance

## **INTRODUCTION**

Health insurance is seen as a way of distributing the financial risk associated with the variation of individual's health care expenditures by pooling costs over time through pre-payment and other people with risk pooling (OECD, 2004). The health insurance policy seeks to remove financial barriers to receiving an acceptable level of health care and requires the wealthy to share in the cost of care of the sick; the element of cross-subsidy is essential (Enthoven, 1988). Moreover, 'when a society considers providing for health care by offering health insurance, to some significant degree, at the public's expense, such insurance programs provided through taxes or regulations called social insurance programs' (WHO, 2010; Carrin and James, 2004; Folland et al., 2004). According to Churchill (2006), community based health insurance is a scheme of insurance that protects low-income people against specific perils in swap for regular premium payments balanced to

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the likelihood and cost of the risk concerned. In view of this, there need arises for the government to set in motion policies and practices that will encourage the use of community health insurance scheme. According to Rosenthal (2001), rural dwellers may be less inclined to seek health services owing to the rising costs of medical services, if the integrated health insurance scheme as established by the state.

The need to develop a comprehensive health insurance scheme dated back to the middle ages. The responsibility of providing medical care for the sick and injured was vested in the family, neighbors, church, king (for his people), master (for his servants) and employer (for his employees). The focus is to make medical care available to everybody through the private resources for care, but with national public funding, with a total funding to be determined by national policy.

Social health insurance scheme has been developed for more than a century following its establishment in Germany by Bismarck in 1883 (Saltman and Dubois, 2004). It is on record that twenty-seven (27) nations have recognized the standard of universal coverage by means of Social Health Insurance (Carrin and James, 2005). This process took one hundred and thirty-one (131) years to achieve the social health insurance scheme in Germany, one hundred and eighteen (118) years in Belgium, seventy nine (79) years in Austria, seventy two (72) years in Luxembourg, forty eight (48) years in Japan and twenty six (26) years in the Republic of Korea.

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The social health insurance (SHI) scheme is equally being implemented so many developing countries such as Thailand, Philippines, Kenya, Ghana and lately in Nigeria. These countries have been implementing social health insurance in their different countries and some of these countries were able to achieve universal health coverage while some are still struggling to introduce and implement the health insurance scheme.

In a nutshell, community based health insurance scheme is becoming an emerging concept in financing health care services.

#### **PROBLEM STATEMENT**

Poor funding on the part of the government and poverty of means on the part of the rural dwellers are issues impeding good quality health care service delivery in Nigeria. thus, government most often do not budget enough resources for health care services on one

hand, and the rural dwellers most often will not be able to pay for health care services. Scholars such as Sanusi and Awe (2009), Johnson and Stoskopf (2009), World Health Organization (2007a), Ichoku (2005), Yohason (2004), etc have conducted studies on methods of improving health care services financing across the globe.

Studies are on-going on ways to improve on health care financing. This is what informed the authors of this study to conduct a study on community-based health insurance scheme as a way forward in health care financing.

### **RESEARCH QUESTIONS**

Two research questions are pertinent in this study. That is,

1. Does the government really need to finance health care service delivery in Nigeria?
2. Does the CBHIS will improve the health financing, and in turn improve the well-being of the rural dwellers?

### **OBJECTIVES OF THE STUDY**

The study sets out to achieve the following objectives:

1. To examine the rationale behind health care financing by the Nigerian government.
2. To examine the roles of CBHIS on health care financing in the well-being of the rural dwellers in Nigeria.

### **LITERATURE REVIEW**

Community-based health insurance scheme is an emerging scheme designed with sole aim of improving accessibility to quality health services for low-income rural households who are excluded from the National Health Insurance Scheme.

Good health is necessary for the health of the rural dwellers. Good health is also required for economic and social development (World Health Organization, 2000). Workers have to be healthy to work, and children have to be healthy to attend school and partake in other activities. Inadequate health facility is often associated with disease and injuries among the rural dwellers. At the same time, poor health has another critical impact: it causes poverty, in that large health expenditure can bankrupt families. According to WHO (2000) the main causes of poor health are insufficient prevention and lack of practical access to primary health care, along with poor nutrition and impure water, while health related poverty consequences beginning a lack of risk pooling and insurance Underfunding of healthcare by government and private organization is central to both of these negative effects. Furthermore, many countries compound these problems by making inefficient use of the resources they have for health care and risk pooling. Solutions could be sought through the use of the workable health insurance plan that can improve the well being of the rural dwellers.

Scholars are of the opinion that the success of community based health insurance scheme is premised on the existence of social capital in the community. It is postulated by Woolcock and Narayan (2000) that social capital refers to the norms and networks that allow individuals to act collectively. Fukuyama (1995) asserted that the social capital is the existence of a certain set of informal values or norms shared among the members of a group that permit cooperation among them. Sobel (2002) corroborated their positions by describing social capital as conditions in which individuals can benefit from group membership. This implies that the social capital refers to the social life-networks, norms and

trust that allow households to act together more successfully to follow communal objectives (Putnam, R.D., 1993; Coleman, J.S., 1990). There is a broad harmony amongst scholars that social capital can be used as a breakthrough to achieve community based health insurance plan in the community among the rural dwellers.

Considering the idea of Social Health Insurance in Nigeria, it is first mooted in 1962 by Haevi Committee, which passed the proposal through the Lagos Health Bill presented to parliament. The bill was not passed, until 1984 when the campaign re-enacted. The desire to source for funds on health care services made the National Council on Health under Admiral Patrick Koghoni, (the Minister of Health) set up a committee chaired by Professor Diejomoh, which advised the government on the desirability of Health insurance plan in Nigeria and recommended its adoption as a way to fund the health sector. In Nigeria, the Formal Sector, Social, Health Insurance Programmed was first introduced in 2005. Priorities include reducing the morbidity and mortality rates due to communicable diseases to the barest minimum; reversing the increasing prevalence of non-communicable diseases; meeting the global targets on the elimination and eradication of diseases, and significantly increasing the life anticipation and quality of life of Nigerians (Federal Ministry of Health, 2004).

Nigeria's over-riding objectives since independence in 1960 has been to achieve stability, material prosperity, peace and social progress. However, this has been hampered as a result of internal problems. These include inadequate human capital development, weak infrastructure and uninspiring growth Health sector, manufacturing sector, unemployment, the poor regulatory environment and mismanagement and misuse of resources.

The persistence of these problems is not unconnected with institutional failure. The institute is only the lack of or weak capacity for efficient service delivery by organizations. It is an established fact that the level of development of any society is influenced by many factors including functional institutions (Ubi, Effiom and Mba, 20011). Institutions are understood as "formal and informal rules, enforcement characteristics of rules, and standards of behavior that structure repeated social interaction", between individuals, within or between organizations, through incentives, disincentives, constraints and enhancement (North, 1989) Thus, the key part of any local government, state or national level is service delivery to its citizenry through its institutions. Hence, due to successive failure of the previous governments in Nigeria to provide its community with affordable health care services across all the three tiers of government there is a need to bring in health care reform in the form of social security in which emphasis should be laid on both the formal and informal sector.

## **RESEARCH METHODOLOGY**

This paper is premised on qualitative approach where ten stakeholders are interviewed on the way forward to finance health care delivery in Nigeria.

The stakeholders that are interviewed were the Permanent Secretary, Sokoto State Ministry of Health, Director in charge of Finance and Administration, Sokoto State Ministry of Health, three staff, Department of Medical and Clinical Service, Sokoto State Ministry of Health and five prominent members of the rural areas in Sokoto State of Nigeria.

## **ANALYSIS**

The statements given by the interviewees were transcribed, and categorized into two schemes in order to answer the research questions and seek to know whether the objectives of the study are achieved or not.

It is discovered that the rural dwellers cannot fund the health care services alone. The government has to intervene in order to argument whatever that is contributed by the rural dwellers.

## DISCUSSION

In view of the above, this paper is urging the three tiers of government in Nigeria to embrace the mechanism of community base health insurance plan as the only way forward of providing quality and accessible health care for the majority of Nigerians that resides in the rural areas. Also, a workable subsidy should be provided by the Nigerian government. It is equally on records that since the official flag up of the insurance scheme in the formal sector in 2005, the Nigerian rural dwellers are not enjoying any form of insurance scheme. The Nigerian government as a matter of urgency embraced CBHIS as a form of alternative insurance scheme for the rural dwellers.

## CONCLUSION

In conclusion, the authors of this paper are strongly recommending the Community-based health insurance scheme (CBHIS) as an alternative health insurance scheme for the rural dwellers in Nigeria.

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# **PERFORMANCE EVALUATION OF VOIP OVER WLAN, WIMAX AND WLAN-WIMAX INTEGRATED NETWORK.**

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Tarek Mosbah Abdala  
Valeriano A.Dasalla  
Nasarudin Daud

## **ABSTRACT**

This paper assesses the performance of WLAN and WiMAX networks to carry real time voice traffic communication using the Internet Protocol in a real network, where in the network the voice sessions have to share the link with data, video, and voice. Due to the loose nature of wireless network. Issues like providing QoS at a good level, dedicating capacity for calls is more difficult rather than wired LAN. Therefore VoIP over WLAN and WiMAX remains a challenging research topic. In this paper the Measurements are performed in the WLAN and WiMAX wireless networks. Measurements focus on the three major VoIP parameters: packet loss and jitter. The environmental factors such as the distance between nodes, network traffic, and other obstacles are also considered. Based on the analysis of the findings that have been made, it was discovered that the VoIP application performs better over WiMAX-WiMAX network Than WLAN-WLAN network, In this research experiment, we find out the degradation of those parameters mostly caused by the network condition during the conversation. In order to have the best conversation of VoIP over different wireless networks, the environment as one of the backbone and has to be in a good condition.

**Keywords:** VoIP, WLAN, WiMAX, Packet Loss, Jitter.

## **INTRODUCTION**

VoIP Wireless industry is rapidly moving towards the convergence of communications, computing and consumer platforms, as well as converged applications and services across the network. Users desire real-time services like voice call, music, video, picture sharing, and social interactions anytime, with similar experiences regardless of location. Mobile broadband is the center of this convergence, enabling private and corporate users to enjoy higher data rates and the broadband experiences in various environments.

The existing WLAN and WiMAX wireless networks offer flexibility to support real-time applications such as VoIP (The IEEE 802.11 (WLAN) technology shows great success as inexpensive wireless Internet access while the IEEE 802.16 (WiMAX) provides large coverage area (approximately 50 km) and high data rates (up to 75 Mbps) using radio links (M.Tariq & Y. Shinoda, 2010).

## **BACKGROUND**

VoIP is one of the most important applications that run on Internet Protocol networks. Corporate organizations and government institutions as well as the public users all over the

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world are transiting towards VoIP technology due to the cost effective factor compared to the public switched telephone networks (PSTN).

VoIP has gained significant popularity over the years. Organizations and individuals are starting to migrate to its services due to its great advantage in terms of mobility and cost. VoIP is a highly intolerant and need a high priority transmission(M.Qureshi & A. Younus,2011).

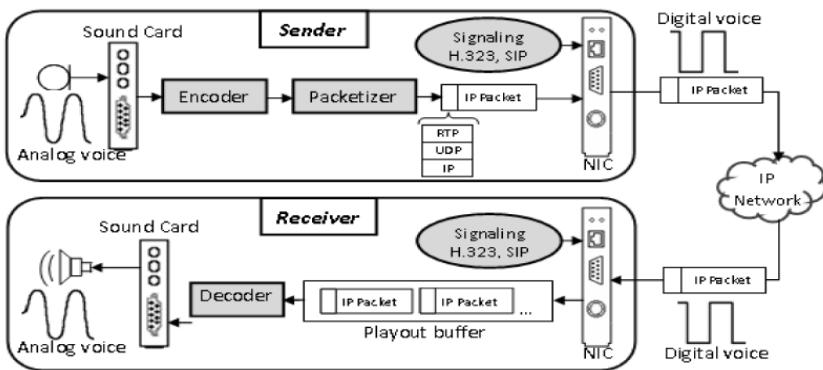


Figure 1: VoIP components.

### A. VoIP over WLAN

Wireless LAN is one of the mainly organized wireless technologies all over the world and is likely to play a major function in the next-generation wireless voice call networks. Wireless local area network (WLAN) is commonly used in residential, business, and public areas. It is notable that the perceived throughput in WLAN does not match the real throughput. Furthermore, all users share the access to the channel, which is very critical for all real-time applications in general and especially for VoIP. The low capacity of WLAN connections has a high impact on the QoS in VoIP. Beside the high traffic generated by users, both protocols, VoIP and WLAN create large headers, which result in degraded VoIP performance (M.Tariq & Y. Shinoda, 2010).

### B. VoIP over WiMAX

Worldwide Interoperability for Microwave Access (WiMAX) as a broadband wireless technology is considered as an alternate solution for wired networks. It provides up to 75 Mbps data rate and has a coverage area of up to 50 km [2]. It also supports QoS requirements by various applications, especially real-time applications such as VoIP. Although WiMAX has been designed to provide broadband Internet service, WiMAX provides performance similar to WLAN (IEEE 802.11 standard), but allows higher data rates over longer distances, efficient use of bandwidth and avoids interference almost to a minimum (I. Adhicandra, 2010).

### C. QoS of VoIP Applications

Today's generation of data network is demanded to satisfy the needs for higher-speed data and media transport as well as higher-capacity voice support. To analyze the suitability of WLAN and WiMAX a series of experiments covering critical parameters that affect the voice quality will be implemented. The QoS for VoIP is measured by performance metrics such as packet loss and jitter.

- Packet Loss is the total number of packets transmitted over the network that are not received at the endpoint or destination, so it means some data or packets are lost or not received by a destination. There are two main sources of packet loss one is network packet loss, mainly due to network congestion, link failures and rerouting, transmission errors, etc.; and the other is discarded packet loss of packets experienced an excessive delay.
- *Jitter is the variation in arrival time of consecutive packets (M.Tariq & Y. Shinoda, 2010). Before decoding, packets arrive to buffers of limited size and some packets may be lost or arrive out of order. Jitter is calculated by computing the difference in delay of packets over a period of time , means one packet reaches in 100 ms and one reaches in 125 ms .*

The guidelines for voice quality measurement for both end-to-end delay and jitter, shown in Table 1, are provided by the Telecommunication Standardization Sector of the International Telecommunications Union (ITU-T) (A.H.Muhamad Amin, 2012). A good quality voice calls should have a jitter between 0 ms and 40 ms and packet loss less than 0.4%. Otherwise, calls are considered to be of acceptable quality.

Table 1: Major Matrix of Standard Quality Management

Measuring Item	Good	Acceptable	Poor
Packet Loss(%)	<0.4	0.4~1.0	$\geq 1.0$
Jitter (ms)	<40	40~60	$\geq 60$

## RELATED WORKS

There are several related works that have also been achieved by other researchers in this field. Observing and measuring the QoS namely Delay, Jitter and Packet loss for VoIP over the WLAN has been done by (I. Adhicandra, 2010) .while (M.Qureshi & A. Younus,2011) focuses on the jitter and packet delay patterns on VoIP network using real network environment. There are also some other initiatives in monitoring and measuring QoS of VoIP in wide area network using pattern methods as in (M.Tariq & Y. Shinoda, 2010). These works have been a motivation for the researchers. Generally, the researchers have adopted laboratory experimentation as a mean to study the VoIP performance. This is simply due to the fact that it is more feasible to control the real-life experimentation and provide the real results. Reference (V. Vassiliou and P. Antoniou, 2006) presents the design and implementation of a WLAN and investigates the performance of UDP and TCP protocols. The authors conclude that there is a sensible variation over packet loss rate and network throughput. Other related works, carry out an analysis of IPSec overhead in 802.11b networks, showing a high overload in TCP and UDP traffic, and the higher the security level, the higher the system overhead. and evaluate the capacity of a 802.11 network supporting VoIP traffic. Their conclusions say that channel capacity is a function strongly dependent on

the channel bandwidth, voice codec packetization interval and the data traffic. Reference (M.Tariq & Y. Shinoda, 2010).proposes a new mechanism to enhance the quality of service in 802.11 networks.

## SCOPE OF THE RESEARCH

Today's generation of data network is demanded to satisfy the needs for higher-speed data and media transport as well as higher capacity voice support. Thus, new standards are designed to meet these expectations that led to high speed VoIP transport. This research will analyze the packet loss and jitter of VoIP in WLAN and WiMAX network .

## Software Tools

To evaluate the performance of VoIP over WLAN and WiMAX and compute the packet loss and jitter at the end points we use these tools :

First, we choose to use Skype as a soft phone with low delay communication tool. We install it on both sides, a sender and a receiver. Then the measurement process was done using JPerf.

The drive tests for monitoring and collecting data was done in Infrastructure University Kuala Lumpur (IUKL). Two computers were placed in two locations, acting as a sender and receiver.

The drive tests were made at the same time, which was around 9:30 am to 10:00 am for seven days for each experimental condition.

## Experiment Scenarios

In this research we provide three experiment scenarios:

### Academic WLAN-WLAN Network

Academic Wireless Local Area Network (WLAN) refers to WLAN in Infrastructure University Kuala Lumpur (IUKL) Wireless network environment where we perform the first experiment. We select IUKL as our academic environment because of the ease of accessibility to the network as shown in Figure

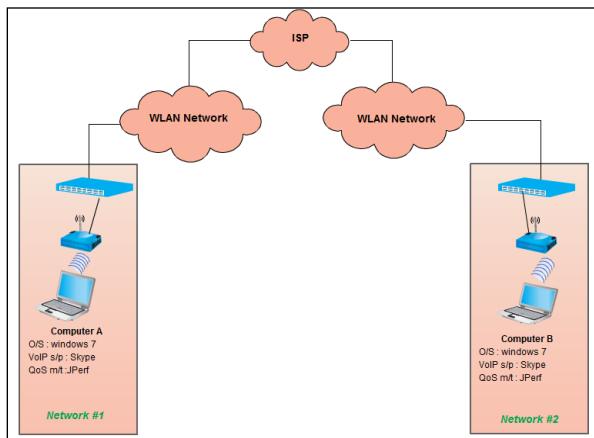


Figure 2: WLAN-WLAN

### WiMAX-WiMAX Network

Currently, there are two network providers in Malaysia that offers WiMAX network to the user which are P1 and YES. In this scenario we will select (P1) Packet One Network to evaluate the performance of VoIP over WiMAX to WiMAX as shown in figure 3.

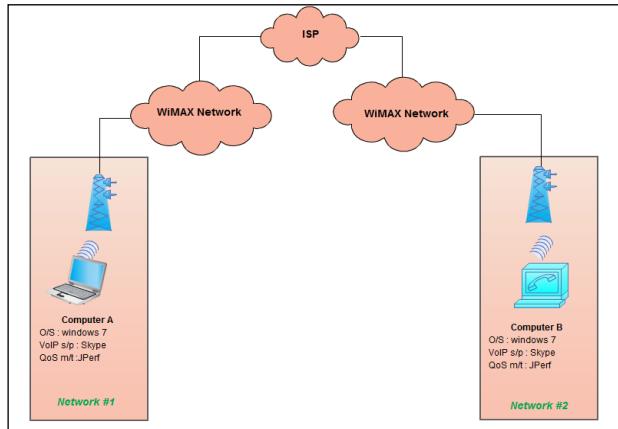


Figure 3: WiMAX-WiMAX

Figure 4: WLAN-WiMAX

### WLAN-WiMAX Integrated Network

In this experiment .We will evaluate the performance of WLAN-WiMAX Integrated Network as shown in figure 4.

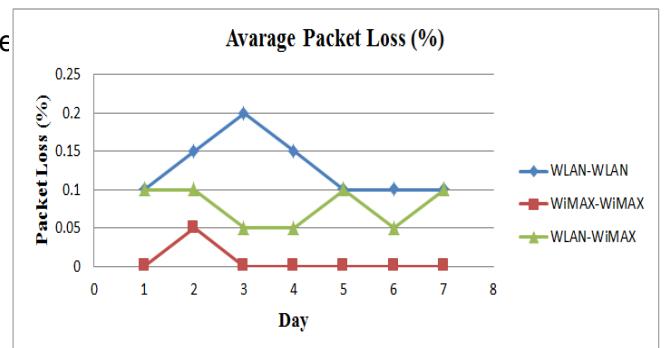
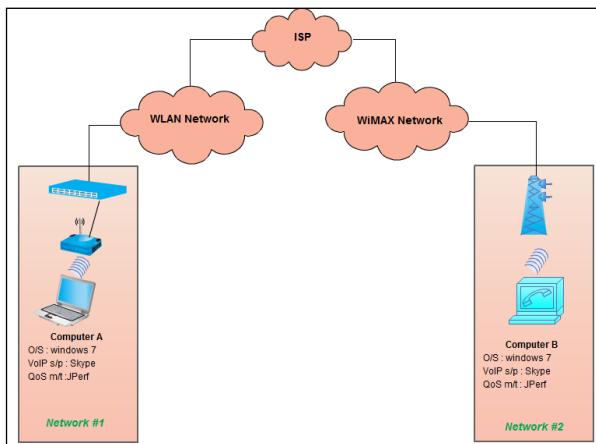


Figure 4: WLAN-WiMAX

## RESULT AND DISCUSSION

### A. Packet Loss Performance

The comparison of packet loss between WLAN-WLAN, WiMAX-WiMAX and WiMAX-WLAN integrated network is presented in Table 2 below.

Table 2: Packet Loss measured in 7 Days

Day	WLAN-WLAN	WiMAX-WiMAX	WiMAX-WLAN
1	0.1	0	0.1
2	0.15	0.05	0.1
3	0.2	0	0.05
4	0.15	0	0.05
5	0.1	0	0.1
6	0.1	0	0.05
7	0.1	0	0.1

Figure 5 below shows the loss of the voice for the three scenarios. Perceived voice quality is considered to be good if the packet loss is less than 0.4% .As, shown in the figure, the average packet loss for WiMAX-WiMAX is almost 0.01% were in WLAN-WLAN is more than 0.13 % .The integrated network WLAN-WiMAX shows a packet

loss is less than WLAN-WLAN network which was 0.07%.

Figure 5: Avarage Packet Loss Performance

### B. Jitter Performance

The comparison of Jitter between WLAN-WLAN, WiMAX-WiMAX and WiMAX-WLAN integrated network is presented in Table 2 below.

Table 3: Jitter measured in 7 Days

Day	WLAN-WLAN	WiMAX-WiMAX	WiMAX-WLAN
1	20.3	0	18.9
2	28.6	1.1	16
3	20.3	11.6	19.9
4	28	11.6	16.9
5	19.1	12.7	20

6	18.9	13.9	11
7	18.1	1	19.1

Figure 6 below shows the loss of the voice for the three scenarios. Perceived voice quality is considered to be good if the packet loss is less than 0.4% .As, shown in the figure, the average packet loss for WiMAX-WiMAX is almost 0.01% were in WLAN-WLAN is more than 0.13 % .

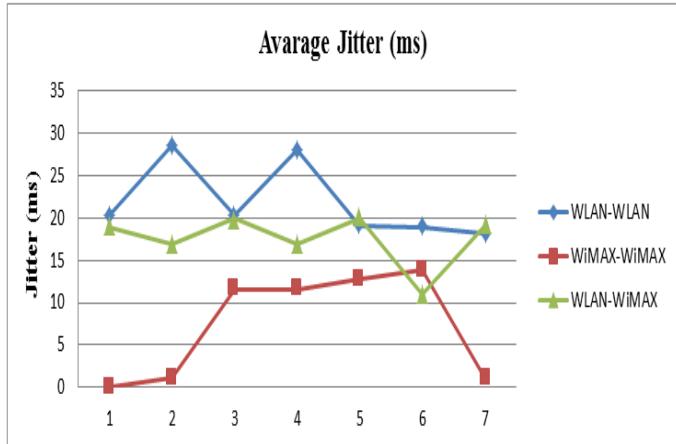


Figure 6: Avarage Jitter Performance

## VI. CONCLUSION

This paper performed the measurement of VoIP application in WLAN-WLAN, WiMAX-WiMAX and WLAN-WIMAX integrated network, using two QoS metrics; packet loss and jitter, the losses of packet lead to the loss of some word during conversation, while jitter leads to non-sequential packet arrival. By comparing the value with the Standard Quality Management scale recognized by ITU-T (Telecommunication Standardization Sector of the International Telecommunications Union). Based on the analysis of the findings that have been made, it was discovered that the VoIP application performs better over WiMAX-WiMAX network Than WLAN-WLAN network. The WiMAX-WiMAX average packet loss and jitter are less than in case of WLAN-WLAN because WiMAX provides broadband service to support heavier traffic loads over the network. Also the integrated network shows the average of packet loss and jitter are less than the WLAN-WLAN.

In this research experiment, we find out the degradation of those parameters mostly caused by the network condition during the conversation. In order to have the best conversation of

VoIP over different wireless networks, the environment as one of the backbone and has to be in a good condition.

## **VII. FUTURE WORK**

This research has worked on performance of VoIP applications over WLAN and WiMAX networks. The work done in this project can further be extended to observe other applications like video applications, file transfer and web browsing.

Due to the time constraint, this paper only analyzed two of quality of service parameters, packet loss and jitter of the VoIP applications. The drive test can be extended to be conducted with other traffic applications, A part from that, there are many QoS parameters that affect the performance of VoIP that have not been covered in this project . Therefore, for future recommendation, other QoS parameters can be observed such as an end to end Delay, bandwidth, bit rate and burst

# EFFECTIVE GOVERNANCE OF DEVELOPMENT ASSISTANCE: KEY PROBLEMS AND CONTROVERSIES

Dr Lukasz Fyderek<sup>1</sup>

## ABSTRACT

The widely accepted principles of governance: Participation, Fairness, Decency, Accountability, Transparency and Efficiency are shared also by the development assistance sector. Problems of effectiveness and efficiency occupy a prominent position in the global debates on development assistance. The critics of development assistance argue, that developmental aid is not only a hugely inefficient endeavor, but also may hinder the real socio-economic development of developing states. The development assistance community accepts some of that critique, pointing out on various factors limiting the effectiveness and efficiency of aid. Not surprisingly, the issue of good governance stand out as an important cause influencing the outcome of different development assistance projects and programs. In case of development assistance, good governance relates to both donor and recipient sides of the process. The ongoing debate brings a number of inputs to both, theory and practice of development and developmental assistance. This article sums up the main findings and controversies of the discourse on deficits of effectiveness and efficiency of development aid.

## INTRODUCTION

Problems of effectiveness and efficiency occupy a prominent position in the global debates on development assistance. Most of international community, consisting of both state actors and NGOs, operates under the assumption, that development assistance works, and that aid provided by the richest members of international community contributes to the global development. However, the critics of development assistance argue, that developmental aid is not only a hugely inefficient endeavor, but also may hinder the real socio-economic progress of developing states. In the recent fifteen years debate on the effectiveness of development assistance has resulted in an unprecedented shift in the approach to development aid: the development assistance community has accepted some of the critique, reaching consensus on reformulation of means and methods of delivering the aid. The new approach, outlined in the "Paris Declaration on Aid Effectiveness" in 2005, has put emphasis on the issues of governance. But despite the significant changes, a number of controversies surrounding effectiveness of development assistance has been repetitively voiced by some scholars and journalists. Below the reader will find outline of that ongoing debate.

## CRITICISM OF DEVELOPMENT PROJECTS

The issue of effectiveness of aid has been in the core of the debate on development assistance since the end of Cold War. Being a rather complicated matter of political relevance, the effectiveness of development assistance debate has been fueled by some social science research. The supporters of development aid used to cite the research showing, that majority of development projects has brought some positive results. Their adversaries pointed out, that the development aid interventions have either a negative impact

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– reducing the development opportunities of aid recipient states or they have no impact at all. This in turn implied that the aid projects may be interpreted by the public opinion as a simple a massive misuse of public funds.

Until recently most of the ODA has been managed in the form of development projects. Development projects have been characterized by clearly defined goals and measurable outcomes. They may relate to infrastructure or resource distribution such as building the highways, running the schools, hospitals supplying of textbooks, distribution of medicines or water canisters. The goals may relate also to the transmission of knowledge, know-how and capacity building. Most of the research on development aid effectiveness heavily relied on project monitoring data. The internal logic of development project monitoring has been based on comparison between the observable facts on the ground and the objectives of a given project. Due to the fact that objectives are usually limited and measurable, project monitoring reports were able to grasp relative success or failure of a given project. Aggregated data from numerous project monitoring reports, has in turn been a primary source of macro analysis on project effectiveness. These analysis, which has usually been done by the donor agencies, generally showed that development projects were successful in reaching their objectives. While the sheer numbers differs, usually the percentage of successful project has been estimated somewhere between 75-80 %. Below there are two typical cases of aggregated project effectiveness analysis.

Independent research group working for British Department of International Development (major donor responsible for approximately 17% of global ODA), produced a synthetic report aggregating data from 1400 projects. The conclusion of the report was an optimistic one, showing that approximately 75 % of projects has been successful. The report didn't show significant changes of project success ratio over the years<sup>3</sup>.

Quite similar conclusion has been reached by Independent Evaluation Group of the World Bank. The research made by the organization has shown that approximately 73 % of project financed by the Bank between 1998-2002 brought satisfying outcome. Moreover IEG's data for the period of 2003-2007 has revealed even higher success ratio of 78 %, which suggests a positive trend in the effectiveness of development projects<sup>4</sup>.

The evaluations designed similarly to the abovementioned has been a major source of knowledge on aid effectiveness. They also have drawn an ample critique, which revolves around four major themes. The first argument points out that project monitoring assessments tend to be incomplete due to the difficulties in data collection. It is peculiar to the most difficult projects, that oftentimes there is no data available. It would be safe to assume, that these projects were largely unsuccessful. However in most of the summary effectiveness reports, this "missing-data" projects are not taken into account, which in turn affects the summary calculations.

The second argument touches upon impartiality of the assessments. While the summary effectiveness analysis are often prepared by independent bodies, they rely on monitoring reports created by project managers. That leaves open the issue of impartiality of these reports, since the project managers are clearly the ones mostly interested in its success. For instance, the independent inquiry of British founded development project has found out that only 30 % of projects conducted between 1993-1999 has been successful. This inquiry

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<sup>2</sup>R. C. Riddell, *Does Foreign Aid Really Work?*, New York 2007, p.180.

<sup>3</sup>M. Flint[et al.], *How Effective is DFID? An independent review of DFID's organisational and development effectiveness*, East Kilbride 2002, s. 21.M. Flint[et al.], *How Effective is DFID? An independent review of DFID's organisational and development effectiveness*, East Kilbride 2002, p. 21.

<sup>4</sup> The World Bank Annual Review 2008, p. 10.

however didn't took into account the total number of projects conducted in this period, which may also contribute to its findings<sup>5</sup>.

The third argument pertains to the limited timeframe of effectiveness evaluation. It's due to the fact that the summary effectiveness measures aggregates data from project monitoring which are in turn conducted immediately after the project's termination. In those cases where the evaluation had been conducted also after some time after project's termination, the outcomes have been usually less favorable. The dilemmas of measurement of effectiveness of development projects are supplemented by a differentiation between the outcomes and impact of a given project. While the outcomes of a given development assistance action are constituted by its immediate effects the impact is understood more broadly. To measure the impact of a given development intervention means to relate its consequences to the broader ultimate goals of development, such as poverty reduction, undernourishment or infant mortality.

This broader understanding leads us to the fourth point, which is of meta-methodological nature. It touches upon the sole nature of development and relation between aid and development itself. While on the micro-level the aid project evaluations pinpoints successful outcomes, on the macro-level or the level of nation-state there is no evidence of development. This so-called "micro-macro paradox" first time has been researched by Mosley in 1986<sup>6</sup>, and since then drew attention of a number of scholars. By stating that it is impossible to establish significant correlation between aid and growth rate of GDP in the recipient countries, Mosley has linked the aid with its ultimate goal: the development. While the former is quite simple process to conceptualize, the latter is on the contrary an extremely complex one. Thus it has turned out, that accepting the GDP growth indicator as a proxy development variable is a reductionist approach. During the further debates it brought a more nuanced concept of development, taking into account some elementary parameters of human well-being, such as: education, public health and longevity of life. This holistic understanding of development led to its better measurement by the social indicators, such as HDI. However, despite that significant progress we are still distant form solving the micro-macro paradox of aid and development. If the impact of aid on development exists, it is enormously difficult to grasp either by the statistical regressions or by the case-study approach<sup>7</sup>.

The debate outlined above, has been focused mostly on the issues of methodology and conceptualization of both development and aid as well as their relations. It unveiled that our knowledge on the effectiveness of development aid has had a rather weak foundations. But beyond the debate on methodology of measurement of aid effectiveness, there was also some critique of political process of decision-making on the development aid. The two particular points has been risen:

1) Development assistance projects do not contribute to the socio-economic development of recipient states. This line of argumentation argues that the poor effectiveness of the aid is caused primarily by underutilization and mismanagement of the aid by its recipients. It stems from the fact that the beneficiaries - the government of developing states – not necessarily and not always aim at social development. Oftentimes the influx of resources from development projects has been utilized for other goals, be that: political struggle, wealth

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<sup>5</sup>M. Flint[et al.], *How Effective is DFID? An independent review of DFID's organisational and development effectiveness*, East Kilbride 2002, s. 21.M. Flint[et al.], *How Effective is DFID? An independent review of DFID's organisational and development effectiveness*, East Kilbride 2002, p. 22.

<sup>6</sup>Mosley P. 'Aid Effectiveness: the micro-macro paradox', *Institute of Development Studies Bulletin* 17, 1986: 214-225.

<sup>7</sup>Howes, Stephen, SabitOtor and Cate Rogers, "Is there a micro - macro paradox in international aid, or do the data deceive?" Center for Development Policy(2011).

redistribution or military built up<sup>8</sup>. The other issue here was the lack of managerial capacity to run efficient and long-term development policies by the recipient governments.

2) Development aid is not properly allocated, being often hijacked by the political preferences of donor states; it has been noted, that donors motivations vary across the spectrum of developed states. As Alberto Alsina and David Dolar pointed out, in numerous cases state donors were primarily preoccupied with their own foreign policy aims, rather than recipient state benefits. So if strategic interest of donor states are of prime importance for aid allocation, then misallocation of development aid occurred – development projects were addressed towards those recipients which neither were willing, nor able to transform it for social development<sup>9</sup>. Moreover, some criticism has been drawn by the fact, that sometimes driven by their own strategic calculations, donor states did not consider the human rights record of recipient states in their aid allocation decision-making process.

## TOWARDS THE GOVERNANCE-CENTERED DEVELOPMENT AID PARADIGM

The critique of development aid has been strong enough to bring the crisis of confidence among the donor community in the nineties. It in turn has affected the level of global funding of development. The drop has been noticeable: while in 1992 the net value of global development assistance had amounted for about 60 billions USD, in 1997 it has dropped down to 48 billions<sup>10</sup>. This crisis proved the importance of development aid effectiveness and efficacy measurement as prerequisite not only of aid effectiveness itself, but also as a necessary component of coalition building efforts. Thus, in the beginning of XXI century a number of initiatives have been undertaken to improve our understanding of factors influencing the effectiveness of development aid, and to reform the development aid methods and modalities. They in turn have brought significant conceptual changes in the field of development aid. The process has been multilaterally negotiated by both states and non-state actors. Its milestones have been drawn in the form of major declarations; six of them were of significant importance:

- Millennium Development Goals accepted by the UN in 2000: The document marks the global consensus on necessity of development assistance as the important, but not sufficient condition of development of the states of global south,
- The Monterey Consensus of 2002: when the leaders of 50 states agreed on necessity of allocating additional resources for the development assistance,
- The Rome Declaration of 2003: which puts forward practical steps to be taken for alignment of the assistance to national priorities of recipient states, and to limitation of the managing function of donor states,
- The Paris Declaration on Aid Effectiveness of 2005: the crucial document laying down a new framework for development assistance,
- The Action Plan of Accra of 2008: adopted in order to streamline the implementation of Paris Declaration and included a wider participation of civil society organizations,
- The Busan Partnership for Effective Development Cooperation of 2011: endorsed to adjust the changing aid architecture in the spirit of Paris Declaration.

Drafting the Paris Declaration was a tipping point in the debate on the development aid effectiveness. The document has been accepted by more than 100 representatives of

<sup>8</sup>R. C. Riddell, *Does Foreign Aid Really Work?*, New York 2007, p165.

<sup>9</sup>A. Alberto, D. Dollar, *Who Gives Foreign Aid to Whom and Why?*, „Journal of Economic Growth” 2000, Vol. 5 (March), s. 33-63; see also: R. Nielsen, *Does Aid Follow Need? Humanitarian Motives in Aid Allocation*, The Henry L. Stimson Center, Washington, 17-18.09.2009.

<sup>10</sup>R. Lensink, H. White, Assessing Aid: A Manifesto for Aid in the 21st Century?, „Oxford Development Studies” 2000, Vol. 28, Issue 1, p. 5-18.

states, the NGO's, and international organizations<sup>11</sup>. Basing on the previous experiences the document formulated a number of practical recommendations aiming at the improvement of the development aid effectiveness. In the core of Paris Declaration were five general principles, which should be applied to all actions of development assistance. Those principles are as follow:

1. **The principle of ownership**, dubbed as the cornerstone of Paris Declaration. It relates to the fact that developing countries needs to be in charge of owning and managing their own development work. It is seen that local ownership of development policies is a key factor of aid effectiveness. The ownership principle has been said basing on research which showed that the highest effectiveness of development aid has been achieved in cases where the beneficiary states were responsible for their development agenda. The local leadership in development policies is to be achieved by creating and strengthening national development strategies supported by local expertise and appropriate institutions. Donors are to "buy into" it by supporting development by cash, in the form of budget support or by other forms of assistance.
2. **The principle of alignment**, understood as the need to line up the donor's assistance to the priorities and procedures outlined by the developing countries. Development programmes and projects should be channeled by the institutions and management systems of beneficiary states. It relates to utilizing developing countries procedures for financial management, accounting, auditing and procurement. In a larger sense, the principle of alignment may be understood also as a assistance in capacity building for managing and implementation of development policies by the developing countries.
- 3.
4. **The principle of harmonization**, which aims at better coordination of development assistance between the donors. It aims also at the lowering of transaction's costs of aid for the recipient governments. The principle of harmonization means that aid, instead of being fragmented, should be rather pooled within the larger programmes managed by the recipient government. This has opened the door for so called "programme-based-approach" modality of delivering the assistance.
5. **The principle of managing for results**, which relates to the fact that both donor and recipient needs to put more emphasis on the results of aid. That means, constructing of solid performance assessment frameworks of development aid.
6. **The principle of mutual accountability**, which boils down to the transparent relationship between donor and recipient. The use of aid funds should be overseen by the citizens and the parliaments of respective states, in order to ensure the accountability. The mutual accountability aims also at reducing the asymmetry of donor-recipient relationship.

The so-called "Paris principles" became the core of the new thinking on the development aid. In response for the criticism concerning aid effectiveness, the representatives of development assistance community decided to move towards much greater reliance on the good governance practices. In order to enforce principles of ownership and alignment the good governance of the recipient governments is essential. Effective implementation of the harmonization principle hinges upon coordination between donors, while two last principles of managing for results and mutual accountability again focus on the good governance of both donors and recipients.

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<sup>11</sup> The participant formed a body called „Aid Effectiveness High Level Forum”.

## **GOVERNANCE AND DEVELOPMENT AID DEBATE AFTER 2005**

The new, governance-oriented paradigm of development aid has been generally welcomed by the observers. It resulted in redesigning of aid architecture, where a number of smaller development projects has been replaced by the much larger development programs, sometimes pooled within the complex Sector Wide Approaches. The achievement of precisely delineated targets of Paris Declaration on the ground has been regularly monitored by the OECD. However, the report published by the organization in 2011 has presented a mixed picture, where out of 13 operational targets only one was fully met<sup>12</sup>. There is a number of reasons behind such a slow progress and not all of them are governance-related.

First, the leadership role which was assigned to the recipient governments has been clearly too ambitious to some of them. Especially the government of so called fragile states have clearly lacked the capacity to take a leading role in their own development. The problem concerns approximately 30-40 governments worldwide. Some of them is in shortage of the bureaucratic competences and structures to draft coherent development policies, and conduct a fruitful dialogue with the donors. The others lack the political will to fulfill standards of international community in terms of governance, the anti-corruption measures or human rights record<sup>13</sup>. It seems that in the case of fragile states, the principle of ownership and the recipient-driven development, proposed by Paris Declaration has not been a practical solution.

The problem has been a challenging one, since the fragile states governments are recipients of approximately 30% of ODA, and their total population exceeds 1.5 billion and the prospects of governance reforms may be counted in decades rather than years<sup>14</sup>. In order to address those issues, a modified approach of engagement has been adopted during the Busan meeting in 2011. The document called 'A New Deal For Engagement in Fragile States' outlines the strategy of gradual shift development agency from the development agencies to the local governments of the fragile states<sup>15</sup>. The initiative however has not brought significant fruits yet, and taken into account the inherent contradictions of governance - state fragility dilemma, one may wonder if there is a room for improvement in the future.

Second issue, which has been risen by the observers of development sector, touches upon the lack of coherent guidelines and incentives for better governance. Some commentators point out, that the Paris Declaration emphasis on ownership, alignment and partnership favors the process above the content of development strategies, which should be implemented<sup>16</sup>. Even if we assume, that today it is quite evident what policies which are necessary for development (good governance, capacity building, public engagement, fostering human capital), the recipient governments have no clearly stated incentives to pursue them. And while most of those reforms are costly in terms of internal politics, the lack of clearly stated incentives may lead to the situation, where the difficult reforms are simply avoided by the governments.

This last point seems to be of much lesser importance than initially thought. It is because of the fact, that even without formally institutionalized incentives for reforms, recipient governments are under pressure to improve governance put forward by a donor community.

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<sup>12</sup>OECD, *Aid Effectiveness 2011. Progress in Implementing the Paris Declaration*. OECD Publishing 2012.

<sup>13</sup>Laurence Chandy, *It's Complicated: the Challenge of Implementing the Paris Declaration on Aid Effectiveness*, Global Economy and Development at Brookings, September 22, 2011.

<sup>14</sup>ODI, A 'New Deal' for fragile states, Overseas Development Institute, 14 December 2011.

<sup>15</sup>OECD, *Can the New Deal for Fragile States Live Up To its Promise to Significantly Shift Agency to the Local?* OECD Insights 14 July 2014.

<sup>16</sup>Gerald F. Hyman, *Bringing Realism to Paris in Busan. The Paris Declaration on Aid Effectiveness*, Center for Strategic and International Studies, Washington D.C., 2011, 10-12.

Operating under the principle of accountability, donor agencies are keen to support those reform-minded governments rather than the reform-avoiding ones. The recipient governments compete in an “assistance market” in some sense, willing to draw international and bilateral aid agencies in. Thus, despite the repeated announcements of shifting the ownership to the local, recipient side, the influence of donor agencies, controlling the supply side of the “development aid market” is far from diminishing.

It seems that the net outcome of the reformulation of international development aid in the aftermath of Paris Declaration is a differentiation of developing states community into winners and losers. In this new development aid paradigm in which principles of ownership and alignment are of primary importance, the donors are much more inclined to offer their programmes to governments with decent implementation capacity, i.e. those with improving governance. That leads to creation of so called “development champions” - the governments which due to its reformist policies are able to attract increasing number of external development funding. But the existence of “development champions” means also that there are some development losers, namely the governments not accountable enough to inspire confidence of the donor’s community.

Acting under the mutual accountability principle means, that both recipient and donor have become more closely tied to each other in terms of governance. Since both institutions are to be accountable before their respective parliaments. It creates the peculiar situation of asymmetry between the international negotiations and internal politics in both donor and recipient contexts.

From donors’ perspective it creates a tension between (internal) perceived effectiveness of aid and (external) aid allocation commitments. The perception of public opinion in the developed states is, that so called “development investments” should bring measurable, tangible outcomes. Development spending, at the end of the day, is seen as just another form of public spending. This puts the donor agencies under domestic pressure to cut the least effective development programs irrespectively of their overseas commitments.

From the recipients’ perspective the pressure on good governance and transparent development policies may be seen as an external interference in their politics. The various interest groups competing for power within developing states’ political systems may feel threatened by some of governance policies in the field of participation, fairness, accountability or transparency, supported by the external donors. Thus the donor agencies pressurizing local governances to pursue the transparent development policies may found themselves not only involved into political conflicts of recipient countries.

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The arguments briefly characterized above are not a complete list of issues and controversies surrounding the “Paris principles” of development aid. The new, recipient-oriented and governance-driven, paradigm of development aid has been set up. The trend of moving towards bigger involvement of recipient countries in the development is unquestionably a positive one. It brings the governance in the full front of the development debate and development aid day-today routine. It should be noted however, that the international declarations pulling forward the debate on effective aid have been to some extent incomplete: while emphasizing the necessity of good governance, they failed to formulate a set of indicators and incentives towards it. This deficiency has been related to the sole nature of the Paris Declaration, which in its core, is a technocratic, international solution to a problems which are both political and local. While technocratic measures brought important improvements in the spheres of reporting, micro-management of development programs and coordination across aid agencies, some of underlying, political causes has not

been addressed<sup>17</sup>. The most important among them is the necessity of understanding good governance in its local, political context and setting a realistic agenda for its improvements. This may be done in the proper atmosphere of trust and transparency between the recipient government and donor community. The high-level, international declarations have a clear limits in this respect. The further debate on the effective development assistance should thus acknowledge the complexity of governance in a variety of local contexts.

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<sup>17</sup>Laurence Chandy, *It's Complicated: the Challenge of Implementing the Paris Declaration on Aid Effectiveness*, Global Economy and Development at Brookings, September 22, 2011.

# **COMPARISON OF DSR, AODV AND DSDV ROUTING PROTOCOLS IN MOBILE AD-HOC NETWORKS: A SURVEY.**

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Valeriano A.Dasalla  
Nasarudin Daud

## **ABSTRACT**

A mobile ad hoc network (MANET) is a collection of mobile nodes that is connected through a wireless medium forming rapidly changing topologies. MANETs are infrastructure less and can be set up anytime, anywhere. We have conducted survey of protocol properties of various MANET routing algorithms and analyzed them. The routing algorithms considered are classified into three categories proactive (table driven), reactive (on demand) and Hybrid protocol. The algorithms considered are Dynamic Source Routing (DSR), Ad-hoc On-Demand Distance Vector Routing (AODV) and Destination sequence Vector (DSDV) have been proposed to solve the multi hop routing problem in Ad-hoc networks. The comparison among three routing protocols are based on the various protocol property parameters such as Routing overhead, packet delivery ratio, end-to-end delay, path optimality, and throughput are some metrics commonly used in the comparisons.

**Keywords:** Mobile Adhoc Network, DSR, DSDV, AODV, Protocol property.

## **INTRODUCTION**

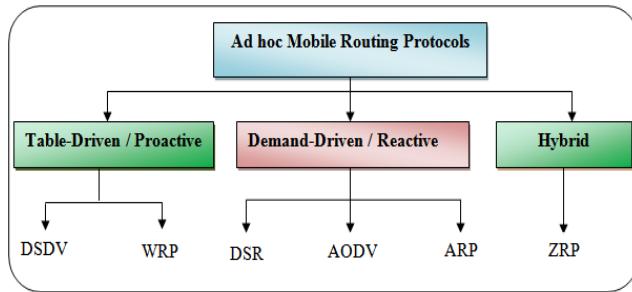
Mobile Ad-hoc Network (MANET) is a collection of mobile nodes that is connected through a wireless medium. MANETs are self-creating, self-organizing and self-administering. All nodes are allowed to be mobile, Mobile ad hoc networks (MANET) that contain wireless mobile nodes that can freely and dynamically self organize into arbitrary and temporary ad hoc network topologies (C.Perkins and P. Bhagwat ,2010). Mobile Ad-hoc Network (MANET) is a collection of communication devices or nodes that wish to communicate with infrastructure less support and without predetermined organization of available links.In MANET, Routing is main problem to route the data packets from one source node to destination node in networks. Manet aimed is to provide communication capabilities to areas where limited or no predetermined communication infrastructures exist.

## **ROUTING PROTOCOL**

The routing protocols in MANETs are classified into three categories proactive (table driven), reactive (on demand) and Hybrid. Figure 1 indicate the routing protocols types.

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### Proactive Routing Protocols

Each node in the network has routing table for the broadcast of the data packets and want to establish connection to other nodes in the network. These nodes record for all the presented destinations, number of hops required to arrive at each destination in the routing table. The routing entry is tagged with a sequence number which is created by the destination node. To retain the stability, each station broadcasts and modifies its routing table from time to time. How many hops are required to arrive that particular node and which stations are accessible is result of broadcasting of packets between nodes. Each node that broadcasts data will contain its new sequence number and for each new route (I. Basu, 2012), node contains the following information:

- How many hops are required to arrive that particular destination node
- Generation of new sequence number marked by the destination
- The destination address

Store the needed information for routing purposes in tables, which are updated through control packets that are sent by each node. The updates can also respond to topological changes of the network. Examples DSDV and WRP.

### Reactive Routing Protocols

Reactive Protocol has lower overhead since routes are determined on demand. It employs flooding (global search) concept. Constantly updation of route tables with the latest route topology is not required in on demand concept.

Reactive protocol searches for the route in an on-demand manner and set the link in order to send out and accept the packet from a source node to destination node. Route discovery process is used in on demand routing by flooding the route request (RREQ) packets throughout the network.

Examples of reactive routing protocols are the dynamic source Routing (DSR), ad hoc on-demand distance vector routing (AODV).

### Hybrid Routing

Based on combination of both table and demand driven routing protocols, some hybrid routing protocols are proposed to combine advantage of both proactive and reactive protocols. The most typical hybrid one is zone routing protocol. Example is DSDV.

## RELATED WORKS

There is a large number of Articles, papers and studies talking about performance of routing protocols in MANETS for different scenarios including (I. Basu, 2012) have conducted survey of protocol properties of various MANET routing algorithms and analyzed them. The routing algorithms considered are classified into two categories proactive (table driven) and reactive (on demand). With increasing node density in a fixed area, the performance of AODV and DSR is affected very badly with all performance metrics taken into consideration for this study. (C.Perkins and P. Bhagwat ,2010) the authors mention that the performance of reactive routing protocols is highly dependent upon the scenario. It was observed during their simulation analysis that AODV and DSR suffers severely with performance degradation with the scenarios considered in the experiments. (Md. Anisur Rahman, Md. Shohidul Islam, 2009) this paper the authors introduce a brief description about Ad Hoc Mobile networks and they analyze the performance of AODV and DSR using different QoS parameters like: level of congestion, rate of mistakes, changes of used route . (A. Ade & P.A.Tijare,2010) this research has been done in comparing the different Ad hoc routing protocols which are AODV ,DSR and DSDV under different network scenarios , in this survey paper the performance metrics are routing overhead, packet delivery ratio, end-to-end delay and throughput .

### **DSR (DYNAMIC SOURCE ROUTING)**

DSR is a source routing protocols, and requires the sender to know the complete route to destination. It is based on two main processes:

- (a) The route discovery process which is based on flooding and is used to dynamically discover new routes, maintain them in nodes cache.
- (b) The route maintenance process, periodically in the relative nodes .DSR is a fully reactive routing protocol detects and notifies networks topology changes.

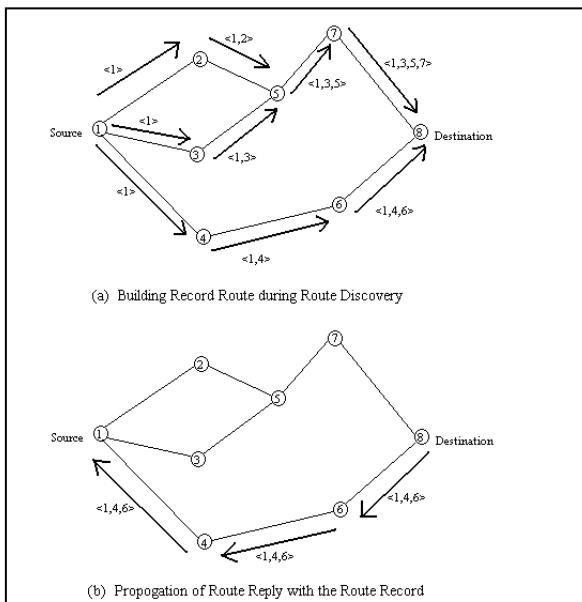


Figure 2. Route discovery in DSR

### **DESTINATION SEQUENCE DISTANCE VECTOR (DSDV)**

The Destination-Sequenced Distance-Vector (DSDV) Routing Algorithm is based on the idea of the classical Bellman-Ford. Routing Algorithm. The routing loop problem is solved which is present in Bellman-Ford algorithm.To solve the routing loop problem, this routing makes use of sequence numbers.

Each mobile node maintains a routing table that includes the number of hops to reach the destination, all available destinations and the sequence number tagged by the destination node. The sequence number is used to distinguish stale routes from new ones and thus avoid the formation of loops. So, the update is both time-driven and event-driven. A "full dump" or an incremental update technique is used to update the routing table(Sapna & Deshmukh2009).

A full dump sends the full routing table to the neighbors and could span many packets whereas in an incremental update only those entries from the routing table are sent that has a metric change since the last update and it must fit in a packet. When the network is relatively stable, incremental updates are sent to avoid extra traffic and full dump are relatively infrequent .If there is space in the incremental update packet then those entries may be included whose sequence number has changed.DSDV protocol guarantees loop free paths and Count to infinity problem is reduced in DSDV.

#### **AD HOC ON-DEMAND DISTANCE VECTOR (AODV)**

AODV uses a very special technique to maintain routing information. AODV protocol is both an on-demand and a table-driven protocol. It adopts flat routing tables, one entry per destination. It is in difference to DSR, which can maintain multiple route cache entries for every one destination.

Unlike DSR The packet size in AODV is uniform. In AODV there is no need for system-wide broadcasts due to local changes, unlike DSDV.AODV has multicasting and uncasing routing protocol property within a uniform framework. Source node, destination node and next hops are addressed using IP addressing.AODV builds routes using a route request /route reply cycle.

AODV discovers paths without source routing and maintains table instead of route cache. It is loop free using destination sequence numbers and mobile nodes to respond to link breakages, changes in network topology in a timely manner. It maintains active routes only while they are in use and delete unused routes.

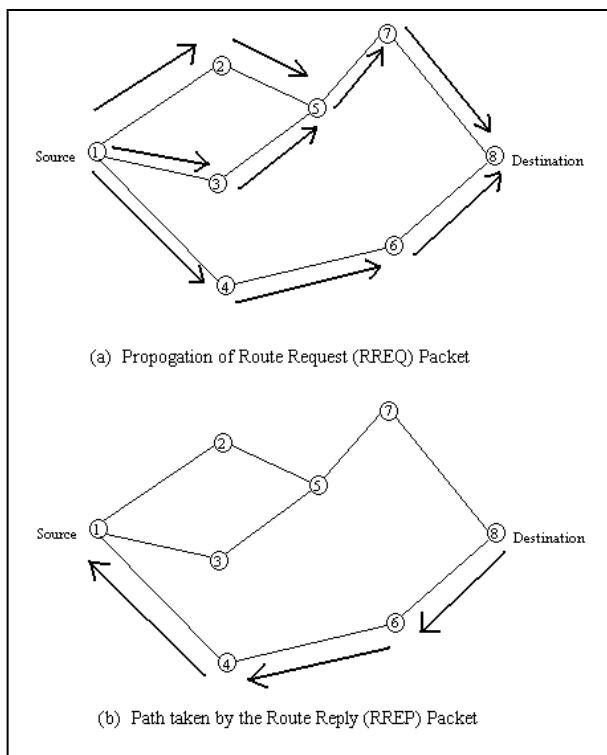


Figure 3. Route discovery in AODV

### COMPARISON

The mobile ad hoc networks have experienced an unprecedented growth since their inception. These are being widely deployed in various emergency scenarios. The various properties of the routing protocols chosen listed in Table 1.

Table 1:DSDV DSR and AODV Comparison

Protocol Property	DSDV	DSR	AODV
Route mechanism/ Maintenance in	Route table with next hop	Complete Route cached	Route table with next hop
Table driven/ Source Routing	Table driven	Source Routing	Table driven and Source Routing
Need of Hello message	Yes	No	Yes
Route Discovery	Periodic	On Demand	On Demand
Network Overhead	High	Low	Medium
Node overhead	Medium	High	Medium
Multi-hop Wireless Support	Yes	Yes	Yes
Loop free	Yes	Yes	Yes
Multiple Routes	No	Yes	No
Unidirectional link support	No	Yes	No
Network Suitable for	Less number of nodes	Up to 200 nodes	Highly Dynamic
Route Discovery	No	Yes	Yes
Route Maintenance	No	Yes	Yes
Reactive/ Proactive	Proactive	Reactive	Reactive
Routing Overhead	Medium	Low	High
Routing Philosophy	Flat	Flat	Flat

## **CONCLUSION**

This paper does the realistic comparison of three routing protocols DSDV, AODV and DSR. The significant observation is, comparison results agree with expected results based on theoretical analysis.

As expected, reactive routing protocol AODV performance is the best considering its ability to maintain connection by periodic exchange of information, which is required for TCP, based traffic. DSR/AODV performs better than DSDV with large number of nodes. Hence for real time traffic AODV is preferred over DSR and DSDV. For less number of nodes and less mobility, DSDV's performance is superior.

DSR/AODV is based on route discovery and route maintenance mechanism. Loop free routing Protocol Property is available to DSR, AODV and DSDV.

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# SOCIO- ECONOMIC CONSEQUENCES OF EBOLA VIRUS OUTBREAKS IN WEST AFRICA.

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## ABSTRACT

The recent Ebola virus outbreaks in some West African countries which according to world health organisation has so far affected many countries has raise scholarly attention on preventive measures to combat the disease. The **objective** of this paper therefore is to review existing literature on Ebola virus: Its historical development, its classification, it's mode of transmission and treatment as well as assess its socio- economic consequences on affected victims, communities and nations. The **method** of data collected is secondary using textbooks, journals, newspapers, health bulletins/magazines, annual reports of various national and international organizations etc. The **findings** revealed that at least 3000 people, out of which over 2000 have died within 2 to 3 weeks, which constitutes serious health treats to humans and wildlife as well as the socio-economic well-being of the affected nations. The paper **recommends** (amongst others) a holistic approach in tackling the menace of Ebola virus as one of the most deadly disease known to human society in recent history.

**Keywords:** *Ebola virus, humans, wildlife, transmission, treatment.*

## INTRODUCTION

Ebola virus (EBOV) formerly referred to as haemorrhagic fever, is a deadly transmissible infectious that has a mortality rates of about 90% among its victims (Pehitt, 2013; Heymannet al, 1980). The virus was initially transmitted from wild animals to humans and now it is now beingtransmitted from human to human through direct contact with infected persons bodily fluids i.e. urine, salves, faeces, vomit and even semen (martini G.A et al 1971) EBOV is however not airborne (The Week, 2014).

Ebola virus was first discovered in 1967 at a German hospital- Marburg where laboratory workers were admitted with an unusual disease. On investigation, the source of the virus was traced to imported green monkeys used for research and vaccine testing (Peters et al 1999). Again Ebola virus outbreaks occurred in 1976 in Southern Sudan and North-Western Zaire(now Democratic Republic of Congo). Subsequently from 1976-2014 there are over 27 Ebola virus outbreaks in about eleven African Countries. These countries include Kenya, Zimbabwe, Cote d'Ivoire, Gabon, Congo, Sudan, Uganda, Liberia, Sierra Leone, Guinea, Liberia and Nigeria(Muyembe-Tamfun, et al, 2012; The Week, 2014; Fact Sheet, 2014) The recent outbreaks in west African countries have been most devastating as the virus affected over 3000 people, with over 50% mortality (1500) recorded within weeks ( The Week, 2014). However, it was thought that the magnitude of EBOV in the affected West African countries

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was grossly underestimated, and that the rate of the virus outbreaks could rise to 20,000, cases (WHO, 2014; The Week, 2014)

Unfortunately, however in spite of the numerous and series of EBOV outbreaks since 1967 when it was first discovered in Marburg hospital Germany, there is no tested vaccine/antiviral drugs that have been produced to treat its victims (Muyembe Tamfun, et al, 2012). However a drug called Zmapp, developed to treat animals with Ebola virus is now been to treat Ebola victims. This is despite the fact that the drug has not been tested clinically to know its side effects on human. Another health measures taken by governments of the affected countries in treatment of affected victims of Ebola virus is through isolations of the victims and given them intensive care under strict quarantine (The Week, 2014). Various measures have been adopted by governments to prevent the spread of Ebola virus among African Countries and indeed the world over. These measures include travel ban of people suspected with the virus, strict quarantine of affected people, wearing of protective clothes by health workers while treating the victims, screening of all passengers at international air ports, seaports, land boarders (The Week, 2014), these preventive measures no doubt have achieved their intended goals but they have also produced devastating effects on the socio-economic lives of the citizens of the affected west African countries

## LITERATURE REVIEW AND THEORETICAL FRAME WORKS

### Concept of Ebola Virus

Ebola virus (EBOV) was initially referred to as Ebola haemorrhagic fever. It is a deadly infectious disease or a severe acute viral illness that is transmitted through contacts with bodily fluids (i.e. vomit, urine, broken skin/mucus, faeces and semen) of infected persons (Bausch et al, 2007; Pettitt et al, 2013; Peter et al 1999). Ebola virus, can also be transmitted when a person has a bodily contact/consumed the meat of infected animal (Morell; 1995; WHO, 1976; Gear, 1975). The virus derives its name from Ebola, a river located in the Democratic republic of Vamkobu village Congo. Situation Report on Ebola in West Africa shows that Ebola virus particularly the Zaire Ebavirus (ZEBOV) is more deadly and can cause up to 90% mortality among infected persons (Wong, et al 2012).

### Signs and Symptoms of Ebola Virus Disease (EVD)

The most common signs and symptoms to be noticed in an infected person or animal include at the initial stage sudden onset of fever, intense weakness, muscle pain, headache and sore throat. After a while, it would degenerate to vomiting, diarrhoea, rash, impaired kidney and liver function and in few cases internal and external bleeding (WHO, 2014; Peters et al, 1999). The results of laboratory testing of an effected Ebola victim would normally show low white blood cell, and platelet counts and elevated liver enzymes (WHO, 2014).

### Classification of Ebola Virus and its origin

Biomedical scientist had provided at least four genetic types of Ebola virus: Zaire (EBO-Z), Cote d'Ivoire (EBO-CI), Sudan (EBO-S) and Philippines (EBO-R) (Fact sheet, 2014, Monath, 1999; Peter et al 1999). However the Ebola virus that mostly affects human beings has been linked to EBO-Z, EBO-CI, and EBO-S (Centre for disease control, 1995, WHO, 1995).

Ebola virus belongs to the family Filoviridae. Its outbreaks is not restricted to Africa, as it happened in Marburg Germany 1967, USA 1989. In Africa, the virus was first noticed in 1976

when two outbreaks took place in two villages located 800km apart from each other in Yambuku in Zaire, Nazare or Maride in Southern Sudan (WHO, 1978a, 1978b; Barrette et al, 2009; Kissling 1970). Between 1980- 2014 the Ebola virus outbreaks occurred in a number of African countries including Kenya (1980:1982), Zimbabwe(1982), Gabon(1996), Cote D'Ivoire , Sierra Leone(2014), Liberia (2014), Guinea(2014) and Nigeria (2014) (WHO 1978, WHO 1995, The Week, 2014, Muyembe-Tamfun, et al, 2012).

Ebola virus was first discovered in monkeys, in tropical rain forest of Africa (i.e. Western Congo swamp. The tropical rain forest of Africa provides most fertile ground for the emergent and transmission of Ebola Virus, since when it was first noticed in monkeys. In other words, the virus has a Zoonotic origin, since the first human causes of Ebola virus was noticed in people who had direct contact with gorillas, chimpanzees, antelope or bats(Muyembe- et al, 2012).

### **SOCIO-ECONOMIC CONSEQUENCES OF EBOLA VIRUS ON FAMILIES AND ECONOMIES OF THE AFFECTED NATIONS**

The fact that Ebola Virus is transferred through bodily contact with the blood, secretions, organs and other bodily fluids of infected person or animal, thus resulting in death within few days, coupled with the fact that there is no tested drugs in the market, governments of UN have adopted some prevention measures to halt the spread and eradication of Ebola virus since its recent outbreaks in some west African countries in August, 2014 .These measures although have achieved their intended goals but have nevertheless resulted in some socio-economic calamities on the people and their governments.The restrictions of movement and association of people has lead to stigmatization of not only the infected people, but citizens of the affected countries. They are subjected to rigorous screening at sea ports, airports and land borders of many countries. African sportsmen and women were also barred from participating in international games in China, Russia, Uzbekistan, France, Spain, Italy and many other European and Asian countries (Daily Trust, 2014),thus depriving them of their fundamental human rights to freedom of association. This is particularly more worrisome in Liberia where the Ebola virus outbreak appeared out of control. Similarly people travelling from Africa into Europe, Asia and the America faced more intense scrutiny than other passengers (Daily Trust, 2014). All these discriminations against people of Africa travelling to Europe, Asia and the America have persisted despite the numerous calls by the UN secretary General for them to stop. On the economic front, the economies of the affected West African states have suffered colossal economic losses particularly in their tourism industries, due to suspensions of flights from other countries. For example Sierra Leone has cut its 2014 economic growth forecast from 8 to 7 percent because according to its finance minister its previous target of 11.5% economic growth for 2014 is unachievable in the face of the Ebola outbreak.Similarly government has lost revenue of 60 million dollars within the last three months due to Ebola outbreak as mining and tourism sectors of the economy were badly affected revenue in Sierra Leone. While the economies of Liberia and Guinea suffered similar fate. As the economy of Liberia is expected to drop from 5.9% to 4% while that of Guinea is expected to drop from 4.5% to 2.5% (Daily Trust, 2M, and BVk0\014).

Some Sociological theories view sickness as a form of social deviance. However this paper considers two theories most relevant in explaining the recent Ebola virus outbreak in some WestAfrican countries. These theories are: sick role theory of Talcott parson which views sickness as a form of social deviance which disturbs/hinders/affects the smooth and efficient operation/functioning of a society. It maintained that a sick person in today's modern society have certain rights and obligations. The sick person's rights include the right to health care to be provided by health professionals within a health care system and the right to be exempted

from carrying out normal social obligations (i.e. employment) depending on the seriousness of the sickness. Their obligations include accepting their health conditions as an undesirable phenomenon, thus they must seek medical care and also cooperate with health care providers in order for them to be treated and get well, so as to contribute their quota within the society (Haralmabous, 2009). This theory clearly provides explanations about the importance of the health measures adopted by government of the affected countries which include isolation and quarantining of the affected victims. The second theory is the theory of Robert Merton on structural functionalist where he spoke on intended functions and unintended (latent/dysfunctions consequences) which is associated with most government policies/measures (Ritzer, 2003). Based on this theory, it can be argued that the measures adopted by governments for treatment of Ebola virus victims through isolation has achieved the intended function of providing treatment to the victims as well as protecting the larger society from becoming infected. However the policy has also produced unintended consequences on the victims, citizens of the affected countries and their economics. This is because the victims were not only isolated but they suffered stigmatization as well. Similarly, the citizens particularly those travelling to Europe, Asia and the America were subjected to intense scrutiny at airports/seaports than other passengers. Similarly, some airlines cancelled their flights to the affected countries thus affecting businesses and tourism.

## **CONCLUSION**

Ebola virus is one of the deadly infectious diseases that was initially transmitted from wild life animals (monkeys, rats, antelopes etc) to humans who had contact with their blood or organs. The first case of Ebola infection was discovered in 1967 at a German hospital which was traced to medical laboratory staff that had contact with imported Chimpanzee from Zaire. Subsequently the virus was discovered in 1976 in Zaire and southern Sudan. However Ebola virus surprised everybody when for the first time it appeared in the West African sub region in 2014 covering five countries. So far the virus has continued to spread like bush fire affecting over three thousand people and claiming the lives of at least two thousand people all within two to three weeks time. This forced the UN and government of the affected countries to adopt panicky but far reaching health measures through isolation of victims, travel bans and intense scrutiny at airports in order to decelerate the speed at which the virus was being transmitted. While these measures have in some respect achieved the goals for which they were intended but they have also produced negative social and economic consequences on the people and economies of the affected countries.

## **RECOMMENDATIONS**

4. A holistic approach involving all stakeholders (governments, UN, health professionals, religious leaders, family members, and the press) should be involved in sensitization of people about the deadly nature of Ebola virus.
5. Preventive measures rather than curative (sanitation, provision of drainages, clean drinking water etc) should be adopted in dealing with Ebola virus and other diseases not only in the affected countries but other countries as well.
6. The UN and other donor countries/agencies should help African countries with the necessary funds to upgrade and improve their healthcare facilities as well as training of more health workers of African origin to attend to the health needs of their countries.

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# **RELATIONSHIP BETWEEN JOB SATISFACTION AND ORGANIZATIONAL COMMITMENT AMONG EMPLOYEES OF DEVELOPMENT FINANCE INSTITUTIONS (FDIS) IN MALAYSIA.**

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Zaharin Ridzuan

## **ABSTRACT**

This study examined the relationship between the five dimensions of job satisfaction of the work itself, supervision, co-workers, promotion and salary satisfaction, with a dependent variable of organizational commitment. This study was conducted in SME Bank, one of the development finance institution (DFI) in Malaysia. Based on the data by Hewitt Associates, the turnover rate in banking and financial services in Malaysia is the second largest. High turnover among employees might jeopardize strategic plans to achieve organizational objectives. When an organization loses its critical people, there might be a number of negative impacts like reduction in overall level of innovation and quality of customer services. Therefore, organization commitment plays a very critical role in order to reduce the employees' turnover. For this purpose, data were obtained from a sample of 150 employees in eight branches of SME Bank. Using descriptive, correlation, and multiple regression analyses, the results showed that all five elements of job satisfaction have a significant relationship towards organizational commitment. However, the relationships are rather weak, except for the work satisfaction element. Hence, SME Bank could identify and explore these elements to enhance their employees' job satisfaction in order to promote organizational commitment.

**Keywords:** job satisfaction, work satisfaction, pay, promotion, supervisor support, co-workers, organizational commitment

## **INTRODUCTION**

The relationship between job satisfaction's elements and organizational commitment has been much debated by Western and local researchers. The elements such as work, salary, promotion, supervisor's support, and co-workers are the main pillars to employees' satisfaction in their work. The interaction between supervisors and co-workers is important for the well being of the organization. Therefore, supervisors need to understand the factors that promote the quality of social relationships within the organization in order to achieve effective management (Olugbenga et al. 2008). This was also explained by Olugbenga, Olalekan and Comfort in 2008 who state that opportunities are provided to employees such as job's enrichment, enforcement of fair policies, system and salary, job security to employees, organizational support and practical organizational climate to improve the relationship between staff and supervisors.

The organization also needs to ensure that salary is given considerable attention, as it is one of the most important elements in job satisfaction. In fact, the absence of reasonable wages,

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toppled with harsh working conditions, could lead to lack of work motivation, and eventually affect their commitment to work. Among others, some of employees' reaction could be seen through absenteeism, lateness, or handing sick leave frequently. As a result, this could prove costly for the organization.

### **SCOPE OF THE STUDY**

This study was conducted at a development finance institution (DFI) in Malaysia. The DFIs in Malaysia are specialized financial institutions established by the Government. They are given specific mandate to develop and promote key sectors that are considered strategic importance to the overall socio-economic development objectives of the country. These strategic sectors include agriculture, small and medium enterprises (SMEs), infrastructure, maritime, export-oriented sectors as well as capital-intensive and high-technology industries (BNM, 2002).

### **PROBLEM STATEMENT**

Bank employees always exposed to customer demands. This factor generally prompts employee to feel dissatisfy and have high desire to leave the organization. According to Hewitt Associates (2012/2013), the turnover rate in banking or financial services in Malaysia is the second largest among staff which contributes 18.3% after high-tech or information technology industry (20%). High turnover rate among employees is detrimental to the organization because each time a staff turnover occurs, the organization have to train and guide new employees which in turn becomes detrimental to the time, cost and energy of the bank's management especially if turnover occur among experienced employees (Nobuo, 2014).

### **RESEARCH OBJECTIVES**

1. To determine the levels of work satisfaction, pay satisfaction, promotion satisfaction, supervisor's support satisfaction, co-workers' satisfaction and organizational commitment.
2. To identify the relationship between work satisfaction, pay satisfaction, promotion satisfaction, supervisors' support satisfaction, co-workers' satisfaction and organizational commitment.
3. To examine the effect of work satisfaction, pay satisfaction, promotion satisfaction, supervisor's support satisfaction and co-workers' satisfaction towards organizational commitment.

### **RESEARCH QUESTIONS**

1. What is the level of work satisfaction, pay satisfaction, promotion satisfaction, supervisor's support satisfaction, co-workers' satisfaction and organizational commitment?
2. What is the relationship between work satisfaction, pay satisfaction, promotion satisfaction, supervisor's support satisfaction, co-workers' satisfaction and organizational commitment?

3. Is there any effect on work satisfaction, pay satisfaction, promotion satisfaction, supervisor's support satisfaction, co-workers' satisfaction towards organizational commitment?

## **SIGNIFICANCE OF THE STUDY**

This study helps organization to measure their employees' job satisfaction and commitment to the organization. In order to improve organizational performance, the elements of job satisfaction and organizational commitment are positively related because the level of job satisfaction depends on the satisfaction with the work satisfaction, pay satisfaction, promotion satisfaction, and support from the supervisor are major factors determining employees' commitment. According to Ong (2013), management is aware that employees tend to resign and move on to other organizations that offer higher pay, due to the high cost of living nowadays. This phenomenon occurs among employees in the Development Finance Institution even more so.

## **LIMITATION OF THE STUDY**

This research is only focused on the development finance institution (DFI) in Malaysia. Thus, it does not involve other banking sectors such as commercial and Islamic financial institutions in Malaysia. If it involves other financial sectors, it is likely very large and have significant differences since the work environment and the job situation is very different from one financial operation compared to other financial operation based on the services provided.

## **LITERATURE REVIEW**

Beck and Wilson, (2001) define organizational commitment as the strong identification of the organization with its objectives, values, and culture. Organizational commitment can also be defined as: (a) the employee's strong personal belief against the values and goals of the organization, (b) a willingness to give their best to the organization, or (c) a strong intent or desire to continue working with the organization (Porter, Lead, Mowday & Boulian, 1974). According to Meyer and Allen (1991), organizational commitment is defined as an affective or collective emotional sense of organization.

Organizational commitment also refers to an individual's connection to the organization, and it basically involves three elements: (1) identify the values and goals of the organization; (2) the desire to remain in the organization; and (3) willingness to contribute efforts for the organization (Snape, Redman and Chan, 2000).

Hausknecht, Hiller and Vance (2008) developed and tested a model which involves unit-level absenteeism using five ways of data collected over six years from 115 units of work in a large state agency. Unit-level job satisfaction, organizational commitment, and local unemployment were modeled as a time varying predictor of absenteeism. The result shows that job satisfaction and commitment has positive association in predicting absenteeism. There is a positive relationship between job satisfaction and organizational commitment.

Tsai and Huang (2007) in their study of nurses suggest that the high turnover intention among nurses is due to lower earnings received, compared to their perception of getting a

more attractive salary for the job. The results indicate that pay satisfaction, commitment, and organizational commitment have a positive relationship.

Cheung, Wu, Allan and May (2009), suggest that the relationship between supervisor-subordinate, participatory management, turnover intentions, and organizational commitment is affected by job satisfaction. Based on the data of 196 employees from three local manufacturing firms in Zhejiang Province, China, they found that job satisfaction has mediating effects on supervisor-subordinate on participatory management and intention to leave, but partially mediated by the relationship between supervisor-subordinate and organizational commitment.

### SOCIAL EXCHANGE THEORY

Thibaut and Kelley (1959) first introduced the social exchange theory to explain the motives of why individuals have relationships with other people. According to this theory, the relationship between individuals depends on the interest and costs. Individuals involved in a relationship tend to calculate the interest they received and the costs they have to pay for the relationship. According to Blau (1964), this theory suggests that good deeds should be rewarded. Individuals who receive the benefit of other people will feel obligated to respond to the benefits he received through the efforts and loyalty (Mossholder, Settoon & Henagan, 2005).

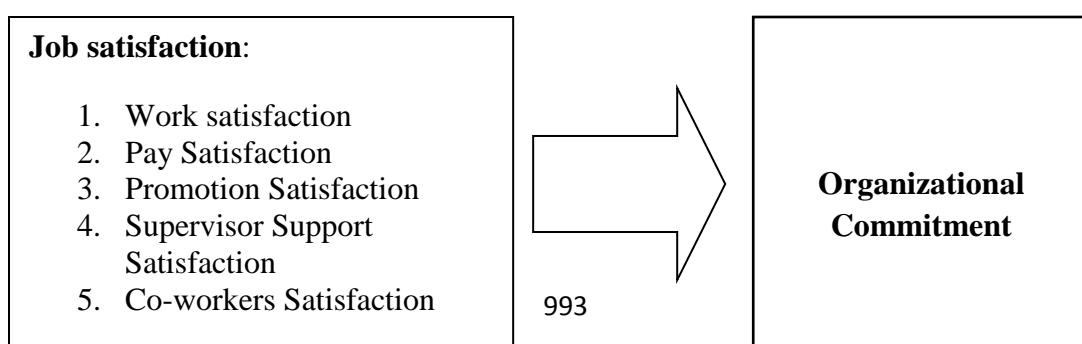
Based on social exchange theory and the principle of reciprocity, an employee's job satisfaction has a direct relationship with the organization. Workers, who suffer low job satisfaction, show decline in organizational commitment (Bennett & Robinson, 2000). This suggests that organizational commitment is also affected by job satisfaction (Stone et al., 2004).

The social exchange theory explains that employees who feel satisfied with what they have been given by organization; supervisors and co-workers will in turn feel encouraged to reciprocate with high organizational commitment. In particular, satisfaction with work, supervisors, co-workers, pay and promotion will increase employees' commitment to the organization (Galletta, Portoghese & Battistelli, 2011).

### RESEARCH DESIGN

The study adopted a quantitative design, using questionnaire as the research instrument. Data were analyzed using descriptive statistics, Pearson correlation and multiple regressions. Figure 1, below, summarizes the theoretical framework.

**Figure 1: Theoretical framework**



This model was based on Social Exchange Theory and empirical research to provide the framework for the development of the research model. This research developed a model, incorporating work satisfaction, pay satisfaction, promotion satisfaction, supervisor support satisfaction, co-workers' satisfaction as the independent variables, while organizational commitment as the dependent variable.

### **POPULATION AND SAMPLING**

The population of this study is employees at the DFI sector in Malaysia. There are six DFIs in Malaysia, namely Bank Rakyat, Bank Pembangunan, Agro Bank, Bank Simpanan Nasional, SME Bank and Exim Bank. The simple random sampling was applied in the selection of DFI banks. According to Sekaran (2005), ten percent of a population is sufficient in a study. Therefore, from six DFI in Malaysia, one organization was selected, namely SME Bank.

After determining the selected bank (SME Bank), the selection of respondents is based on systematic random sampling. SME Bank has 19 main branches and 4 mini branches all around Malaysia. This study employed cluster sampling to determine the groups of respondents. The SME bank population is divided into two groups, based on main and mini branches. Out of 19 main branches, eight branches all around Malaysia were selected based on sample random sampling. The study population consist of 150 staff of SME bank which were randomly selected all around Malaysia, namely Kuala Lumpur, Seremban, Kota Kinabalu, Kota Bharu, Johor Bahru, Kuantan, Kuching and Seberang Jaya.

### **ANALYSES AND FINDINGS**

The overall results indicate there are significant correlations between all five elements of job satisfaction and organizational commitment. However, the relationship may be considered weak. Table 1 and Table 2 display the readings for the correlation and the regression analyses respectively.

Table 1: Correlation analysis between the variables and organizational commitment

Variables	r	p
Work satisfaction	0.444	0.000
Supervisor Support Satisfaction	0.387	0.000
Co-Workers' Satisfaction	0.393	0.000
Promotion Satisfaction	0.234	0.004
Pay Satisfaction	0.174	0.003

*Significant level p<0.01*

Among the five elements, work satisfaction indicates the highest relationship with organizational commitment with readings of ( $r = .444$ ,  $p = <0.01$ ). This finding is consistent with the study by Stringer and Brown (2008), which examines how job satisfaction can contribute to organizational

commitment. The relationship between co-workers and organizational commitment comes in second with a correlation coefficient of ( $r = 0.393$ ,  $p <0.01$ ). While the relationship between supervision and the organization commitment is quite weak as well ( $r = 0.387$ ,  $p <0.01$ ). The other two elements have a slightly weaker relationship compared to the other three mentioned above. The correlation between promotion and organization commitment has a correlation coefficient ( $r = .234$ ,  $p = 0.004$ ). While pay satisfaction, has the weakest relationship towards organizational commitment, with the readings of ( $r = 0.174$ ,  $p = 0.033$ ).

Similarly, the regression analysis indicates the five elements do not have a big influence on organizational commitment. Among them, the elements of supervision and co-workers satisfaction are neither significant nor critical, in influencing organizational commitment. Pay satisfaction however, has the highest reading with BETA 0.362, suggesting a significant factor determining organizational commitment.

Table 2: Regression analysis between the variables and organizational commitment

Variables	$r^2$	sig
Work satisfaction	0.320	0.000
Supervisor Support Satisfaction	0.198	0.022
Co-Workers' Satisfaction	0.010	0.916
Promotion Satisfaction	0.291	0.003
Pay Satisfaction	0.362	0.000

*Significant level p<0.01, r<sup>2</sup> = 0.260*

## CONCLUSION

In summary, this study sets out to investigate the relationship between the five elements of job satisfaction namely work satisfaction, supervision, co-workers, promotion, and pay satisfaction towards organizational commitment of SME Bank employees. The results showed that significant relationships exist between all five elements and organizational commitment. The findings showed that work satisfaction is consistently high in terms of having significant relationship and influential in obtaining organizational commitment. It is common knowledge that when employees enjoy their work, it will be reflected in the increased level of work commitment. Pay satisfaction is also an obvious factor, generally. Ensuring a reasonable, yet competitive salary for employees, could result in a long term advantage for organization. Once employees believe the salary they receive commensurate with their positions, they will feel secured and valued, thus would want to retain in the organization. On the other hand, co-workers satisfaction seems to be the weakest link towards organizational commitment. Low co-workers satisfaction implies a rather weak relationship and lack of

cooperation among employees. Employees who can work together and help each other may perform better and increase productivity. Meanwhile, promotion satisfaction, has both weak significance relationship and low influence on organizational commitment. Thus could be due to employees' knowledge of the organization's promotion system. As long as employees perceive that the organization they work for practise a professional and fair system, employees will strive for success.

The study of organizational commitment is critical to the development and progress of the organization in the future. One of the more comprehensive study needs to be studied in order to define a conceptual framework that reflects the factors influencing organizational commitment.

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# From WWI to www. – PUT INTO THE RIGHT PLACE

Prof. Anis H. Bajrektarevic<sup>1</sup>

## ABSTRACT

On 28th July exactly 100 years ago, Central Europe declared a war to Eastern Europe, an event that marked the official outbreak of World War I. This was a turning point which finally fractured a fragile equilibrium of La Belle Èpoque, and set the Old Continent and the whole world with it into the series of motions that lasted for almost a century, before docking us to our post-modern societies. From WWI to www. Too smooth and too good to be true? Let us use this occasion and briefly examine our post-modernity and some fallacies surrounding it.

In the (Brave New) world of [www.where](#), irrespectively from your current location on the planet, at least 20 intelligence agencies are notifying the incoming call before your phone even rings up, how is it possible to lose jumbo-jet for good? The two huge aviation tragedies affecting same country – Malaysia, are yet another powerful reminders that we are obsessed with a control via confrontation, not at all with the prosperity through human safety. Proof? Look at the WWI-like blame-game over the downing of the plane – a perfect way to derail our most important debate: Which kind of future do we want? Who seats in our cockpit and why do we stubbornly insist on inadequate civilizational navigation?!Consequently, Ukraine today is a far bigger crash site,which is – regrettably enough – well beyond an ill-fated MH 17.

Why in the [www.world](#) our media still bears the WWI-like rhetorics?The ongoing demonization of President Vladimir Putin and the Kremlinin the so-called mainstream mediaactually serves as a *confrontational nostalgia* call on the side of West. Hence, this main-screamseems aimingnot to alienate, but to invite the current Russian leadership to finally accept confrontation as a *modus operandi* after a25 years of pause.

The conclusion these media leaves us with, is somewhat puzzling: the West has *democratically* decided that the CC + CC has no alternative (more Carbons and Confrontation e.g. in Ukraine, besides and despite the planetary Climate Change). President Putin *autocratically* still hesitates, and does not rush into the CC. Does it mean that Russia is more democratic and more progressive than it is reported to us,or that the West is more militaristic and more conservative thanit loves to portray itself? Neither or either, all or none?

How about our post-modern cooperation? Which kind of neighborhood the European Union and United States have supported around Russia for the last 25 years, that same sort of Russia we are trying to see today. I would even dare say that Russia today is far better than the West (and its past acting) deservesto have. The same attribution would most probably apply to the Arab world. The way Atlantic-Central Europe and the US interacted with the

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MENA (Middle East–North Africa), and the sort of Islam they supported there yesterday, is the sort of Islam (or to say, Islamofascism) we are getting today in the Christian Europe as well as in the Christian neighborhoods of Iraq.

For the sake of quick Atlantic-Central Europe penetrations into the body and soul of East, all important debates such as that of Slavism, identity, secularism and antifascism have been advised to Eastern Europe to abandon. By doing so, all the vital merits were simply handed over to Russia to solely deal with it. Why then our sudden shock that once recuperated, Russia returns with a(reloaded) identity which champions antifascism and (pan-)Slavism? After all, the rich but egalitarian, democratic, transparent, antifascist, a non-nation-state determined and secular US has supported everything opposite in Eastern Europe (in the MENA, too). For far too long, in the pretext of fighting the legacies of communism, Americans have tolerated Über-economic, political and socio-demographic neo-Nazism as well as the clerical ethno-fascism in the core sectors of Europe. It is now time to pay for letting the unchecked happen.

*The winner takes it all* is a Swedish song, not a Swedish table. Clearly, there is no winning without a full share of responsibility.

### **Europe of Sarajevo 100 years later**

The end of the Cold War came abruptly, overnight. Many in the West dream about it, but nobody really saw it coming. The Warsaw Pact, Red Army in DDR, Berlin Wall, Soviet Union, one after the other, vanished rapidly, unexpectedly. There was no ceasefire, no peace conference, no formal treaty and guarantees, no expression of interests and settlement. Only the gazing face expression of that time Soviet Foreign Minister Eduard Shevardnadze who circled around and unconvincingly repeated: “we now better understand each other”. In his luminary work ‘The New Asian Hemisphere’, Mahbubani accurately concludes that Mikhail Gorbachev – *not understanding the real success of Western strength and power, handed over the Soviet empire and got nothing in return.*<sup>2</sup> Does our history only appear overheated, but is essentially calmly predetermined? Is it directional or conceivable, dialectic and eclectic or cyclical, and therefore cynical?

The Soviet Union was far more of a classic continental military empire (overtly brutal; rigid, authoritative, anti-individual, omnipresent, secretive), while the US was more a financial empire (covertly coercive; hierarchical, yet asocial, exploitative, pervasive, polarizing). Bear of permafrost vs. Fish of the warm seas. Athens vs. Sparta. Phoenicia vs. Rome... Consequently, the Soviets went bankrupt by mid 1980s – they cracked under its own weight, imperially overstretched. So did the Americans – the ‘white man burden’ fractured them

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<sup>2</sup> Or, by the words of the senior UN diplomat who, contemplating with me over the question whether a middle-power foreign policy is adequate for a great power, recently told me in Geneva: “The difference between Russia and the Soviet Union is that the Federation desperately looks around for respect, but leaves the world responsibilities solely to the US. As known, admiration and respect is earned not given for free.” Clearly, the post-Soviet Russia avoids any strategic global competition with the US. Still, it feels rather insulted with the current strategic global partnership – as both the US and China treat Moscow as a junior partner. Is it possible to (re-)gain a universal respect without any ideological appeal? That could be debated, but one thing is certain; even the mid-size powers such as Brazil, Indonesia or Turkey have moved on from a bandwagoning, reactive, opportune and slow to an emancipating proactive, accurate and extensive foreign policy.

already by the Vietnam war, with the *Nixon shock* only officializing it. However, the US imperium managed to survive and to outlive the Soviets. How? The United States managed its financial capital (or an illusion of it) insofar as to be(come) a debtor empire through the Wall Street guarantees.<sup>3</sup> Titanium-made *Sputnik* vs. gold mine of printed-paper... Nothing epitomizes this better than the words of the longest serving US Federal Reserve's boss, Alan Greenspan, who famously said to then French President Jacques Chirac: "True, the dollar is our currency, but your problem". Hegemony vs. hegemony.

This very nature of power explains why the Americans have missed to take our mankind into completely other direction; towards the non-confrontational, decarbonized, de-monetized/de-financialized and de-psychologized, the self-realizing and green humankind. They had such a chance when, past the Gorbachev's unconditional surrender of the Soviet bloc, the US – unconstrained as a 'lonely superpower' – solely dictated terms of reference.<sup>4</sup> Sadly enough, that was not the first missed opportunity for the US. The very epilogue of the WWII meant a full security guaranty for the US: Geo-economically – 54% of anything manufactured in the world was carrying the *Made in USA* label, and geostrategically – the US had uninterruptedly enjoyed nearly a decade of the 'nuclear monopoly'. Up to this very day, the US scores the biggest number of N-tests conducted, the largest stockpile of nuclear weaponry, and it represents the only power ever deploying this 'ultimate weapon' on other nation. To complete the irony, Americans enjoy geographic advantage like no other empire ever. Save the US, as Ikenberry notes: "...every major power in the world lives in a crowded geopolitical neighborhood where shifts in power routinely provoke counterbalancing". The US is blessed with neighboring oceans.

Why the lonely might, an *empire by invitation* did not evolve into empire of relaxation, a generator of harmony? One of the leading architects of the American foreign policy, Simon Serfaty laments: "The irony is plain for all to see. Ten years after the fiasco in Iraq, the global demand for American power has never been higher, but its credibility rarely lower and its reliability more in doubt...a preponderant power must be right...for its enemies it must be strong, it must inspire trust..." What are we talking about here – the inadequate intensity of our confrontational push or about the false course of our civilizational direction?

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<sup>3</sup> How was a debtor empire born? One of the biggest (nearly schizophrenic) dilemmas of liberalism, ever since David Hume and Adam Smith, was an insight into reality; whether the world is essentially *Hobbesian* or *Kantian*. The state will rob you, but in absence of it, the pauperized masses will mob you. The *invisible hand* of Smith's followers have found the satisfactory answer – sovereign debt. This 'invention' means: relatively strong government of the state, heavily indebted – firstly to local merchants, than to foreigners. With such a *mixed blessing*, no empire can easily demonetize its legitimacy.

<sup>4</sup> One of the biggest ideological victories of the US is the fact that, only two decades after the Soviet collapse, Russia today has an economy dominated by oil-rich class of billionaires. The assets of this new caste are 20% of country's GDP –by far the largest share held by the ultra-rich in any major economy. The second largest ideological victory for Americans is reported by the *New York Times*. It states that the outgoing Chinese President, leader of the country that officially still rests on ideology of oppressed working class, has allegedly accumulated family wealth of 1,7 billion in less than a decade of his rule ('only' 1 USD million every second day). Some in the US are not that happy about it, and are wondering – like Fukuyama in his luminary essay – "where is a counter-narrative?" To ease the pain for all balance-seekers: Even if the American ideological triumph might be a clear cut, geopolitically it remains undecided. While Russians were absorbing the shock of loss of their historical empire, the 'lonely hyper-power' did not quite know what to do with its colossal gain. The fact that there is no (yet) clear leader of the post-Western world, does not mean that the post-Christian and post-industrial West – as a place and as the geo-economic and ideological model – is unquestionably accepted as it was before.

Indeed, no successful and enduring empire does merely rely on coercion, be it abroad or at home. However, unable to escape its inner logics and deeply-rooted appeal of *confrontational nostalgia*, the prevailing archrival is only a winner, rarely a game-changer.<sup>5</sup> Hence, to the above asked question whether our history is dialectic or cyclical, the current Ukrainian events are like a bad-taste *déjà vu*.

*End of the Cold War*—such a buzzword, of a diametrically different meaning. East interprets it as the final end of confrontation – beginning of the age of a mutual respect, harmony and understanding. The Westerners have no such an illusion. To them, it is the end of war, which only came after the unconditional surrender of East (and, which will last until this surrender remains unquestioned). Another powerful evidence to support our claim: Just 20 years ago, distance between Moscow and NATO troops stationed in Central Europe (e.g. Berlin) was over 1.600 km. Today, it is only 120 km from St. Petersburg.<sup>6</sup> Realities have dramatically changed for the Atlantic-Central Europe block and for Russia, while for Eastern Europe much remains the same—East still serves others as a strategic depth playground.<sup>7</sup>

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<sup>5</sup>There are many who would claim that the West was unable to capitalize on the collapse of the Soviet Union, and that the real winner in the superpowers' playoff is actually the third. It is not only that Asia is resurfacing very self-confident. Deeper and structural, the issue is more subversive as well: One of the most remarkable achievements in the world history of capitalism is happening last 20 years under the leadership of the largest Communist party on this planet. (While one of the biggest collectivisations à la communism was taking place in the cradles of capitalism—the US and UK financial hubs.) At this point, let us recall what was the epilogue of a lasting ideological confrontation between Byzantium and Sassanid Persia and of their colossal geopolitical overextension? Clearly, it was an appearance of the Third Power Center on a geopolitical and ideological terrain, which was gradually prevailing from the 7<sup>th</sup> century onwards. Byzantium and Sassanids corroded and imploded.

<sup>6</sup>Despite the (formal) end of the Cold War, and contrary to all what we celebrate as a technological progress, our Gini coefficients' distances are far larger than they were two decades ago. Additionally, as the EU was getting closer to Eastern and Russophone Europe, the socio-economic inequalities and politico-cultural exclusions there, were growing wider. The contemporary world (believes it) has unprecedented wealth. Although over the last four decades the global working force has tripled from roughly 1 to 3 billion, the world today holds mass poverty – like never before, especially in underdeveloped Africa and de-industrialized East of Europe. The newly set 'economic system' in Eastern Europe in fact reproduces poverty, even among the fortunate ones – people with a job, victims of low wages and long hours. According to the World Bank, total global wealth was \$241 trillion in 2013 and is expected to rise to \$334 trillion by 2018. The WB defines the UN standard poverty line with a threshold of \$1,25/day. Lant Pritchett, a critical WB/IMF developmental economist, advocates a more reasonable bottom-line of \$10/day. If his calculations were applied, between 90 and 95% population in the East-Rusophone Europe would be well below dignified life, deep under the poverty line!

<sup>7</sup>Before too long, Washington will have to decide: either containment or accommodation – a viable truce with Moscow or unconditional backing of Russia's closest neighbours. If Putin finally abandons the non-confrontational course, and regularizes the play on a *confrontational nostalgia* card, the US-led West might award Moscow by returning Baltics, some central-southern portions of Eastern Europe, along with Central Asia and Caucasus to Russian sphere of influence. If the history of Russo-American confrontations is (noisy or) deep, wide and long, their ability to broker a deal is remarkably extensive, too. Or, as prof. W.R. Mead elaborates: "...In deciding how hard to press Russia over Ukraine, the White House cannot avoid calculating the impact on Russia's stance on the Syrian war or Iran's nuclear program." (Mead, W.R. (2014), *The Return of Geopolitics*, Foreign Affairs Magazine 93(3) 2014)

# **SKIM SUBSIDI HARGA PADI (SSHP): PENILAIAN DAN IMPLIKASI POLISI KE ATAS TARAF HIDUP PETANI PADI (MISKIN DAN BUKAN MISKIN) SERTA PERANAN DALAM PASARAN**

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## **ABSTRAK**

Kertas kerja ini ditulis bertujuan untuk menilai keberkesanan perlaksanaan Skim Subsidi Harga Padi (SSHP) dalam meningkatkan taraf hidup petani padi. Bagi menilai kepentingan SSHP kepada isi rumah, seramai 225 orang petani padi di kawasan pengairan Muda telah dipilih secara rawak. Hasil kajian mendapat seramai 32 orang petani padi dikategorikan sebagai miskin dan 193 orang petani padi bukan miskin. Hasil kajian turut mendapat bahawa petani padi dikawasan pengairan Muda bergantung sepenuhnya kepada hasil pengeluaran tanaman padi dan SSHP sebagai sumber pendapatan utama. Sekiranya kerajaan memutuskan untuk menarik semula SSHP, sebanyak 2.22 peratus petani padi akan memasuki kumpulan miskin tegar, 9.33 peratus miskin dan 61.33 peratus berada dalam kumpulan mudah terancam. Selain kaedah soal selidik, kajian ini turut menjalankan analisa empirikal di peringkat makro bagi melihat kepentingan SSHP dalam pasaran. Dapatkan analisa ini mendapat SSHP merupakan mekanisme yang berperanan penting bagi mendokong sistem harga kawalan beras yang dilaksanakan bagi melindungi pengguna. Menyedari hakikat tersebut, kertas kerja ini mencadangkan agar SSHP perlu diteruskan dan ditingkatkan nilainya pada masa akan datang di samping beberapa tindakan polisi yang boleh dipertimbangkan.

**Kata kunci:** skim subsidi harga padi (SSHP), pendapatan, petani padi, kawasan pengairan Muda

## **PENGENALAN**

Walaupun Malaysia sedang menuju ke arah negara maju menjelang tahun 2020 namun isu kemiskinan masih lagi menjadi persoalan utama yang sering diperdebatkan. Kemiskinan merupakan konsep dan fenomena pelbagai dimensi (Chamhuri 1995). Dimensi ekonomi merupakan dimensi utama, namun dimensi dari sudut politik dan sosial misalnya perubatan, pemakanan dan pendidikan tidak kurang pentingnya. Oleh itu, maka tidak hairanlah terdapat pelbagai kajian berkaitan kemiskinan dari pelbagai aspek yang mencakupi pelbagai disiplin ilmu. Pendapat umum merujuk kemiskinan sebagai kekurangan wang dalam mendapatkan keperluan asas yang mesti diperolehi oleh setiap isi rumah bagi meneruskan kehidupan.

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Keperluan asas adalah berbeza bagi setiap individu dan berubah dari masa ke masa (Mohd Haflah 1984).

Golongan luar bandar khususnya petani padi sering berhadapan dengan insiden diluar jangka seperti banjir, kemarau dan sebagainya. Bagi memastikan kehidupan para petani padi terjamin untuk berhadapan dengan insiden luar jangka, intervensi atau campur tangan kerajaan melalui harga minimum terjamin, subsidi dan subsidi harga padi dilihat penting bagi tujuan melindungi pesawah daripada ketidakstabilan harga dunia, mengurangkan kos pengeluaran dan menambah pendapatan pesawah. Kajian yang dilakukan oleh Amin Mahir et al. (2010) merumuskan bahawa intervensi kerajaan telah dapat membantu pesawah dan mengekalkan pesawah untuk terus mengusahakan sawah dan telah membolehkan industri pengeluaran padi untuk terus bertahan serta berdaya saing. Kajian yang dijalankan oleh Shafique et al. (2007), Vinajayakumar et al. (2008), Molua (2010), Tey et al. (2010) dan Ahmad Zubir (2012) menjelaskan bahawa intervensi kerajaan sama ada melalui penetapan harga, subsidi, penggunaan baja, penggunaan teknologi dan sebagainya memberi kesan positif ke atas pengeluaran makanan sekali gus meningkatkan pendapatan petani. Lantaran itu, kajian ini telah dijalankan bertujuan untuk menganalisa kepentingan SSHP dalam memastikan kelestarian penghidupan petani padi khususnya petani padi miskin serta peranan dalam memastikan industri beras negara terus berdaya saing dalam pasaran tempatan.

#### **PERLAKSANAAN SKIM SUBSIDI HARGA PADI (SSHP)**

Dalam memastikan kestabilan dan peningkatan pengeluaran padi dan beras negara berterusan, kerajaan telah mewujudkan polisi subsidi sebagai salah satu intervensi bagi menggalakkan pengeluaran bahan makanan ini. Hampir keseluruhan petani padi merupakan golongan yang mudah terancam. Tanpa bantuan daripada pihak kerajaan secara langsung akan menjaskan pengeluaran padi. Tambahan pula pendapatan yang diperoleh secara bermusim turut menyulitkan lagi keadaan. Justeru itu, perlaksanaan pelbagai bantuan atau subsidi yang dilaksanakan oleh kerajaan sedikit sebanyak dapat membantu golongan ini untuk mempertingkatkan hasil mereka.

Bagi mengurangkan bebanan yang harus dipikul oleh petani padi dalam berhadapan insiden luar jangka, skim subsidi harga padi (SSHP) dilihat sebagai salah satu tindakan yang dapat membantu. SSHP telah dilaksanakan sejak tahun 1980 menerusi Lembaga Padi dan Beras Negara (LPN) dan diuruskan oleh Padiberas Nasional Berhad (BERNAS) selepas 12 Januari 1996. Objektif SSHP adalah untuk meningkatkan pendapatan pesawah di atas garis kemiskinan negara dan memastikan harga beras di pasaran dapat dikekalkan di peringkat yang telah ditetapkan oleh kerajaan demi kepentingan para pengguna. SSHP merupakan bayaran kerajaan kepada semua pesawah yang berdaftar dengan Skim SSHP, yang menjual padi dari sawah yang diusahakan sendiri atau pun secara upah di kilang-kilang padi yang berdaftar dengan BERNAS. Pada peringkat awal pelaksanaan, subsidi harga sebanyak RM33.20 diberikan kepada pesawah bagi setiap tan metrik padi bersih yang dijual di pintu kilang. Jumlah tersebut ditingkat pada tahun 1982 dengan kadar RM167.00 per tan metrik. Kadar tersebut ditingkatkan lagi pada kadar RM248.10 per tan metrik pada tahun 1990. Jumlah subsidi tersebut kekal hingga sekarang (Ahmad Zubir & Chamhuri 2012a).

Terdapat beberapa kajian lepas yang telah menunjukkan kepentingan skim harga padi dalam mempertingkatkan kualiti kehidupan petani. Kajian oleh Fatimah & Mohd. Ghazali (1990) menjelaskan bahawa skim harga padi memberi kesan yang besar ke atas pendapatan petani padi sebanyak 71.5 peratus berbanding skim baja padi sebanyak 38.6 peratus. Manakala kajian oleh Mohd Anuar (1989) turut memperlihatkan perlaksanaan skim subsidi harga padi berupaya meningkatkan pendapatan golongan petani padi dari

RM1231.66 kepada RM1660.75 iaitu pertambahan sebanyak RM429.09 atau kira-kira 35 peratus sehektar/semusim. Dapatan kajian yang diperoleh oleh pengkaji di atas menjelaskan bahawa betapa besarnya sumbangan bantuan subsidi khususnya subsidi harga di dalam menambah pendapatan petani padi di sektor ini. Secara tidak langsung skim subsidi baja dan skim subsidi harga memberi kesan yang positif dari segi penambahan pengeluaran (mengurangkan kos pengeluaran) dan seterusnya menambahkan pendapatan petani padi (Mohd Anuar 1989). Manakala kajian yang dilakukan Amin Mahir et al. (2010) mendapati campur tangan dalam bentuk subsidi telah membantu dan mengekalkan pesawah untuk terus mengusahakan sawah di samping membolehkan industri pengeluaran padi negara untuk terus bertahan serta berdaya saing. Ringkasnya, intervensi kerajaan menerusi harga minimum terjamin, subsidi dan subsidi harga bukan sahaja dapat meningkatkan pendapatan pesawah, malah dasar campurtangan ini juga secara tidak langsung melindungi pesawah dan pasaran (khususnya pengguna) daripada ketidakstabilan harga dunia selain memastikan industri beras negara terus berdaya saing dalam pasaran tempatan.

### **KEMISKINAN LUAR BANDAR**

Dalam mengkaji kemiskinan luar bandar, ramai pengkaji menghujah pelbagai indikator bagi mentakrifkan siapa yang dikategorikan sebagai golongan miskin mengikut bidang kajian masing-masing. Sahak (1984) berpendapat bahawa kemiskinan merupakan satu fenomena yang disebabkan oleh perkara berikut; (i) kekurangan individu mempunyai peluang penggunaan sumber; (ii) keupayaan untuk mendapat dan mencapai pilihan dalam ekonomi dan kuasa politik adalah terhad; (iii) mudah terdedah kepada penyakit; dan (iv) mudah terpengaruh dengan harga barang yang tidak menentu. Manakala Osman & Abdul Majid (1988) turut menjelaskan kemiskinan merupakan satu ‘sindrom situasi’ yang meliputi unsur-unsur kekurangan makanan dan taraf kesihatan yang rendah, pendapatan yang rendah, pengangguran, keadaan perumahan yang tidak selamat, taraf pendidikan yang rendah, tidak menikmati keperluan moden, pekerjaan yang tidak terjamin, sikap hidup yang negatif dan fikiran yang kolot. Senario ini secara langsung menggambarkan bahawa kemiskinan bukan hanya meliputi ketidakupayaan untuk mendapat keperluan asas semata-mata malah ia merangkumi pelbagai sudut kehidupan. Sementara Chamhuri (1995) juga turut mengklasifikasi golongan tersebut seperti berikut iaitu (i) golongan yang tidak mempunyai keupayaan pendapatan; (ii) golongan yang tidak mempunyai kesempatan untuk menggunakan sumber kuasa sosial (kuasa mengemukakan pendapat, kuasa politik, pemilikan alat pengeluaran, pendidikan dan sebagainya); dan (iii) golongan yang tidak menikmati keperluan asas (perlindungan, pemakanan, pendidikan asas, kesihatan, pekerjaan dan sebagainya) yang mencukupi mengikut ukuran sara hidup sesebuah masyarakat.

Memahami pengertian isu kemiskinan tidaklah mudah apatah lagi untuk mengukurnya. Konsep kemiskinan adalah terlalu kompleks dan bukan sekadar ditafsir daripada segi angka dan peratusan sahaja. Konsep ini melibatkan bukan hanya dimensi ekonomi, tetapi juga terjaring didalamnya aspek psikologi, sosiologi, politik, kebudayaan, kemanusiaan, dan kerohanian. Justeru itu adalah mustahil bagi kita untuk mengerti apakah kemiskinan sebenarnya dan apakah bentuk kos kemiskinan ini kepada masyarakat dan negara (Osman 1995).Walaupun sebahagian besar penduduk Malaysia telah berupaya memenuhi keperluan, namun masih terdapat sebilangan kecil dalam anggota masyarakat yang masih terperangkap dalam tampuk kemiskinan tegar dan menghadapi masalah ketidakcukupan makanan. Justeru, usaha-usaha perlu terus dilakukan bagi mengurangkan kemiskinan relatif terutama di luar bandar. Lantaran itu, bagi memastikan pembasmian kemiskinan dapat dilakukan dengan lebih berkesan, kerajaan melalui Bidang Keberhasilan Utama Nasional (National Key Results Areas - NKRA) Mempertingkatkan Taraf Kehidupan Isi Rumah Berpendapatan Rendah telah mentakrif semula kategori kumpulan berpendapatan rendah

sejajar dengan pendapatan bulanan mereka. Takrifan bagi isi rumah berpendapatan rendah, miskin dan miskin tegar telah diselaraskan antara semua kementerian dan agensi bertujuan bukan hanya untuk menyelaraskan hubungan kerja dalam kerajaan semata-mata tetapi juga memastikan bantuan dan inisiatif dapat disasarkan dengan betul dan tepat kepada masyarakat yang memerlukannya (Jadual 1). Melalui takrifan ini juga, bagi individu yang mempunyai pendapatan isi rumah kurang daripada RM2000 turut dikategorikan sebagai isi rumah berpendapatan rendah (Malaysia 2011c). Kegagalan untuk mencapai tahap pendapatan melepas garis kemiskinan mengakibatkan isi rumah tidak mencapai kelestarian kehidupan. Kesannya akan mengakibatkan golongan ini sentiasa berada dalam keadaan mudahterancam.

Jadual 1 Takrifan isi rumah berpendapatan rendah, miskin dan miskin tegar berdasarkan pendapatan bulanan

Kategori	Semenanjung Malaysia	Sabah	Sarawak
Miskin tegar	RM440 sebulan dan ke bawah	RM540 sebulan dan ke bawah	RM520 sebulan dan ke bawah
Miskin	RM750 sebulan dan ke bawah	RM960 sebulan dan ke bawah	RM830 sebulan dan ke bawah
Isi rumah berpendapatan rendah	RM2000 sebulan dan ke bawah	RM2000 sebulan dan ke bawah	RM2000 sebulan dan ke bawah

Sumber : Malaysia 2011c

Bagi tujuan analisa dalam kajian ini, golongan miskin dan bukan miskin dikategorikan kepada dua kategori utama iaitu, (i). pendapatan kurang RM1000 sebulan sebagai miskin dan (ii). melebihi RM1000 sebagai tidak miskin. Walaupun purata garis kemiskinan menjelaskan pendapatan RM745 ke bawah dikategorikan sebagai golongan miskin, namun dalam kajian ini pengkaji menggunakan pendapatan petani di bawah RM1000 dikategorikan sebagai miskin. Secara rasional dan realitinya, isi rumah luar bandar yang mempunyai pendapatan kurang daripada RM1000 masih tidak mencukupi dan menghadapi kesukaran untuk memenuhi tuntutan kehidupan. Tambahan pula bilangan ahli isi rumah yang ramai turut menyulitkan keadaan.

## METODOLOGI

Kaedah seoal selidik dalam kajian ini melibatkan seramai 225 orang responden di kalangan petani padi di kawasan pengairan Muda, Kedah yang dipilih secara rawak berstrata yang melibatkan empat wilayah utama di dalam kawasan ini. Daripada jumlah tersebut hasil kajian mendapati seramai 193 orang petani padi mempunyai pendapatan melebihi RM1000 sebulan dan 32 orang mempunyai pendapatan kurang daripada RM1000 sebulan. Perbincangan hasil kajian akan diklasifikasikan kepada taburan sumber pendapatan keseluruhan sampel petani padi di dalam kajian termasuk insiden kemiskinan, dan kepentingan SSHP dalam meningkatkan taraf hidup para petani padi.

Selain itu juga, analisa keseimbangan pasaran harga beras tempatan menggunakan kaedah kuasa dua terkecil dua peringkat (two-stage least square, 2SLS)<sup>3</sup> telah dijalankan bertujuan untuk melihat peranan SSHP dalam pasaran. Kaedah ini dipilih bagi membolehkan penyelesain dua persamaan secara serentak iaitu persamaan permintaan (DD) dan penawaran (SS) beras tempatan. Setiap persamaan (model) ini dianggarkan berdasarkan fungsi log-log ( $\ln$ ). Jadual 2 memaparkan senarai pemboleh ubah bersandar dan bebas bagi data siri masa tahunan ( $t=26$ ) yang meliputi data daritahun 1985 sehingga 2010. Kesemua faktor harga termasuk faktor pendapatan dalam kajian ini telah dideflasikan dengan Indeks Harga Pengguna (2005=100). Data berkaitan padi dan beras kecuali data jumlah permintaan beras diperoleh menerusi pelbagai iLaporan Perangkaan Padi Malaysia yang diterbitkan oleh Jabatan Pertanian Semenanjung Malaysia. Data jumlah permintaan beras tempatan dimuatnaik secara percuma daripada pengkalan data atas talian (World Rice Statistics Online Query Facility) oleh Institut Penyelidikan Beras Antarabangsa (IRRI). Data oleh IRRI ini adalah berdasarkan data dari U.S. Department of Agriculture (USDA). Manakala data harga runcit bagi tepung gandum diperolehi daripada Kementerian Perdagangan Dalam Negeri, Koperasidan Kepenggunaan (KPDKKK) Malaysia. Data berkaitan populasi pula didapati daripada Jabatan Statistik Malaysia.

Data-data sekunder ini digunakan untuk menganalisis dua model yang dibentuk iaitu model fungsi permintaan beras tempatan ( $f_{DD}$ ) dan model fungsi penawaran beras tempatan ( $f_{SS}$ ) seperti yang dinyatakan dalam persamaan berikut:

$$\ln Q_t^{ss} = \beta_0 + \beta_1 \ln HBT + \beta_2 \ln HBI + \beta_3 \ln HASIL + \mu \quad [1]$$

$$\ln Q_t^{dd} = \beta_0 + \beta_1 \ln HBT + \beta_2 \ln INC + \beta_3 \ln HG + \beta_4 \ln POP + \mu \quad [2]$$

Jadual 2 Deskripsi pembolehubah model fungsi permintaan dan penawaran beras

	Definisi	Sumber
<i>Pemboleh ubah Bersandar</i>		
1. Permintaan (DD <sub>t</sub> )	Jumlah kuantiti (Q) permintaan beras tempatan ('000 mt)	IRRI (USDA)
2. Penawaran (SS <sub>t</sub> )	Jumlah kuantiti (Q) penawaran beras tempatan ('000 mt)	Perangkaan Padi
<i>Pemboleh ubah Bebas</i>		
1. Harga Beras Tempatan (HBT <sub>t</sub> )	Purata harga runcit tahunan beras super tempatan (RM/kg)	Perangkaan Padi
2. Harga Gandum (HG <sub>t</sub> )	Purata harga runcit tahunan bagi tepung gandum (RM/kg)	KPDKKK
3. KNK/kapita (INC <sub>t</sub> )	Keluaran negara kasar per individu (malar 2005 US\$)	Bank Dunia
4. Harga Beras Import (HBI <sub>t</sub> )	Purata harga runcit tahunan beras pulut Thailand (RM/kg)	Perangkaan Padi
5. Hasil per Hektar (HPH <sub>t</sub> )	Produktiviti pengeluran padi per hektar Malaysia (mt/ha)	Perangkaan Padi

<sup>3</sup>Kebanyakan persamaan serentak menghadapi masalah 'over-identified' dan masalah ini dapat diatasi dengan menggunakan kaedah 2SLS.

6. Populasi (POP <sub>t</sub> )	Jumlah populasi rakyat Malaysia ('000 orang)	Jabatan Statistik
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## HASIL KAJIAN DAN PERBINCANGAN

### Kepentingan SSHP Terhadap Penghidupan Petani

Merujuk kepada Jadual 3, kajian mendapat jumlah pendapatan isi rumah petani padi merangkumi pendapatan daripada aktiviti tanaman padi dan aktiviti-aktiviti sampingan yang lain, pendapatan isteri, pemberian anak-anak, bantuan kebajikan daripada pelbagai agensi, pencen, sewa hartanah dan sumber-sumber lain kewangan. Kajian turut mendapat pendapatan petani padi di kawasan pengairan Muda bergantung sepenuhnya pada sumber tanaman padi. Sumber tanaman ini menyumbang secara sebanyak 72.17 peratus sebulan daripada keseluruhan pendapatan petani miskin dan 66.89 peratus kepada petani bukan miskin. Jumlah ini termasuk bantuan subsidi harga padi oleh kerajaan secara purata sebanyak 19.97 peratus (petani miskin) dan 8.61 peratus (petani bukan miskin) sebulan. Pada masa yang sama, kajian turut mendapat pendapatan bukan pertanian juga turut menyumbang kepada pendapatan para responden namun dalam peratusan yang kecil iaitu sebanyak 4.56 peratus atau secara purata sebanyak RM 50.00 bagi petani miskin dan 11.87 peratus (11.87 peratus) bagi petani bukan miskin.

Jadual 3 Taburan sumber pendapatan petani padi purata sebulan

Sumber pendapatan	Petani miskin	Petani bukan miskin
	RM	RM
Pendapatan hasil pertanian	791.91 (72.17%)	1723.57(66.89%)
Pendapatan sampingan - Tanaman getah - Ternakan - Ternakan ikan (sangkar/kolam)	30.72 (2.8%) 12.50 11.97 6.25	229.79 (8.92%) 191.09 21.17 17.53
Pendapatan bukan pertanian (Gaji, upah, bermiaga)	50.00 (4.56%)	306.03 (11.87%)
Lain-lain pendapatan - Sumbangan anak-anak - Hasil sewaan - Pencen - Zakat - Bantuan daripada kerajaan - Lain-lain : dividen dan faedah	6.25 (0.56%) 6.25 - - - - -	95.35 (3.7%) 20.73 5.96 45.08 17.36 2.07 4.15
Jumlah kecil	878.88	2354.74
Subsidi harga padi	219.15 (19.97%)	221.91(8.61%)
Jumlah besar	1097.30(100.00%)	2576.65 (100.00%)

Sumber: Analisa data kajian (2010)

Pendapatan sampingan yang meliputi tanaman getah, ternakan binatang dan ternakan ikan dalam sangkar atau kolam turut menyumbang kepada pendapatan petani padi di kawasan pengairan Muda secara purata sebanyak RM30.72 (2.8 peratus) daripada keseluruhan pendapatan petani miskin di kawasan ini, berbanding 8.92 peratus (RM229.79) bagi petani

bukan miskin. Sumber lain-lain pendapatan seperti bantuan zakat, pemberian anak-anak, hasil sewa dan sebagai turut menyumbang peratusan sebanyak 0.56 peratus daripada keseluruhan pendapatan petani padi miskin dan 3.7 peratus bagi petani bukan miskin. Hasil kajian juga turut mendapati petani padi bahawa para petani dikawasan pengairan Muda khusus petani miskin bergantung sepenuhnya kepada SSHP disamping pendapatan hasil tanaman padi. DidapatiSSH menyumbang sebanyak RM219.15 daripada keseluruhan pendapatan petani padi miskin, dan RM221.91 bagi petani bukan miskin. Dengan perlaksanaan SSHP, hanya lapan orang petani dikategorikan sebagai miskin kerana mempunyai pendapatan dibawah RM 750 dan 24 orang mempunyai pendapatan RM751 hingga RM1000 (Jadual 4). Pada masa yang sama, didapati seramai 150 orang petani padi (66.67%) dikategorikan sebagai mudah terancam, di mana golongan petani ini mempunyai pendapatan di antara RM751 hingga RM2300.

Merujuk kepada Jadual 4, kajian turut mendapati SSHP masih lagi diperlukan bagi memastikan kesejahteraan para petani. Sekiranya kerajaan memutuskan untuk menarik balik semula bantuan SSHP, kadar kemiskinan tegar dikawasan pengairan Muda akan meningkat sebanyak 2.22% dan miskin 9.33% dikalangan petani padi di kawasan ini. Keadaan ini sudah pasti akan memberi impak yang besar kepada kerajaan dan para petani. Lantaran itu, situasi ini memperjelaskan betapa pentingnya SSHP dalam meningkatkan taraf hidup petani padi di samping membasmi kemiskinan di kalangan penduduk luar bandar. Hasil kajian ini memperjelaskan bahawa lebih daripada 60% petani padi di kawasan pengairan Muda berada dalam keadaan mudah terancam. Seandainya golongan petani ini berhadapan dengan insiden di luar jangka seperti ancaman perubahan iklim, kebarangkalian golongan ini untuk jatuh ke dalam kelompok miskin adalah tinggi terutamanya golonganpetani dengan keluasan tanah purata 2.73 hektar (Radin Firdaus & Ahmad Zubir 2013).

Jadual 4 Taburan pendapatan golongan petani padi di kawasan Muda

Kategori	Julat pendapatan	Petani Miskin		Petani bukan miskin	
		Bantuan SSHP	Tanpa bantuan SSHP	Bantuan SSHP	Tanpa bantuan SSHP
		Bil.(%)	Bil.(%).	Bil. (%)	Bil. %
Miskin tegar	< RM440	-	5 (15.62)	-	-
Miskin	RM441-RM750	8 (33.33)	18 (56.24)	-	3 (1.55)
	RM751-RM1000	24 (66.67)	9 (28.13)	-	17 (8.81)
Tidak miskin	RM1001-RM2000	-		110 (57.00)	98 (50.78)
	RM2001-RM3000	-		40 (20.72)	32 (16.58)
	RM3001-RM5000	-		33 (17.10)	33 (17.10)
	RM5001 ke atas			10 (5.18)	10 (5.18)
Jumlah		32 (100.00)	32 (100.00)	193 (100.00)	193 (100.00)

Sumber: Analisa data kajian (2010)

## **Peranan SSHP Dalam Pasaran**

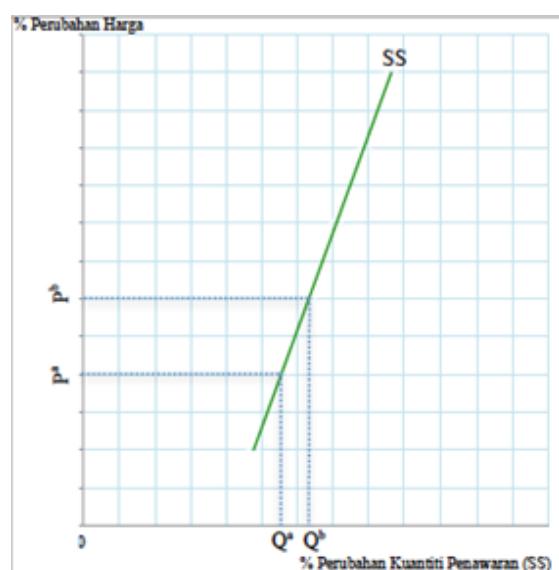
Amnya, SSHP dilaksanakan bertujuan untuk melindungi kebijakan pengeluar (petani). Perlaksanaan SSHP secara tidak langsung membolehkan dasar kawalan harga beras di pasaran dijalankan. Oleh itu, SSHP bukan sahaja bertindak dari segi memperbaiki pendapatan petani malah turut memastikan pengeluaran petani padi tempatan mempunyai daya saing khususnya dari segi harga. Justeru, mekanisme SSHP bukan sahaja memberi kesan langsung kepada petani malah secara tidak langsung turut memberi kesan kepada pengguna. Amnya, dalam ekonomi, perubahan dalam hasil pengeluaran pertanian akan cenderung untuk mengubah harga komoditi pertanian dan makanan berbanding kuantiti pengeluaran dan penggunaan memandangkan permintaan makanan secara relatif adalah tidak anjal harga manakala penawaran komoditi secara relatif adalah anjal harga (Tubiello et al. 2007). Oleh yang demikian, SSHP serta dasar kawalan harga bukan sahaja bertindak untuk melindungi pengeluar, malah dalam pada masa yang sama turut berperanan untuk melindungi pengguna, terutamanya ketika berlaku insiden luar jangka yang menjelaskan harga dan pengeluaran seperti banjir, kemarau maupun krisis ekonomi.

Bagi menerangkan hal ini dengan lebih jelas, ilustrasi dalam bentuk keluk berdasarkan hubungan harga keanjalan terhadap jumlah permintaan dan penawaran ditunjukkan dalam Rajah 1, 2, 3 dan 4. Dalam menunjukkan hubungan ini, kecerunan kedua-dua keluk permintaan (DD) dan keluk penawaran (SS) dibentuk berdasarkan nilai keanjalan melalui analisa regresi 2SLS seperti yang ditunjukkan dalam Jadual 5 dan 6. Rajah 1 menunjukkan hubungan antara harga beras dan jumlah penawaran beras. Kenaikan harga beras sebanyak 1% iaitu dari  $P_a$  ke  $P_b$  menyebabkan jumlah penawaran hanya meningkat sebanyak 0.385% iaitu dari  $Q_a$  ke  $Q_b$ . Rajah 2 pula menggambarkan hubungan antara harga beras dan jumlah permintaan beras. Kenaikan harga beras sebanyak 1% iaitu dari  $P_a$  ke  $P_b$  menyebabkan jumlah permintaan jatuh sebanyak 0.542% iaitu dari  $Q_d$  ke  $Q_c$ . Secara relatifnya, keluk permintaan adalah lebih landai berbanding keluk penawaran. Hal ini menerangkan bahawa keanjalan harga terhadap jumlah permintaan pengguna adalah lebih tinggi berbanding keanjalan harga terhadap jumlah penawaran. Atau dalam erti kata lain, petani adalah kurang responsif terhadap perubahan harga berbanding pengguna.

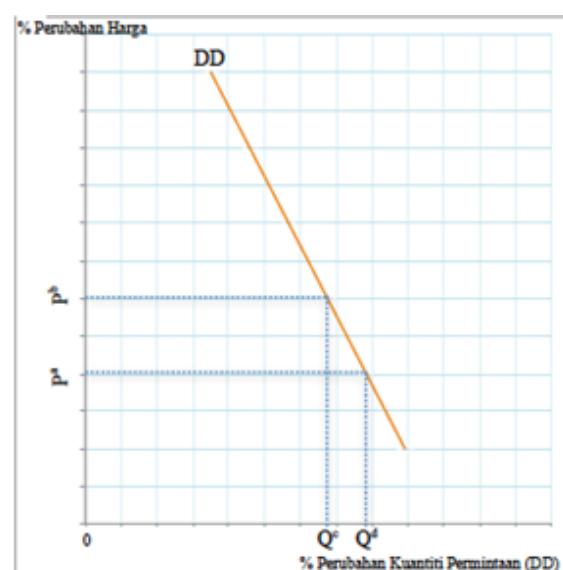
Tingkat harga dan kuantiti keseimbangan seperti ditunjukkan dalam Rajah 3 berlaku apabila keluk permintaan dalam Rajah 1 dan keluk penawaran dalam Rajah 2 bersilang. Rajah 4 pula menunjukkan kesan terhadap tingkat keseimbangan harga, PW dan kuantiti keseimbangan,  $Q_w$  apabila jumlah penawaran merosot sebanyak 1% iaitu dari SS ke SS' dikala jumlah permintaan DD tidak berubah. Didapati kemerosotan penawaran akan menyebabkan kenaikan harga keseimbangan kira-kira 1.1%, iaitu dari PW ke PW<sub>1</sub>, manakala kuantiti keseimbangan pula jatuh kira 0.55% iaitu dari QW ke QW<sub>1</sub>. Pada tingkat keseimbangan, kemerosotan penawaran sebanyak 1% akan mengakibatkan perubahan harga keseimbangan yang lebih besar berbanding kuantiti.

Apabila berlaku kemerosotan dalam hasil pengeluaran petani, sekiranya PW merupakan tingkat harga kawalan, maka untuk mengekalkan tingkat harga ini, kerajaan perlu meningkatkan subsidi atau insentif kepada petani agar pada masa yang sama petani tidak mengalami kerugian. Tanpa subsidi, harga pasaran beras tempatan akan naik kepada PW<sub>1</sub> dan ini secara tidak langsung akan memberi kesan kepada kuasa beli pengguna. Sekiranya kejatuhan penawaran adalah sebanyak 20%, tanpa kawalan kerajaan maka harga beras akan naik sebanyak 22%. Kenaikan ini akan memberi kesan terhadap pendapatan benar pengguna, dengan andaian faktor lain tidak berubah.

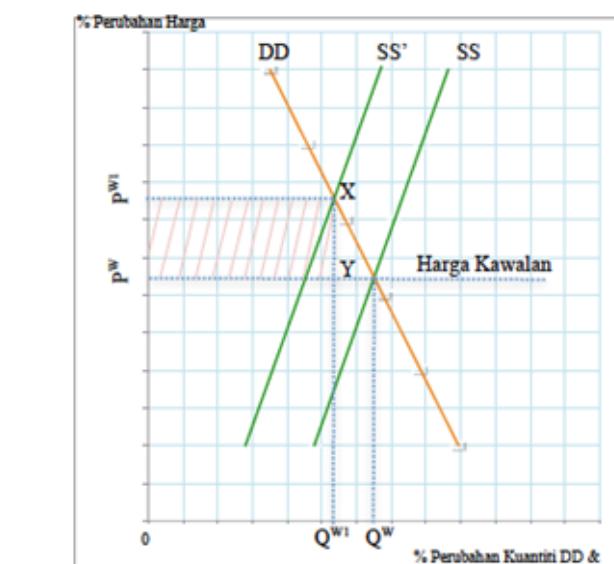
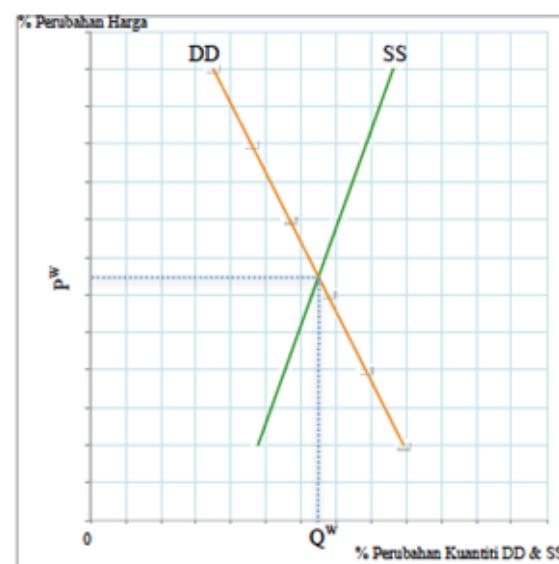
Bagi melindungi kebajikan pengguna, kerajaan akan memainkan perananya dengan menetapkan harga syiling yang kebiasaanya lebih rendah daripada harga yang ditentukan melalui kuasa pasaran. Namun, pada masa yang sama, kerajaan juga harus meningkatkan jumlah pemberian subsidi yang sedia ada bagi menampung kerugian petani. Berdasarkan Rajah 4, jumlah subsidi yang harus ditingkatkan adalah sebanyak PWPW1XY. Oleh yang demikian mekanisme subsidi seperti SSHP bukan sahaja penting bagi melindungi pengeluar padi malah dalam pada masa yang sama turut dapat melindungi pengguna khususnya ketika berlaku insiden luar jangka seperti banjir atau kemarau. Malah kedua-dua mekanisme SSHP dan dasar kawalan harga ini juga membolehkan pengeluaran petani padi tempatan terus kekal kompetitif dalam pasaran. Namun secara relatifnya, dasar kawalan harga beras yang diamalkan adalah lebih menguntungkan pihak pengguna berbanding petani (Nik Hashim Nik Mustapha 1998).



Rajah 1 Kelukpenawaranberastempatan



Rajah 2 Kelukpermintaanberastempatan



Rajah 3 Keluk keseimbangan beras tempatan

Rajah 4 Perubahan keluk keseimbangan  
beras tempatan akibat kemerosotan  
penawaran

Jadual 5 Keputusan regresi model mengikut fungsi bagi jumlah permintaan beras tempatan

<i>PembolehUbah</i>	<i>Koefisien</i>	<i>RalatPia wai</i>	<i>Statistik-T</i>
HBT	-0.5419	0.1672	**-3.241
HG	0.0869	0.1465	0.594
INC	-0.1721	0.1726	-0.990
POP	1.1216	0.0018	***14.107
Pemalar (C)	-1.9731	1.2451	*-1.816
$R^2$	0.955		
$R^2$ Terlaras	0.945		
DW	1.139		
Statistik-F	106.601		
BG-LM (Prob Chi-Sq)	0.265		

Signifikan: \*\*\*pada aras keertian 99% ( $p<0.01$ ); \*\*pada aras keertian 95% ( $p<0.05$ ); \*pada aras keertian 90% ( $p<0.01$ )

Sumber: Simulasi Penyelidik

Jadual 6 Keputusan regresi model mengikut fungsi bagi jumlah penawaran berast empatan

<i>Pemboleh Ubah</i>	<i>Koefisien</i>	<i>Ralat Piawai</i>	<i>Statistik-T</i>
HBT	0.3853	0.2227	*1.730
HBI	-0.0195	0.1156	-0.195
HPH	1.0200	0.2602	***4.693
Pemalar (C)	5.8774	0.2526	***23.271
$R^2$	0.700		
$R^2$ Terlaras	0.657		
DW	1.164		
Statistik-F	16.281		
BG-LM (Prob Chi-Sq)	0.146		

Signifikan: \*\*\*pada Aras keertian 99% ( $p<0.01$ ); \*\*pada aras keertian 95% ( $p<0.05$ ); \*pada aras keertian 90% ( $p<0.01$ )

Sumber: SimulasiPenyelidik

## **PERBINCANGAN DAN KESIMPULAN**

Secara purata jumlah pendapatan di kalangan petani padi di kawasan pengairan Muda sebanyak RM2162.70 sebulan. Berdasarkan kepada kajian yang dilakukan, petani padi di kawasan ini bergantung sepenuhnya kepada hasil tanaman padi sebagai sumber pendapatan utama. Kajian turut mendapati hasil tanaman padi menyumbang melebihi 70 peratus daripada keseluruhan pendapatan yang diperoleh. Daripada jumlah peratusan tersebut bantuan subsidi harga padi turut menyumbang sebanyak 10.25 peratus kepada keseluruhan pendapatan petani padi di kawasan Muda. Sekiranya kerajaan memutuskan untuk menarik semula bantuan subsidi ini, ia akan mewujudkan sebilangan petani padi sebanyak 1.8 peratus dikategorikan sebagai miskin tegar dan 9.3 peratus dikategorikan sebagai miskin.

Pendapatan bukan hasil pertanian turut menyumbang kepada pendapatan golongan petani padi namun peratusannya belum boleh dibanggakan hanya sekitar empat hingga 11 peratus daripada keseluruhan pendapatan yang diperoleh. Kajian mendapati bahawa petani padi bergantung kepada penerimaan subsidi bagi meningkatkan pendapatan utama. Perolehan kajian ini menjelaskan bahawa penglibatan kerajaan dalam menjamin penghidupan petani padi masih lagi diperlukan menerusi SSHP. Impak intervensi kerajaan melalui skim bantuan dan subsidi kerajaan telah berupaya meningkatkan pendapatan para petani dan dianggap sebagai insentif utama kepada petani dalam pengeluaran padi. Pada masa yang sama kerajaan perlu menanggung kos yang tinggi bagi pembiayaan subsidi setiap tahun. Untuk menghapuskan bantuan subsidi ini adalah tidak adil untuk para petani kerana rata-rata di kalangan mereka terdiri daripada petani berskala kecil dan bergantung sepenuhnya kepada tanaman ini sebagai punca pendapatan. Kajian yang dilakukan oleh Amin Mahir et al. (2010) turut menjelaskan bahawa skim subsidi telah berupaya meningkatkan pendapatan pesawah, tetapi sekiranya tiada sebarang skim subsidi, industri pengeluaran padi tidak mempunyai daya ketahanan yang tinggi serta tidak berdaya maju.

Bagi memastikan petani padi terus bertahan dalam berhadapan dengan situasi mudah terancam dan tidak bergantung harap kepada bantuan kerajaan, dicadangkan beberapa implikasi polisi yang boleh dipertimbangkan bagi memastikan kelestarian golongan ini terus terbelia.

i. Penstrukturkan semula bantuan dan subsidi kerajaan

Bagi memastikan para petani terus bertahan dalam berhadapan sebarang situasi di luar jangka, penglibatan kerajaan melalui SSHP perlu diteruskan dan perlu ditingkatkan melebihi 50 peratus. Ini kerana pada masa sekarang SSHP hanya menyumbang 30 peratus daripada keseluruhan harga padi (Radin Firdaus & Ahmad Zubir 2013). Peningkatan SSHP adalah bertujuan untuk menahan dan mengelak golongan ini masuk ke dalam kumpulan mudah terancam. Pemberian SSHP perlu diagihkan berdasarkan nilai produktiviti yang dikeluarkan oleh para petani bukan kepada keluasan tanah semata-mata. Perkara ini adalah penting sebagai suntikan motivasi kepada para petani untuk berusaha meningkatkan hasil pengeluaran sekaligus dapat menikmati SSHP yang tinggi. Dalam pada masa yang sama, kualiti pengeluaran padi tempatan juga perlu dipertingkatkan dari masa ke masa supaya setanding mahupun lebih baik dari pengeluaran padi yang diimport. Ini seterusnya membolehkan pengeluaran padi negara untuk bersaing di pasaran tempatan dan antarabangsa.

ii. Memperluas peluang menambah pendapatan luar ladang

Para petani digalakkan mengusahakan aktiviti luar ladang untuk menambah hasil pendapatan. Tanah-tanah yang terbiar dan tidak berekonomi boleh diusahakan dengan tanaman lain(kenaf) atau ternakan ikan air tawar bagi mengelakkan pembaziran sumber yang sedia ada. Bagi tujuan ini, pihak agensi kerajaan seperti Pertubuhan Peladang perlu memainkan peranan sebagai kawal selia dan memberi bmbingan serta galakan kepada petani yang menyertai aktiviti ini.

- iii. Meningkatkan pencapaian dan keperluan aset manusia  
Melalui aset ini, para petani dapat menentukan hala tuju serta sasaran penghidupan melalui kemampuan yang dimiliki. Pemilikan latihan serta pengetahuan secara langsung dapat membantu golongan ini untuk merencanakan sumber yang sedia ada bagi mempertingkatkan kualiti penghidupan. Sebagai institusi yang paling hampir dengan petani padi, Pertubuhan Peladang boleh menjalankan usaha ini melalui ketua unit atau ketua blok masing-masing. Permasalahan yang dihadapi oleh golongan sasaran akan dapat membantu pihak berkaitan merangka bentuk latihan yang diperlukan bagi mengatasi masalah yang wujud.
- iv. Meningkatkan penglibatan petani dalam aktiviti persatuan  
Kekurangan penglibatan petani padi di kawasan pengairan Muda dalam aktiviti berpersatuan perlu diberi penekanan dan perhatian. Tidak dapat dinafikan bahawa penglibatan dalam rangkaian sosial dapat mempertingkatkan keyakinan serta ketahanan diri setiap petani. Melalui penglibatan dalam aktiviti persatuan juga, ilmu pengetahuan petani dapat ditingkatkan. Dalam konteks ini, Pertubuhan Peladang, atau Badan Bukan Kerajaan sebagai contoh perlu memainkan peranan yang penting bagi menarik minat petani padi untuk menyertai persatuan. Melalui berpersatuan, akan mengujudkan rangkaian sosial dan akhirnya keterbukaan minda para petani dapat ditingkatkan. Kesannya akan memudahkan program transformasi yang dilakukan dapat dilakukan.

## **RUJUKAN**

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# **MENENTUKAN DAN MENGHITUNG KERUGIAN KEUANGAN NEGARA DALAM TINDAK PIDANA KORUPSI DI INDONESIA**

Piatur Pangaribuan<sup>1</sup>

## **INTISARI**

Pemerintah Indonesia saat ini terus bergiat memberantas tindak pidana korupsi dimana lembaga negara seperti Komisi Pemberantasan Korupsi (KPK), Polisi Republik Indonesia (Polri), Kejaksaan, Badan Pemeriksa Keuangan (BPK), Kehakiman serta Badan Pengawasan Keuangan dan Pembangunan (BPKP) dan profesi advokat maupun akademisi sering berbeda pandangan hukum dalam menentukan kerugian keuangan negara yang bersumber dari anggaran pendapatan dan belanja negara (APBN) dan anggaran pendapatan dan belanja daerah (APBD), hal ini terlihat pada salah satu kasus dugaan korupsi 40 anggota DPRD Kabupaten Kutai Kartanegara, Kaltim tahun 2005 di Indonesia. Hal ini terjadi karena pendekatan keilmuan untuk menentukan dan menghitung kerugian keuangan negara tidak interdisiplin ilmu, sementara dalam peristiwa hukum tersebut terdapat tiga ilmu yang terkait yakni; ilmu hukum, ilmu akuntansi dan ilmu auditing. Upaya agar penentuan yurisdiksi peristiwa hukum dan menghitung kerugian keuangan negara akurat maka harus dipergunakan pendekatan interdisiplin ilmu. Secara konseptual dapat dibagi empat tahap proses menghitung kerugian keuangan negara dalam tindak pidana korupsi ke dalam empat tahap yakni: tahap pertama; menemukan perbedaan antara apa yang ditetapkan dalam APBN maupun dalam APBD dengan apa yang dilaksanakan. tahap kedua: menentukan ada tidaknya kerugian keuangan negara, tahap ketiga: menghitung besarnya kerugian keuangan negara, jika memang ada, tahap keempat: menetapkan kerugian negara. Pengunaan keuangan negara baik yang bersumber dari APBN maupun APBD yang tidak sesuai antara yang diatur dalam undang-undang APBN dan Peraturan Daerah APBD tidak serta merta masuk yurisdiksi tindak pidana korupsi. Untuk menguji perbuatan tersebut dapat mempergunakan alat bantu teori konversi alat bukti untuk menentukan apakah peristiwa hukum tersebut merupakan peristiwa tindak pidana (korupsi), hukum administrasi negara atau bahkan peristiwa perdata.

**Kata kunci:** Interdisiplin Ilmu, Yurisdiksi, APBN/APBD, Kerugian Negara dan Alat Bukti

## **PENDAHULUAN**

Pemerintah Indonesia saat ini terus bergiat memberantas tindak pidana korupsi dimana lembaga negara seperti Komisi Pemberantasan Korupsi (KPK), Polisi Republik Indonesia (Polri), Kejaksaan, Badan Pemeriksa Keuangan (BPK), Kehakiman serta Badan Pengawasan Keuangan dan Pembangunan (BPKP) dan profesi advokat maupun akademisi sering berbeda pandangan hukum dalam menentukan dan menghitung kerugian keuangan negara yang bersumber dari anggaran pendapatan dan belanja negara (APBN) dan

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<sup>1</sup>.Riwayat Pendidikan AM.d, SH., MH., Dr., Dosen Pascasarjana Megister Ilmu Hukum, Universitas Balikpapan, Kalimantan Timur, Indonesia, Penang-Malaysia, 29-30 Nopember 2014.

anggaran pendapatan dan belanja daerah (APBD), hal ini terlihat pada salah satu kasus dugaan korupsi 40 anggota DPRD Kabupaten Kutai Kartanegara, Kaltim tahun 2005 di Indonesia.<sup>2</sup>

Lembaga negara maupun profesi dalam menentukan kerugian keuangan negara memiliki sudut pandang yang berbeda berdasarkan keilmuan masing-masing secara mandiri sehingga menimbulkan perdebatan di antara sesama penegak hukum termasuk juga kalangan akademisi. Hal ini terlihat pada kasus dugaan korupsi Sekretaris Dewan dan 40 anggota DPRD Kabupaten Kutai Kartanegara di Kaltim tahun 2005, diduga melakukan tindak pidana korupsi biaya perjalanan dinas secara ganda oleh Polisi Daerah (Polda) Kalimantan Timur, BPK menghitung kerugian keuangan negara dan Kejaksaan Tinggi Kalimantan Timur membawa kepengadilan negeri Tenggarong, diadili tetapi bebas pada pengadilan negeri tingkat pertama<sup>3</sup> dan tingkat kasasi. Kasus ini menjadi perhatian publik dan menimbulkan pertanyaan dalam masyarakat hukum, sesungguhnya masuk dalam wilayah hukum (yurisdiksi) apa peristiwa hukum tersebut, sehingga diperlukan analisa hukum yang tepat dalam menentukan dan menghitung kerugian negara agar ada kepastian hukum bagi setiap orang dalam menjalankan tugasnya, baik masyarakat yang memiliki kepentingan dengan pemerintah yang ada kaitanya dengan pembiayaan yang bersumber dari anggaran pendapatan dan belanja negara (APBN) maupun pembiayaan dari anggaran pendapatan dan belanja daerah (APBD).

## RUMUSAN MASALAH

Upaya apa yang dilakukan lembaga negara KPK, Polri, Kejaksaan, Kehakiman, BPK, BPKP, profesi advokat maupun akademisi dalam menentukan yurisdiksi dalam menentukan dan menghitung kerugian keuangan negara?.

## TUJUAN PENELITIAN

Untuk mengetahui upaya yang dilakukan lembaga negara KPK, Polri, Kejaksaan, Kehakiman, BPK, BPKP, profesi advokat maupun akademisi dalam menentukan yurisdiksi dalam menentukan dan menghitung kerugian keuangan negara?.

## LANDASAN TEORITIK

Dalam pembahasan akan menggunakan beberapa teori meliputi; teori Pemisahan dan Pembagian Kekuasaan (John Locke dan Montesque), Teori ini dipergunakan sebagai *grand theory* untuk mengetahui batasan kewenangan yang diperoleh secara hukum.<sup>4</sup> Teori Perundang-undangan, teori ini dipergunakan sebagai *middle theory* untuk menguji keabsahan perundang-undangan<sup>5</sup> dan teori kebenaran (Sonny Keraf dan Mikhail Dua) akan

<sup>2</sup> UU No. 20 Tahun 2001 tentang Perubahan atas UU Nomor 31 tahun 1999 tentang Pemberantasan Tindak Pidana Korupsi, UU No 2 Tahun 2002 tentang Kepolisian Negara Republik Indonesia, UU No. 16 Tahun 2004 tentang Kejaksaan, UU No. 15 Tahun 2006 tentang Badan Pemeriksa Keuangan, Peraturan Presiden No. 64 Tahun 2005 tentang Perubahan keenam atas Keputusan Presiden No. 103 Tahun 2001 tentang Kedudukan, Tugas, Fungsi, Kewenangan, Susunan Organisasi, dan Tata Terja Lembaga Pemerintah non Departemen, UU No. 48 Tahun 2009 tentang Kehakiman dan UU No. 18 Tahun 2003 tentang Advokat.

<sup>3</sup> Putusan Perkara Pidana No.260/Pid.B/2010/PN.Tgr., Putusan Tanggal 6 Desember 2011, hal. 91.

<sup>4</sup> Jazim Hamidi dkk, *Teori dan Politik Hukum Tata Negara (Green Mind Community)*, (Yogyakarta: Total Media, 2009), hal. 46.

<sup>5</sup> Zazim Hamidi & Budiman Sinaga N.P.D, *Pembentukan Perundang-Undangan Dalam Sorotan* (Jakarta: Tatanusa, 2010), hal. 2.

dipergunakan sebagai *applied theory* keabsahan pemeriksaan keuangan negara yang ada kaitanya dalam menentukan dan menghitung kerugian keuangan negara.<sup>6</sup>

## LANDASAN KONSEPTUAL

### Sistem hukum

Keterpisahan itu merupakan sebab utama kesulitan pembangunan kebenaran (*the objectivity*) cabang ilmu itu.<sup>7</sup> Hukum adalah sebuah sistem yang memiliki keterkaitan dengan ilmu lain (inter-disipliner ilmu).<sup>8</sup> Menurut Visser T. Hoof memberi defenisi sistem adalah sesuatu yang terdiri dari sejumlah unsur atau komponen yang selalu pengaruh mempengaruhi dan terkait satu sama lain oleh satu atau beberapa asas, sementara R. Subekti memberi defenisi sistem adalah suatu susunan/tatanan yang teratur, suatu keseluruhan yang terdiri atas bagian-bagian yang berkaitan satu sama lain menurut suatu rencana/pola, hasil dari suatu pemikiran untuk mencapai suatu tujuan.<sup>9</sup>

### Hukum administrasi negara

Sebagaimana telah disampaikan oleh Prajudi Atmosudirdjo yakni, hukum administrasi negara terdiri atas; 1. filsafat dan dasar-dasar umum pemerintahan dan administrasi negara, 2. organisasi pemerintahan dan administrasi negara, 3. tata pemerintahan, 4. kegiatan-kegiatan operasional administrasi negara, 5. administrasi keuangan negara meliput; mengenai:<sup>10</sup> a. hukum anggaran; b. hukum perpendaharaan; c. hukum perpajakan; d. hukum kekayaan negara; e. hukum pengawasan keuangan negara; f. hukum peradilan keuangan negara. Menurut Rachmat, akuntansi erat kaitanya dengan hukum administrasi negara yang keduanya diperlukan dalam pemerintahan.<sup>11</sup> Hukum administrasi yang dimaksudkan Rachmat dalam hal ini akuntansi, lebih khusus akuntansi keuangan. Steven Barkan juga menegaskan, bahwa "... *the process of legal research often involves investigation into other relevant disciplines*".<sup>12</sup>

## PEMBAHASAN

### Lembaga negara dan institusi dalam menentukan dan menghitung kerugian negara berdasarkan kewenagan yang diberikan perundang-undangan.

Dalam menentukan dan menghitung kerugian keuangan negara sering terjadi perbedaan pendapat, pada satu sisi menurut auditor BPK ataupun BPKP yang juga memiliki latarbelakang akuntansi dan audit sering melihat pembiayaan yang terdapat dalam APBN/APBD yang sangat besar dan dianggap tidak efektif dan effisien di sisi lain pembiayaan sudah ditetapkan dan telah menjadi undang-undang APBN, pada pemerintah pusat disebut Undang-Udang tentang APBN dan di pemerintah daerah disebut Peraturan Daerah tentang APBD.

Bentuk keberlakuan suatu kaidah hukum dibentuk sesuai dengan aturan-aturan hukum, secara prosedural oleh badan yang berwenang. Secara substansial tidak bertentangan

<sup>6</sup>.Sonny Keraf dan Mikhail Dua dalam Hyronimus Rhiti, *Filsafat Hukum* (Yogyakarta, 2011), hal. 320.

<sup>7</sup>. Lili Rasjidi dan Ida Bagus Wyasa Putra, *Hukum Sebagai Suatu Sistem*, Edisi Kedua (Bandung: Fikahati Aneska, 2003), hal. iii

<sup>8</sup>. *Ibid.*

<sup>9</sup>. I Gede Pantja Astawa dan Suprin Na'a, 2008, *Dinamika Hukum dan Ilmu Perundang-Undangan di Indonesia*, (Bandung: 2008), hal. 40.

<sup>10</sup>.Prajudi Atmosudiro, *Hukum Administrasi Negara*, Cetakan Kedelapan, (Jakarta; Ghalia Indonesia, 1986), hal. 67

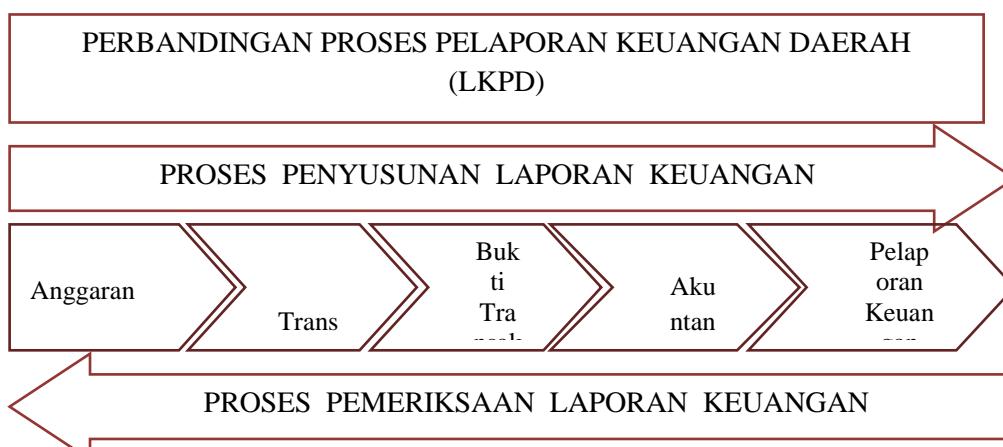
<sup>11</sup>. Rachmat, *Akuntansi Pemerintah* (Bandung: Pustaka Setia, 2010), hal. 99.

<sup>12</sup>.Johnny Ibrahim, 2011, *Teori & Metodologi Penelitian Hukum Normatif* (Malang; Bayumedia Publishing, 2011), hal. 300.

dengan kaidah-kaidah hukum lainnya, terutama kaidah hukum yang lebih tinggi. Menurut W.Zevenbergen keberlakuan hukum terjadi jika hukum itu dibentuk berdasarkan cara yang ditetapkan menurut hukum, yang sering disebut *formalisme*.<sup>13</sup> Sementara menurut Logemann, bahwa keberlakuan ini ada jika dalam hukum itu secara sistematis terdapat hubungan keharusan antara suatu kondisi dan akibatnya.<sup>14</sup> Menurut Brunggink, bahwa keberlakuan *normative/formal/yuridis* suatu hukum, jika kaidah itu merupakan bagian dari suatu sistem kaedah hukum tertentu yang di dalamnya kaidah-kaidah hukum itu yang menunjuk satu dengan yang lain.<sup>15</sup>

Menurut Arifin Sabeni dan Imam Ghozali, selain hal diatas, pemeriksaan ini dapat bersifat pertimbangan (*judgment*) mengenai kondisi-kondisi tertentu seperti kehematan, keserasian dan pertimbangan-pertimbangan lainnya yang dianggap perlu. Bisa juga terjadi mengenai suatu pengeluaran, meskipun menurut pemeriksaan formal sudah memenuhi syarat, tetapi menurut pemeriksaan materiil tidak memenuhi syarat, *pengeluaran tersebut dapat dibatalkan karena pengeluaran dianggap pemborosan*.<sup>16</sup>

Pendapat di atas dari perspektif ilmu akuntansi dan auditing dapat diterima tetapi dari sisi hukum pidana ini menjadi perbuatan pidana yang merugikan keuangan negara, kemudian muncul persoalan hukum bahwa yang diperiksa ini merupakan undang-undang dan masih sah dan berlaku sementara auditor mengatakan dapat dibatalkan. Apakah auditor memiliki kewenangan secara hukum untuk membatalkan peraturan tersebut menjadi pembahasan dalam materi ini. Menurut Fredrick D.S. Choi dan Gary K. Meek, *auditor* seringkali melampaui kewenangan yang diberikan undang-undang mengenai batasan laporannya.<sup>17</sup> M. Yusuf Johan dan Dwi Setiawan S memberikan bagan perbandingan antara proses pelaporan keuangan pemerintah daerah dan pemeriksaan keuangan daerah sebagaimana digambarkan dalam bagan berikut:<sup>18</sup>



Bagan 1.1. : Proses Penyusunan LKPD dan Proses Pemeriksaan LKPD

<sup>13</sup>. Dominikus Rato, *Filsafat Hukum: Mencari, Menemukan dan Memahami Hukum*, (Surabaya: LaksBang Justitia, 2011), hal. 142-143.

<sup>14</sup>. *Ibid.*

<sup>15</sup>. *Ibid.*

<sup>16</sup>. Arifin Sabeni dan Imam Ghozali, *Pokok-Pokok Akuntansi Pemerintahan*, Edisi Keempat, Cetakan Ketiga (Yogyakarta: BPFE-Yogyakarta, 2001), hal. 18-19.

<sup>17</sup>. Fredrick D.S. Choi dan Gary K. Meek, *International Accounting (Akuntansi Internasional)*, (Jakarta: Salemba Empat, 2010), hal. 112.

<sup>18</sup>. M. Yusuf Johan dan Dwi Setiawan S, *Kiat Memahami Pemeriksaan Laporan Keuangan Pemerintah Daerah di Indonesia*, (, Jakarta: Gramedia Pustaka Utama, 2009), hal. 55

Berdasarkan bagan 1.1. jelas tergambar bahwa pemeriksaan (auditing) yang dilakukan hanya mencocokan apa yang ditetapkan dan apa yang dilakukan, apakah sudah sesuai atau tidak. Bagan 1.1. ini juga sesuai dengan teori normatif dan teori deskriptif Dalam teori normatif merupakan teori yang seharusnya dilaksanakan dan teori deskriptif yang merupakan teori yang sesungguhnya dilaksanakan.<sup>19</sup> Teori ini juga sejalan dengan standar akuntansi pemerintahan merupakan norma konkret, sehingga dijadikan sebagai acuan dalam pelaksanaan audit investigatif, sebagaimana diasampaikan I Gusti Agung Rai, pemeriksaan (*auditing*) adalah; kegiatan membandingkan suatu kriteria (apa yang seharusnya) dengan kondisi (apa yang sebenarnya terjadi).<sup>20</sup>

Dalam kontek pemeriksaan yang dilakukan baik oleh BPK, bila ditemukan perbedaan apa yang seharusnya dengan apa yang dilaksanakan, maka masuk dalam yurisdiksi hukum apa peristiwa hukum tersebut. Apakah peristiwa hukum yang terjadi dalam teori normatif dengan teori deskritif bertentangan sudah otomatis masuk peristiwa tindak pidana korupsi?. Menurut Jean Rivero dan Waline sebagaimana dikuti oleh Indriyanto SenoAdji, pengertian penyalahgunaan kewenangan dalam hukum administrasi dapat diartikan dalam tiga wujud, yaitu:

- a. penyalahgunaan kewenangan untuk melakukan tindakan-tindakan yang bertentangan dengan kepentingan umum atau untuk menguntungkan kepentingan pribadi, kelompok atau golongan;
- b. penyalahgunaan kewenangan dalam arti bahwa tindakan pejabat tersebut adalah benar ditujukan untuk kepentingan umum, tetapi menyimpang dari tujuan apa kewenangan tersebut diberikan oleh undang-undang atau peraturan lain;
- c. penyalahgunaan kewenangan dalam arti menyalahgunakan prosedur yang seharusnya digunakan untuk mencapai tujuan tertentu, tetapi telah menggunakan prosedur lain agar terlaksana.<sup>21</sup>

### **Penentuan dan menghitung kerugian keuangan negara menggunakan pendekatan interdisiplin ilmu.**

Penjelasan Theodorus M. Tuanakotta, dalam bukunya "Akuntansi Forensik dan Audit Investigatif" edisi kedua, IAPI belum menerbitkan standar audit investigatif.<sup>22</sup> Bahkan ada akuntan yang tidak menyadari bahwa apa yang dikerjakannya termasuk dalam lingkup akuntansi forensic.<sup>23</sup> Bawa auditor BPK juga menegaskan, "apakah pemeriksaan yang dilaksanakan pemeriksa sekarang ini telah sama dengan apa yang pernah dipelajarinya dalam buku-buku auditing? mungkin kita bahkan tidak tahu apakah sama atau bahkan tidak pernah sama".<sup>24</sup> Karena kenyataanya memang belum ada standar audit investigatif apalagi audit forensik. Sementara kejadian *extra-ordinary* maka keilmuannya dalam mengidentifikasi kerugian keuangan negara juga harus *extra-ordinary*. Contoh saat ini akuntansi forensik juga

<sup>19</sup>. Abdul Halim, *Auditing 1, Dasar-Dasar Audit Laporan Keuangan*, (Yogyakarta: Unit Penerbit dan Percetakan (UPP) AMP YKPN), 2001), hal. 29.

<sup>20</sup>. I Gusti Agung Rai, *Audit Kinerja Pada Sektor Publik (Konsep, Praktek dan Studi Kasus)*, (Jakarta: Salemba Empat, 2010), hal. 29

<sup>21</sup>. Indriyanto Seno Adji, *Memahami Hukum; Dari Konstruksi Sampai Implementasi*, (Jakarta: Rajagrafindo Persada,2009), hal. 169.

<sup>22</sup>. Theodorus M. Tuanakotta, *Akuntansi Forensik dan Audit Infestigatif* (Jakarta: LP-Fakultas Ekonomi Universitas Indonesia, 2007), hal. iii.

<sup>23</sup>*Ibid.*, hal. 5.

<sup>24</sup>.M. Yusuf Jhon dan Dwi Setiawan S, *Kiat Memahami Pemeriksaan Laporan Pemerintahan Daerah di Indonesia*, Jakarta, PT. Gramedia Pustaka Utama, 2009, hal. 54.

dipergunakan dalam kasus yang sangat kompleks, yakni Bank Century. Diagram akuntansi forensik tergambar sebagai berikut:<sup>25</sup>



Bagan 1.2. : Diagram akuntansi forensik

Tindak pidana korupsi terjadi jika ada kaitanya yang merugikan keuangan negara yang bersumber dari APBN maupun APBD. Menentukan kerugian negara tidak hanya dilihat dari perspektif hukum pidana tetapi juga harus dilihat dari ilmu lain yang terkait dalam hal ini akuntansi dan auditing hal ini juga sejalan dengan pengertian sistem baik sistem dalam perspektif hukum, maupun sistem dari perspektif akuntansi dan auditing. Keterpisahan itu merupakan sebab utama kesulitan pembangunan kebenaran (*the objectivity*) cabang ilmu itu.<sup>26</sup> Menurut Mr. JJ. H. Bruggink, "membangun suatu sistem hukum yang secara logikal tertutup adalah suatu kemustahilan".<sup>27</sup>

Sementara Sudikno Mertakusumo bahwa sistem hukum terbuka mempunyai hubungan timbal balik dengan lingkungannya. Dimana sistem hukum merupakan kesatuan unsur-unsur (yakni peraturan dan penetapan) yang dipengaruhi oleh kebudayaan, sosial, ekonomi, sejarah dan sebagainya. Dan sebaliknya sistem hukum mempengaruhi faktor-faktor di luar sistem hukum tersebut. Peraturan-peraturan hukum itu terbuka untuk penafsiran yang berbeda, oleh karena itu terjadi perkembangan. Dengan demikian dapat dikatakan bahwa sistem hukum di Indonesia berbentuk sistem hukum terbuka.<sup>28</sup>

Agar dapat memberikan acuan keilmuan dalam menentukan dan menghitung kerugian keuangan negara maka menjadi sangat penting untuk mempertimbangkan dari multi disiplin ilmu untuk menentukan peristiwa hukum tersebut, apakah peristiwa hukum tersebut peristiwa pidana, peristiwa hukum administrasi negara bahkan tidak menutup kemungkinan peristiwa perdata

### **Penentuan yurisdiksi peristiwa hukum dan perhitungan kerugian keuangan negara**

Menurut Indriyanto Seno Adji, pemahaman yang berkembang dalam praktik peradilan tidaklah semudah kajian akademik memberikan solusinya, permasalahannya adalah manakala aparatur negara dianggap melakukan perbuatan menyalahgunakan kewenangan dan melawan hukum, artinya mana yang dijadikan ujian bagi penyimpangan aparatur negara ini, hukum administrasi negara ataukah hukum pidana, khususnya dalam perkara-perkara

<sup>25</sup>.*Ibid.*, hal. 18.

<sup>26</sup>.Lili Rasjidi dan Ida Bagus Wyasa Putra, *Hukum Sebagai Suatu Sistem*, Edisi Kedua (Bandung: Fikahati Aneska, 2003), Loc.Cit., hal. iii

<sup>27</sup> . JJ. H. Bruggink, *Refleksi Tentang Hukum, Pengertian Pengertian Dasar Dalam Teori Hukum* , Alih Bahasa B. Arief Sidharta, Cetakan Ketiga (Bandung: Citra Aditya Bakti,2011), hal.137-138.

<sup>28</sup>.Mokhammad Najih dan Soimin, *Pengantar Hukum Indonesia, Sejarah, Konsep Tata Hukum dan Politik Hukum Indonesia*, Cetakan Pertama, Setara Press (kelompok Penerbit Intrans), Jatim, 2012, hal. 69.

tindak pidana korupsi. Pemahaman yang berkaitan dengan penentuan yurisdiksi inilah yang sangat terbatas dalam kehidupan praktik yudisial.<sup>29</sup>

Dalam menjawab kompleksitas persoalan dewasa ini, maka lahir teori sistem ekologi administrasi dari Pfiffner dan Presthus, sebagaimana dikutip Faried Ali. Dalam lokus negara, maka teori sistem ekologi administrasi akan melihat administrasi negara sebagai suatu sistem yang di dalamnya terdapat sub-sistem yang saling mempengaruhi, sub-sub sistem terdiri dari subsosial seperti hukum, sosial, dan budaya, serta politik; serta subsistem alam seperti iklim, temperatur udara, dan sebagainya.<sup>30</sup>

Berdasarkan teori sistem ekologi administrasi, menegaskan adanya kaitan antara disiplin ilmu. Dalam konteks hubungan hukum dan politik, dalam pengawasan perundang-undangan dapat dilakukan melalui *legilatif review*, khususnya pada saat terjadinya penyusunan anggaran pendapatan dan belanja. Menurut Philipus M. Hadjon, yang dikutip oleh Firman Wijaya mengatakan, bahwa dalam penanganan korupsi dan suap terkait kewenangan jabatan, maka wewenang merupakan konsep inti dari hukum tata negara (HTN), dan hukum administrasi negara (HAN) yang sangat diperlukan sebagai pisau analisis.<sup>31</sup> Demikian juga akademisi dan sekaligus praktisi keuangan dan *auditing* yakni Theodorus M. Tuanakkotta menegaskan ada persinggungan antara hukum, akutansi dan auditing.

Langkah pertama dalam menentukan kerugian keuangan negara, terlebih dahulu memetakan yuridiksi peristiwa hukum suatu perkara setelah auditor BPK melakukan audit antara apa yang ditetapkan dengan apa yang dilaksanakan atas APBN maupun APBD. Dalam menentukan kerugian keuangan negara baik pada pemerintah pusat maupun pemerintah daerah ada beberapa tahapan-tahapan yang harus dilakukan. Theodorus M. Tuanakkotta menegaskan, secara konseptual dapat dibagi proses berkenaan dengan kerugian keuangan negara dalam tindak pidana korupsi ke dalam tiga tahap yakni; tahap pertama: menentukan ada atau tidaknya kerugian negara kerugian negara, tahap kedua: menghitung besarnya kerugian keuangan negara tersebut, jika memang ada, tahap ketiga: menetapkan kerugian negara.<sup>32</sup>

Sementara menurut Piatur Pangaribuan, dalam menentukan kerugian keuangan negara atau daerah ada satu tahapan yang harus ditambahkan dalam tahapan menghitung kerugian keuangan negara yang sebenarnya sudah dilakukan dan merupakan fungsi utama auditor BPK yakni melakukan analisa perbandingan antara apa yang ditetapkan dalam APBD maupun dalam APBN dan apa yang dilaksanakan. Dengan demikian secara konseptual dapat dibagi proses berkenaan dengan penentuan dan penghitungan kerugian keuangan negara dalam tindak pidana korupsi ke dalam empat tahap yakni: tahap pertama: menemukan perbedaan antara apa yang ditetapkan dalam APBD maupun dalam APBN dengan apa yang dilaksanakan, tahap kedua: menentukan ada atau tidaknya kerugian keuangan negara, tahap ketiga: menghitung besarnya kerugian keuangan negara tersebut, jika memang ada, dan tahap keempat: menetapkan kerugian keuangan negara.

Rachmat menegaskan akutansi memiliki hubungan erat dengan hukum administrasi negara sebagaimana digambarkan dalam Teori Sistem Ekologi Administrasi.<sup>33</sup> Dalam kontek penentuan yurisdiksi hukum, pendekatan sangat ideal melalui pendekatan konversi alat bukti. Konversi alat bukti membantu memberikan gambaran suatu peristiwa hukum tersebut,

<sup>29</sup>. Indiyanto Seno Adji, *Korupsi dan Penegakan Hukum*, Cetakan Pertama( Jakarta: Diata Media, 2009), hal.2-3

<sup>30</sup> . H. Farid Ali, *Teori Dan Konsep Administrasi*, (Jakarta; Rajagrafindo Persada, 2011), hal. 117.

<sup>31</sup>. Firman Wijaya, *Delik Penyalahgunaan Jabatan dan Suap Dalam Praktek*, Penaku, Jakarta, 2011, hal. 14.

<sup>32</sup>. Theodorus M. Tuanakkotta, *Menghitung Kerugian Negara, Dalam Tindak Pidana Korupsi*, (Jakarta: Salemba Empat, 2009), hal. 131.

<sup>33</sup>.Rachmat, *Akuntansi Pemerintah*, (Bandung: Pustaka Setia, 2010), hal. 99.

dimanakah sesungguhnya yurisdiksi hukum tersebut, apakah masuk dalam yurisdiksi hukum pidana, hukum administrasi negara atau bahkan hukum perdata. Piatur Pangaribuan menyebut sebagai teori konversi alat bukti.<sup>34</sup>

## KESIMPULAN

Lembaga negara seperti KPK, Polri, Kejaksaan, Kehakiman, BPK, BPKP, profesi advokat maupun akademisi dalam menentukan dan menghitung kerugian keuangan negara yang bersumber dari APBN dan APBD memiliki pendekatan keilmuan secara mandiri untuk menentukan yurisdiksi peristiwa hukum yang mengakibatkan tidak tepat dalam menentukan yurisdiksi peristiwa hukum. Secara konseptual juga belum menarapkan empat tahap proses menghitung kerugian keuangan negara.

## SARAN

Agar lembaga negara seperti KPK, Polri, Kejaksaan, Kehakiman, BPK, BPKP, profesi advokat maupun akademisi dalam menentukan dan menghitung kerugian keuangan negara yang bersumber dari APBN dan APBD menggunakan pendekatan keilmuan secara multidisiplin ilmu untuk menentukan yurisdiksi peristiwa hukum agar tepat dalam menentukan yurisdiksi peristiwa hukum. Secara konseptual juga harus menarapkan empat tahap proses menghitung kerugian keuangan negara.

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# THE REALIZATION OF THE RIGHT TO FOOD IN NIGERIA: GOOD GOVERNANCE AS THE MISSING ELEMENT

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Muhammad Bello<sup>2</sup>

## ABSTRACT

The promotion and protection of human rights has become a global standard often employed to measure a country's commitment to democracy and good governance. With the flexibility of the human rights jurisprudence, the right to food is increasingly becoming an acceptable universal norm designed to aid in the realization of a number of socio-economic rights and address the critical challenges facing many developing countries, including Nigeria. However, it is an emerging right that is gradually evolving, and like most emerging rights, there are pressing challenges militating against its realization in national legal systems. Although recognized as a right in Nigeria, there are governance, institutional and legal hurdles towards its realization. The general state of socio-economic rights in Nigeria may be linked to the increasing poor governance and corresponding underdevelopment, poverty, inequality, malnutrition and deaths. Drawing from the developments in India, Brazil and South Africa and using the provisions of the 1999 constitution, and other relevant domestic and international instruments on the right to food, the paper argues that the realization of this important right largely depends on the ideal of good governance. In this regard, it identifies the legal hurdles to its realization and argues that given the importance of food to human survival, the right to food should be placed on an equal pedestal with all recognized legal rights in Nigeria. The paper recommends a constitutional amendment, judicial activism and adherence to the ideals of the rule of law, good governance and constitutionalism for effective realization of the right to food in Nigeria. The paper also recommends the enactment of a legislation on food security in the country.

**Key words:** Human rights, rights to food, good governance, Nigeria

## INTRODUCTION

Over the past fifty years, the troubling manifestations of Nigeria's economic status have been abject poverty, massive hunger, wretchedness and malnutrition. These negative development indices have constantly undermined the full enjoyment of the recognized and guaranteed fundamental human rights of the citizens raising key but often ignored governance questions that directly touch on the corporate existence and sustainability of the country over the long term. There is increasing universal consensus that good governance is a necessary imperative for the full realization of the goals of modern welfare states.<sup>3</sup> Responsibility in governance, conscious and purposeful leadership, adherence to the ideals of the rule of law, democratic governance and accountability are increasingly becoming

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<sup>3</sup> Eric A. Posner, 'Human Welfare, Not Human Rights', *Columbia Law Review*, Vol. 108, No. 7 (Nov., 2008), pp. 1758-1801; Badamasiy, J., & Bello, M., 'An Appraisal of Administrative Justice and Good Governance in Nigeria', *Canadian Journal of Politics and Law*, Vol. 6, No. 2, (2013) pp216-230

potent universal ideals whose main target is improving the lot and living conditions of the individual for a more dignified, productive, valuable, sustainable and healthy livelihood. The Nigerian constitution and other corpus juris on human rights have recognized these universal ideals for actualizing the goals of the welfare state. However, in functional terms these explosive ideas have remained largely unemployed in the governance of the country as a significant percentage of the people is still wallowing in wretchedness, poverty and hunger compounded by the rising level of food insecurity, economic misdirection, gloomy climatic conditions and natural disasters. Therefore, this paper argues that an environment where good governance flourishes is a fertile ground for not just the progressive but also full realization of the right to food (RTF). In the words of the Committee on Economic, Social and Cultural Rights 'good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.'<sup>4</sup>

This paper sets out to appraise the place of good governance in the realization of the right to food within the legal framework in Nigeria. Henceforth, the paper is structured as follows: section two examines the nature of the right to food and the indices designed for its realization under international law. Section three discusses the critical role of good governance in the realization of this important right drawing from the practices and experiences of India, Brazil and South Africa. Section four reveals the governance crisis in Nigeria while pointing to the government's agricultural and food policies over the past sixty years and then demonstrates how the constitutional non-justiciability of this right has incentivized and anchored poor governance in the country. Section five concludes the paper and advances some key recommendations to address the increasing neglect and 'retrogressive' status of the right in Nigeria.

### **THE RIGHT TO FOOD IN CONTEXT: JURIDICAL CONTENT, STRATEGIES AND GUIDELINES FOR PROGRESSIVE REALIZATION**

The right to food is a broader concept that recognizes the inherent dignity of the human person.<sup>5</sup> Like all human rights, the right to food imposes obligations on duty bearers to guarantee, protect, promote and fulfill their responsibilities towards the right holders.<sup>6</sup> It is therefore, imperative to understand the nature of the right to food, its normative content, status and legal framework under international human rights law before examining the recommended measures or steps designed by international law for its progressive realization.

#### **The Nature of the Right to Food**

The right to food is a child of the human rights jurisprudence. Its normative content and strategies for realization were developed and shaped by international human rights and

<sup>4</sup> See Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12* (Twentieth session, 1999) *The Right to Adequate Food* (art. 11) E/C.12/1999/5 (hereafter CESCR, General Comment 12), at p.7, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3d02758c707031d58025677f003b73b9?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3d02758c707031d58025677f003b73b9?OpenDocument) (accessed 11/12/11)

<sup>5</sup> Ibid.

<sup>6</sup> See Ziegler, J., Economic, Social and Cultural Rights: The Right to Food, Report by the Special Rapporteur on the Right to Food submitted to the UN Commission on Human Rights, 10 January 2002, GE.02-10079 (E) (hereafter Ziegler, 2002); Jean Ziegler, Report of the Special Rapporteur of the Commission on Human Rights on the Right to Food, UN General Assembly, Fifty-Eighth Session, 28 August, 2003 (hereafter Ziegler, 2003), at p.4; UN Human Rights Council, Study of the Human Rights Council Advisory Committee on Discrimination in the Context of the Right to Food, 16 February, 2011 (hereafter, 'HRAC, Discrimination and Right to Food'); A Eide, The Right to Adequate Food as a Human Right, UN Doc E/CN.4/Sub2/1987/23.

humanitarian laws. It may be described as an all-encompassing socio-economic right aimed at addressing socio-economic inequalities manifested by hunger, malnutrition, diseases and pauperization. In terms of definitional content, the United Nations High Commission for Human Rights sees the right to food as more than just satisfying the minimum ration of calories, proteins and other specific nutrients but that it is essentially an inclusive right to 'all nutritional elements that a person needs to live a healthy and active life, and to the means to access them.'<sup>7</sup> In a broader legal perspective, the United Nations Special Rapporteur on the Right to Food defines the right to food to mean:

the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>8</sup>

Therefore, it is a human right designed to protect and enhance the right of all persons to live in dignity, free from hunger and malnutrition.<sup>9</sup> Every person deserves to be able to access healthy food undeterred by poverty and on the basis of equality. The Committee on ECOSOC emphasized on the elements of '*adequacy, accessibility, sustainability and food availability*'.<sup>10</sup> Based on these elements, the right to adequate food relates to and affects the content of nearly all other human rights because it deals with the recognition and realization of the *dignity* of human beings.<sup>11</sup> However, the right to food is different from *food sovereignty* and *food security* although they all share the same purposes of addressing hunger, malnutrition, social inequities and inequalities in the society.<sup>12</sup>

### The Sources of the Right to Food

The first reference point on the provision of the right to adequate food is the international bill of rights consisting of the Universal Declaration of Human Rights, 1948 (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>13</sup> The latter provides as follows:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.<sup>14</sup>

Other specific human rights instruments also recognize the right to food either directly or through other human rights.<sup>15</sup> International humanitarian law also guarantees and protects

<sup>7</sup> See UNHCR, The Right to Adequate Food, Fact Sheet No. 34, Geneva, UNHCR, at p. 2

<sup>8</sup> Ziegler, J., 2002, op cit.

<sup>9</sup> Ziegler, J., Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Report of the Special Rapporteur on the Right to Food, submitted to the UN Human Rights Council, A/HRC/7/5, 10 January 2008 (hereafter Ziegler, 2008), at p.8.

<sup>10</sup> CESCR, General Comment 12, op cit., n.2, at p.3; OHCHR ,Fact Sheet No. 34,op cit, at pp.2-3

<sup>11</sup> Ziegler, J., 2002, op cit, at p.9.

<sup>12</sup> Ibid, at pp.4-5

<sup>13</sup> See Weissbrodt,D., et al, International Human Rights: Law, Policy and Process, 3<sup>rd</sup> edn (Ohio: Anderson Publishing Co, 2001), pp.17-20; Ziegler, 2001, op cit.

<sup>14</sup> Ibid, Article 11 (1)

<sup>15</sup> See for instance, or instance, the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the Convention on the Rights of Persons with Disabilities (2006), Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988), the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child (1990), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

the right to food in specific circumstances.<sup>16</sup> In addition, in several other international declarations and soft laws, the right to food has enjoyed a significant position.<sup>17</sup> For instance, the Millennium Development Goals set out to reduce poverty and eliminate hunger for sustainable human development.<sup>18</sup> Also, there is increasing consensus that the right to food has become binding on countries as a customary international law.<sup>19</sup> It is significant to point out that the above instruments have recognized two inseparable components of the right to food: the right to adequate food and the fundamental freedom from hunger. Obviously, accessibility and availability of food eliminates the indignity of hunger.

The Committee on Economic, Social and Cultural Rights explains that ‘the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement’.<sup>20</sup> The states are the primary duty bearers regarding the realization of the right although other legal persons such as institutions, companies and individuals also shoulder some responsibilities in this regard.<sup>21</sup> Therefore, international human rights law recognizes three forms of obligations in the realization of this and other human rights, viz: obligations *to respect, to protect and to fulfill*.<sup>22</sup>

### **Guidelines for the Realization of the Right to Food**

As noted above, the UN Food and Agricultural Organization (FAO) has been at the forefront in developing key strategies and guidelines to facilitate the realization of the right to food by individual states. One of FAO’s key mandates is to ensure ‘humanity’s freedom from hunger’<sup>23</sup> and all member states have repeatedly affirmed their commitment to the right to food.<sup>24</sup> In 2004, the FAO Council adopted the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food (Food Guideline). These Guidelines constitute the ‘road maps’ designed to guarantee the realization of the right to adequate food.<sup>25</sup> In terms of content, the Food Guideline provides for nineteen (19) broad guidelines dealing with the key fundamentals of good governance which are critical for the smooth, effective and efficient realization of the right to food. These include democracy, rule of law, market efficiency and the principles of equality, non-discrimination, participation, inclusion,

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<sup>16</sup> See for instance, the Hague Convention Respecting the Laws and Customs of War on Land, 1907, Article 7; Geneva Convention Relative to the Treatment of Prisoners of War, 1949, Articles 18, 20, 26, 31, 46 and 51; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Articles 15, 23, 36, 40, 49, 50, 51, 55, 59, 60, 61, 62, 76, 87, 89, 91, 100, 108 and 127; Additional Protocol to the Geneva Convention of 12 August, 1949, Articles 54, 69 and 70; and Additional Protocol to the Geneva Convention of 12 August, 1949, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol III), 1977, Articles 5, 14 and 18.

<sup>17</sup> See for instance the the UN Millennium Declarations; FAO, Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security, [http://www.fao.org/docs/eims/upload/214344/RtFG\\_Eng\\_draft\\_03.pdf](http://www.fao.org/docs/eims/upload/214344/RtFG_Eng_draft_03.pdf); Vienna Declaration and Programme of Action, 1993, DOC A/CONF.157/23 of 12th July, 1993;

<sup>18</sup> See UN Millennium Project, Task Force on Hunger, *Halving hunger, it can be done*, UNDP, New York, 2005. which seeks to ‘halve, by the year 2015, the proportion of the world’s people whose income is less than one dollar a day and the proportion of people who suffer from hunger’ and to adopt ‘effective ways to combat poverty, hunger and disease’.

<sup>19</sup> FAO, The Right to Food Guidelines: Information Papers and Case Studies (Rome: UN FAO, 2006), pp. 103–106; Fact Sheet, No.34, at p.9

<sup>20</sup> CESCR, General Comment 12, op cit, at p.3, para 6.

<sup>21</sup> Ibid, at para.20

<sup>22</sup> See Leckie, S., Another Step Towards Indivisibility: Identifying the Key Features of Violations of Economic, Social and Cultural Rights, 20 HRQ 90-123 (1998)

<sup>23</sup> See FAO’s Constitution.

<sup>24</sup> See FAO, Food and Agriculture Organization of the United Nations, Report of the World Food Summit, 13-17 November 1996 (WFS 96/REP).

<sup>25</sup> Sollner, S., op cit, at p.409

accountability, sustainable development, food security and adequate legal framework for the protection of biological diversity as well as recognizing the universality, indivisibility, interrelatedness and interdependence of all human rights.<sup>26</sup>

## RIGHT TO FOOD AND GOOD GOVERNANCE

From the above discussion, it is clear that good governance is the foundation for the realization of the right to food. In other words, poor governance compounds and exacerbates hunger, malnutrition and food insecurity. There is increasing universal consensus that good governance is an ideal that is indispensable to the effective and efficient management of modern states. It is a virtuous concept<sup>27</sup> that signifies the 'legitimate, accountable, and effective ways of obtaining and using public power and resources in the pursuit of widely accepted social goals'.<sup>28</sup> Many reputable organizations have offered key indices for identifying good governance such as accountability, regularity, consistency and the rule of law.<sup>29</sup> The UNDP sees participation, transparency, accountability, effectiveness, and equity as the most important characteristics of good governance<sup>30</sup>. In fact, good governance has become such a powerful ideal to the extent that it has become a common hallmark embedded in many countries' development plans.<sup>31</sup>

Thus, the realization of any human right is intrinsically connected to the idea of good governance. In fact, the protection, promotion and fulfillment of human rights are necessary components of good governance. In this regard, the Nigerian government has bounden national and international obligations to ensure the realization of the right to adequate food through effective democratic governance, respect and establishment of the democratic institutions as well as the genuine, concrete, proactive and targeted initiation and implementation of laws and policies having direct bearing on the ultimate goal of ensuring availability and accessibility of food to its citizens particularly the most vulnerable ones. These obligations remain constant since the ratification of the ICESCR. It is imperative to first examine how some countries endeavored to ensure the progressive realization of this right before discussing the sufficiency of the attempts or efforts to satisfy these obligations by duty bearers in Nigeria.

Instances of where the realization of the right to food is anchored on good governance are Brazil, India and South Africa. For instance, in India although the right to food is one of the fundamental objectives and directive principles of state policy, the courts have breathed life into the right through creative interpretation and recognition of the indivisibility of the right to other justiciable rights.<sup>32</sup> In fact, as evidence of commitment towards the realization of this right India has recently enacted the Food Security Act, 2013 with a comprehensive institutional framework in place.<sup>33</sup> In Brazil, the Constitution recognizes the national minimum wage in order to ensure access to housing, food, education and health.<sup>34</sup> The increasing welfare of the people, access to food and systematic reduction in poverty are testimonies to

<sup>26</sup> See FAO, the Food Guideline, op cit.

<sup>27</sup> See Badamsiy, J. & M. Bello, op cit, n.1.

<sup>28</sup> See Michael Johnston, Good Governance: Rule of Law, Transparency and Accountability, found at <http://www.undp.org/rba/pubs/agf.pdf>, last visited 25/12/12

<sup>29</sup> See Badamsiy, J. & M. Bello, op cit, n.1.

<sup>30</sup> Ibid.

<sup>31</sup> See the Philippines' Development Plan, entitled *Good Governance and Rule of Law*, (2011-2016) p.1

<sup>32</sup> See for instance, *Minerva Mills V. Union of India* (1980) A.I.R. SC 1789, *State of Madras V.Champakan* (1951)S.C.R. 525; *Mangru V. Commissioner of Burge Burde Municipality* (1951) CIJ 360; *People's Union for Civil Liberties vs Union of India and Others*, Written Petition (Civil)196, 2001.

<sup>33</sup> See Law No. 11,346, 2006 Establishing the National Food and Nutrition Security System (SISAN); Decree No. 6273, establishing the Inter-ministerial Chamber for Food and Nutritional Security, 2007.

<sup>34</sup> See the Brazilian Constitution, 1998, Article 227.

the application of good governance principles in the realization of this important right in Brazil. In addition, the Federal Law on Food and Nutritional Security established the right to food monitoring system.<sup>35</sup> In fact, since 1980 the civil societies and the citizens in Brazil have become very active in the area of right to food advocacy.<sup>36</sup> In South Africa, the constitution imposes an obligation on the state to achieve the progressive realization of everyone's right to have access to sufficient food and water<sup>37</sup> and the courts have acknowledged this important position of the right.<sup>38</sup> Also, several right to food oriented laws and policies had been implemented.<sup>39</sup> In addition, there is a system designed to measure and assess the country's compliance with its national and international obligations regarding the realization of the right to food.<sup>40</sup>

Therefore, the courts and policy makers in these countries clearly recognized the significance of this right and its indivisibility and interdependence with the civil and political rights. They also acknowledge the impacts of hunger and poverty to sustainable human development. However, it should be pointed out that the measures taken in these three countries are not by any means sufficient and it is not suggested here that they represent the ideal situations for the realization of the right to food. There are critical governance problems in these countries such as widespread corruption, massive poverty, diseases and inequalities. But given their age and levels of development, one cannot but recognize that calculated, targeted and sustained efforts are being made by these three countries towards reducing poverty, addressing food insecurity and malnutrition. What then is the situation in Nigeria?

## **RIGHT TO FOOD, GOOD GOVERNANCE AND THE LAWS IN NIGERIA**

Since independence, hunger and malnutrition have remained critical socio-economic challenges facing Nigeria. The constitution and the laws have recognized the need to address these challenges.

### **The Constitution and the Right to Food**

The constitutional rights in Nigeria followed the common pattern of dividing human rights into two categories, that is, civil and political rights on the one hand and economic, social and cultural rights on the other hand. The right to adequate food has been expressly provided under section 16 which provides that 'the state shall direct its policy towards ensuring that suitable and adequate shelter, suitable and adequate food, reasonable minimum living wage...are provided for all citizens.'<sup>41</sup> Clearly, this provision imposes obligations on the state to ensure the realization of the right to food as a stand-alone right. It is one of the fundamental objectives of the state to recognize, maintain and enhance the sanctity, worth and dignity of the human person.<sup>42</sup> But the right under the constitution is a mere directive

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<sup>35</sup> See Law No. 11,346, 2006 Establishing the National Food and Nutrition Security System (SISAN); Decree No. 6273, establishing the Inter-ministerial Chamber for Food and Nutritional Security, 2007.

<sup>36</sup> See FAO, the Right to Food in Practice, op cit, at pp. 7&8

<sup>37</sup> See the South African Constitution, 2000, section 26, 27 (1)(b), 28(1)(c) and 35 (2)(e).

<sup>38</sup> See *The Government of the Republic of South Africa et al V. Groothoom*, Constitutional Court of South Africa, Case CCT 11/00, judgment delivered on 4<sup>th</sup> October, 2000, reported in 2000(11) BCLR 1169 (CC); Minister of Health and Others v Treatment Action Campaign and Others (1) 2002 (10) BCLR 1033 (CC) [123]

<sup>39</sup> See South Africa Human Rights Commission, The Right to Food, 5th Economic and Social Rights Report Series 2002/2003 Financial Year, 21 June 2004.

<sup>40</sup> Fons Coomans and Kofi Yakpo, A Framework Law on the Right to Food — An International and South African perspective, (2004) 4 African Human Rights Law Journal 17

<sup>41</sup> CFRN, 1999, Section 16(2)(d)

<sup>42</sup> CFRN, 1999, s. 17

principle which is different from a fundamental objective.<sup>43</sup> Because of this status of the right under the constitution, it is proclaimed to be non-justiciable or not redressable in a judicial forum in the event of violation.<sup>44</sup> This means that the state or any duty bearer cannot be held accountable for violation of the right to food through the judicial process.<sup>45</sup> It should be pointed out however, that a realization is not exclusively an issue of judicial enforcement. It is a matter of discharging legal obligations through the deliberate taking of concrete measures to ensure food security for the citizens. Therefore, *realization* goes beyond mere *justiciability* as often assumed.

It should be emphasized that as an all-encompassing right, the right to food is an important element of the rights to life and dignity which enjoy full recognition as an enforceable right under Chapter Four of the constitution and other laws.<sup>46</sup> This is more in tandem with the general, holistic interpretation given to the rights to life and to dignity of the human person. It is equally more in tune with the indivisibility of all categories of human rights. According to the Vienna Declaration on Human Rights, 'extreme poverty and social exclusion constitutes a violation of human dignity'.<sup>47</sup> Therefore, hunger, food insecurity and malnutrition are antithetical to human dignity because they often lead to starvation, disease and deaths. In the words of the Special Rapporteur on the Right to Food:

The right to food is inherent in everyone as a human being. Hunger and malnourishment are not the result of fate, they are the result of human actions. There are always actions that can be taken to prevent hunger, prevent famine, and prevent people dying from starvation.<sup>48</sup>

Viewed from this perspective, the non-justiciability argument is unsustainable with respect to the right to adequate food in Nigeria because it is intrinsically connected to human life and dignity. In plain reality, dignity is worthless without food security; dignity is worthless without provision of healthy food through calculated and targeted design and implementation of policies. The Committee on ECOSOC succinctly made the point thus:

The right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfillment of all human rights for all.<sup>49</sup>

### **The Laws and Policies on the Realization of RTF in Nigeria: Identifying the Missing Element**

Identifying the missing element in the realization of the right to food in Nigeria requires a review of the laws and policies on food security in the country. For a start, it is important to note that there is no any existing framework law on food security in Nigeria. But because of the centrality of food to human existence, the Nigerian governments, even before the

<sup>43</sup> See CDC, *Report of the CDC Containing the Draft Constitution*, Vol 1 (Lagos: Federal Ministry of Information Printing Division, 1976) at p. (v)

<sup>44</sup> CFRN, 1999, section 6(6)(c)

<sup>45</sup> Arowolo, G.A, Justiciability of Economic, Social and Cultural Rights under the 1999 Constitution of Nigeria: An Overview', in Ojo G. (ed.) Modern Trends in Laws of Nigeria: Essays in Honor of Prince Bola Ajibola (Abeokuta: Crescent University), 309, at p.310 (hereafter Arowolo, Justiciability).

<sup>46</sup> CFRN, 1999, section 34 which provides that:'every individual is entitled to respect for the dignity of his person.' See also the African Charter on Human and People's Rights (Enforcement and Ratification) Act, CAP A9, LFN, 2004.

<sup>47</sup> Item 1(28) Vienna, Declaration and Programme of Action, 1993

<sup>48</sup> Ziegler, 2002, op cit, at .9, para 20.

<sup>49</sup> See OHCHR, General Comment 12, op cit, at para 4

ratification of the ICESCR, had initiated several economic and social policies designed to empower the citizens towards ensuring their welfare, including unimpeded access to and availability of food. In fact, since independence successive governments never lost sight of the significance of addressing food crisis in the country.<sup>50</sup> From a historical perspective, food insecurity, hunger and malnutrition were less visible in the 1940s-1950s as the country was relatively self-sufficient in food production.<sup>51</sup> These problems emerged with the discovery and subsequent exploration and production of oil in the 1950s-60s and beyond, thereby shifting the focus of the economy from an agrarian based to oil-based. The implications of this shift in functional and economic terms are incalculable up till today. With an explosive population increase, the country has become almost entirely dependent on oil revenues while experiencing stagnation in food production, growing dependence on food importation and prohibitive increase in food prices.<sup>52</sup> For instance, in 1960 food production grew at 4% while the population grew at a corresponding 3% but between 1970 and 1977, the food production stood at -15%.<sup>53</sup>

Several food and agricultural policies were initiated but a sustained, effective and efficient implementation of the policies proved abortive. For instance, the First National Development Plan of 1960-1968 focused on industrialization; the Second National Development Plan (1970-1974) focused more on food production but this too became a mere pretentious policy as the agricultural sector received only 7.7 % of the budget;<sup>54</sup> under the Third National Development Plan (1975-1980) the Operation Feed the Nation (OFN) was initiated to improve food production and guarantee access to and availability of food for the people. Initial successes were recorded in this regard until it encountered policy reversals, organizational and governance challenges. Therefore, without achieving its objectives, the OFN was abandoned and replaced by the Green Revolution in 1980 designed to achieve almost the same objectives as the OFN but it also recorded initial success of increased food production until mismanagement, fraud and inconsistencies became the norms. In fact, lack of proper planning, shortsightedness, corruption, lack of transparency and accountability destroyed the policies. The Fourth National Development Plan came with the Green Revolution of 1985 which allocated 13.5% of the budget to the agricultural sector but it also suffered the same fate.

From the principles outlined in the Food Guidelines, the Committee on ECOSOC's General Comment No.12, FAO's Guide on Legislating for the Right to Food, it is clear that one fundamental measure necessary for the realization of the right to food is the enactment of concrete laws.<sup>55</sup> As noted above, there is no specific framework law on food security in Nigeria. But generally, in terms of formal enactment of other laws relating to food production and consumption, Nigeria has made a tremendous effort. In fact, nearly all the above policies were initiated through the instrumentality of Acts of Parliament. Some of these laws include the Agriculture (Control of Importation) Act,<sup>56</sup> Agricultural and Rural Management Training

<sup>50</sup> NIALS, Communiqué issued at a One-day Roundtable on "Towards Achieving Food Security in Nigeria," held at the Nigerian Institute of Advanced Legal Studies, Lagos, on 16th August, 2011.

<sup>51</sup> See Adesote and Abimbola, Attainment of Food Sufficiency in Nigeria, op cit; Ojo, E.O., and Adebayo, P.F., 'Food Security in Nigeria: An Overview', *European Journal of Sustainable Development* (2012), 1, 2, 199-222, at p. 206.

<sup>52</sup> Ibid, at 1226

<sup>53</sup> Ibid.

<sup>54</sup> Jacob, O.I., 'Food Insecurity in Nigeria: Way Forward', *African Research Review*, Vol. 7 (4), Serial No. 31, September, 2013:26-35, DOI: <http://dx.doi.org/10.4314/afrrev.7i4.2> (hereafter 'Jacob, O.I., 'Food Insecurity in Nigeria')

<sup>55</sup> See FAO, Guide on Legislating for the Right to Food (Rome: Food and Agriculture Organization of the United Nations, 2009), FAO's Food Guideline, 2006, op cit; CESCR, General Comment No.12, op cit; OHCHR, Facts Sheet No.34, op cit.

<sup>56</sup> CAP A13, LFN, 2004

Institute Act,<sup>57</sup> Agricultural Credit Guarantee Scheme Amendment Decree of 1993, Agricultural Credit Guarantee Scheme Fund Act,<sup>58</sup> Agricultural Research Council of Nigeria,<sup>59</sup> Commodity Boards Act,<sup>60</sup> Food and Drugs Act,<sup>61</sup> International Institute of Tropical Agriculture Act,<sup>62</sup> Land Use Act,<sup>63</sup> National Agency for Food and Drug Administration and Control Act,<sup>64</sup> National Agricultural Lands Development Authority Act,<sup>65</sup> National Agricultural Seeds Act,<sup>66</sup> National Centre for Agricultural Mechanization Act,<sup>67</sup> National Crop Varieties and Livestock Breeds (Registration)Act,<sup>68</sup> National Emergency Management Agency (Establishment) Act,<sup>69</sup> National Fertilizer Board Act,<sup>70</sup> National Inland Waterways Authority Act,<sup>71</sup> Natural Resources Conservation Act,<sup>72</sup> Nigerian Agricultural Insurance Corporation Act,<sup>73</sup> etc. All these Acts may be seen as efforts designed to ensure food security in the country. Other positive institutional efforts towards realizing the right to food include the establishment of the National Human Rights Commission (NHRC)<sup>74</sup> and the constitutional recognition of the adjudicatory roles of the Courts.<sup>75</sup> The NHRC deals with all matters of human rights guaranteed by the constitution and by national and international human rights instruments; it also monitors cases of human rights violations and assists victims to secure redress using the available institutional mechanisms in the country.<sup>76</sup> But in functional terms, the NHRC prioritizes civil and political rights and the right to food receives little or no attention at all.

However, in spite of the above policy and legislative steps taken by the government, the realization of the right to food in the country still remains a mirage. Food insecurity is on the increase, poverty has become widespread, and starvation and hunger have become the disturbing trademarks in the country's development drives. The discernable trends in the implementation of the above laws and policies are policy reversals and inconsistencies, corruption, incompetent leadership, inadequate budgetary allocations to the food and agricultural sector, lack of transparency and accountability, inequality and affront to the universal values of human rights and lack of adherence to the rule of law.<sup>77</sup> In other words, formal design of policies and enactment of laws are fruitless without substantive and proper translation of these laws and policies into actual reality. And this clearly requires adherence to the key elements of good governance. Laws seeking to concretize the right to food will amount to empty declarations if food production is dwindling, population is growing, poverty level is increasing, food insecurity is becoming critical, diseases and deaths are increasingly decimating the population due to acute hunger and malnutrition. But these are the natural

<sup>57</sup> CAP A10, LFN, 2004

<sup>58</sup> CAP A11, LFN, 2004

<sup>59</sup> CAP A12, LFN, 2004

<sup>60</sup> CAP C17, LFN, 2004

<sup>61</sup> CAP F32, LFN, 2004

<sup>62</sup> CAP I22, LFN, 2004

<sup>63</sup> CAP L5, LFN, 2004

<sup>64</sup> CAP N1, LFN, 2004

<sup>65</sup> CAP N4, LFN, 2004

<sup>66</sup> CAP N5, LFN, 2004

<sup>67</sup> CAP N13, LFN, 2004

<sup>68</sup> CAP N27, LFN, 2004

<sup>69</sup> CAP N34, LFN, 2004

<sup>70</sup> CAP N39, LFN, 2004

<sup>71</sup> CAP N47, LFN, 2004

<sup>72</sup> CAP 286, LFN, 1990

<sup>73</sup> CAP N89, LFN, 2004

<sup>74</sup> See the National Human Rights Commission Decree No 22 of 1995, CAP N46, LFN, 2004.

<sup>75</sup> CFRN, 1999, sections 6, and 230-296.

<sup>76</sup> National Human Rights Commission Decree (*supra*), section 5.

<sup>77</sup> See for instance, NIALS, Towards Achieving Food Security in Nigeria, op cit; Adesote and Abimbola, Attainment of Food Sufficiency in Nigeria, op cit, at p. 1229; Jerome, Extreme Hunger Eradication, op cit, at p.246; Jacob, O.I., 'Food Insecurity in Nigeria, op cit.

effects of recurring policy reversals, corruption, lack of adherence to the principles of the rule of law and democratic governance.

Therefore, lack of good governance, mismanagement and disregard to constitutional and other legal stipulations constitute the principal hurdles to sustained food security in Nigeria.<sup>78</sup> In fact, mismanagement of resources, corruption, policy inconsistencies, high cost of governance, poor budgetary allocations to the food sub-sector and inequality are all manifestations of poor governance. And no arm or level of government can be exonerated completely. While the Legislature and the Executive are complicit in this general trend which exacerbates the hunger and malnutrition situations in the country, the passivity of the judiciary with respect to constitutional interpretation leaves much to be desired.<sup>79</sup> Nigeria lacks a cohesive national agricultural policy or strategic plan,<sup>80</sup> there are no recourse or remedial mechanisms for enforcement probably because of the non-justiciability clause under the constitution; and there are no sustained supports to vulnerable groups or provisions for social and food safety nets.<sup>81</sup> In fact, subsidies for the peasants, farmers and the vulnerable groups are increasingly being withdrawn to pave way for the full implementation of the neo-liberal economic policies in the country.<sup>82</sup> In addition, access to land and other resources has become deeply politicized with land allocation turned into a gesture for the political big-wigs while the poor are struggling to survive without these basic resources.

Therefore, by weighing the scale and in functional terms, it is obvious that even the instantaneous obligations of satisfying minimum core obligations, ensuring social and economic equality among the citizens, empowering vulnerable groups, and establishing a clear and specific legal framework for the realization of the right to food are yet to be fully concretized in Nigeria. In reality, policy reversals, incoherence and the uncritical adoption of neo-liberal economic policies which substantially derogate from or affect the realization of the right to food and other socio-economic rights through the uncompromising removal of subsidies, opening up of the domestic markets for the ‘dumping’ of foreign agricultural products because of free trade policies, and absence of food security legislation are clear manifestations of political mismanagement and economic mis-directions. In reality, progressive realization cannot be achieved where even the instantaneous obligations consisting of the establishment of the basic legal and institutional framework are not specifically and purposefully pursued due to inconsistencies and irregularities in the working and operation of the state. Efforts to table the question of right to food on the national agenda have met stiff resistance from within the government and with a docile, politically inactive citizenry as well as a compromised civil society, little (if anything at all) can be achieved in this regard.

## **CONCLUSION AND RECOMMENDATIONS**

Addressing the crisis of governance is not as simple as amending laws or initiating other formal or institutional reforms or measures. This is because good governance is nurtured by the political culture but entrenched by constitutional or other legal provisions within the legal system. Therefore, while a systematic legal reform may be necessary it is simply inadequate. Nonetheless, recognizing the imperative of good governance is both critical and necessary to the realization of the right to food and there is nothing magical about it once there is the necessary zeal and commitment to operate in accordance with the precept of the rule of law.

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<sup>78</sup> Adesote and Abimbola, Food Sufficiency in Nigeria, op cit.

<sup>79</sup> Badamiy J., and M. Bello, Judiciary and Good Governance in Nigeria, op cit.

<sup>80</sup> See NIALS, Towards Achieving Food Security in Nigeria, op cit, at p.3

<sup>81</sup> Ibid, guideline 14

<sup>82</sup> See NIALS, Towards Achieving Food Security in Nigeria, op cit, at p.2

It seems untenable to perpetually subject the right to food to a circuitous process of realization in the midst of huge revenue accumulation, increased petrodollars, increasing population but dwindling and diminishing food production and quality of governance. In the same vein, it seems unrealistic and contrary to human rights obligations to constantly play the non-justiciability card in respect of rights that constitute the fulcrum of human existence. The entire society cannot survive in the absence of food security. The right to food is an all-encompassing right that touches on life, dignity, human development and health. None of these will have any meaningful value in an atmosphere of abject poverty, persistent hunger and malnutrition. Therefore, in the light of the importance of the right to food to individuals and communities as well as the critical challenges towards its realization in Nigeria, this paper recommends an uncompromising application of the principles of good governance and specifically advances the following as the solutions to the increasing poverty and persistent hunger in the country:

Adoption of the nineteen Food Guidelines in the design and implementation of food and agricultural policies in Nigeria subject to local circumstances;

1. Legal and institutional Reforms as happened in India, Brazil and South Africa. In addition, there is the need to create through legislation an effective social and food safety net to ameliorate the hardship of the people.
2. There should be adherence to the rule of Law, constitutionalism and increased judicial activism.
3. There should be active civil society engagement and public sensitization.

Other recommendations include the reform of the land tenure system to address the increasing trends of land and water grabbing by influential few and multinationals to the detriment of the overwhelming majority of the people. Also reforms in the areas of environmental laws and natural resources will aid significantly in the realization of the right to food in the long run. While priority to the food sub-sector is important, other key sectors of the economy must also be carried along. In other words, infrastructural development particularly in the rural areas should be intensified. The government needs to increase budgetary allocation to the agricultural sector and priority needs to be given to the sector through supports such as flexible loans to the peasants not the 'political farmers'.

However, the above recommendations are not foolproof. In other words, they are not clear guarantees to the realization of the right to food. The crux of the above proposition is that Nigeria's troubling socio-economic crisis and poor governance constitute major hurdles to the protection, promotion and fulfillment of the right to adequate food thereby exacerbating hunger, malnutrition and deaths. It is not the proclaimed non-justiciability of the right. It is about good governance. Lack of adherence to the ideals of the rule of law and good governance and their fundamentals such as principles of accountability, transparency, regularity, consistency and equality has made the realization of the right to food a mirage in Nigeria. When these are addressed as recommended above, then the non-justiciability clause may stay in the constitution without affecting efforts designed solely to realize the right to food and it may thus become a reality.