Final Report

Indonesia Laws and relevant laws on Socio-Cultural and Political-Security of Indonesia

Office of the Council of State

Kasetsart University

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Preface

The purpose of this study is to collect an overview of policies and bonds as well as information laws in 11 areas including Education Law, Labor law, Law on Public Health Law on Social Welfare, Law on Promotion of Science Technology and Communication, Law on the Promotion and Preservation of the Quality of Environment, Law on Promoting and Preserving Culture and Way of Life, Law on the Increasing of Bureaucratic System Efficiency, Law on Administrative Procedures, Government Information and Liability for the Wrongful Acts of Officials, Law on Public Orders and Situations and Law on Anti-Corruption and the laws governing the purchase or hiring of government. This study have been prepared and distributed to the general public, both in Thailand and in English.

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Chapter 1

Overall information on legislation of Indonesia on social Cultural Political and National Security Issues

Indonesia (Republic of Indonesia) is situated in the region of Southeast Asia. Its capital city is Jakarta and it is one of the five founding member states of the ASEAN which was founded on 8th August 1967, consisting of Indonesia, Malaysia, the Philippines, Singapore and Thailand. The objectives of the ASEAN are to establish international cooperation in the fields of politics, economics and society, to promote peace and security within the region, as well as to establish international cooperation between other countries and international organizations. The research and study on information of Indonesia' s legislation is to gather information and to develop a database on information relating to the social, cultural, political and national security of Indonesia. In the conduct of this research, studies were made of data to provide an overview of the history, society, culture and politics of Indonesia, which is a background to the understanding of Indonesia's legislation.

(1) Historical and General information of Indonesia

Indonesia is situated in the region of Southeast Asia and is significant in terms of natural resources, economy and politics due to its possession of valuable natural resources such as petroleum, natural gases, coal, copper, rainforests and maritime resources. It is a strong manufacturer and exporter and has a long and complex historical and political background, as follows:

1.1 Historical Background of the Indonesian socio-cultural landscape

In the study of the details of any country, it is important to take into account information on its historical background in order to understand the social, cultural, political and national security landscape. It is also important to have regard to the reasoning behind the ideals and way of life of the people in the country in order to achieve a true understanding of that background. This research has divided the historical periods of Indonesia into 4 parts : ancient and pre-colonial history, Indonesia during the colonial period, Indonesia in the period prior to independence, and Indonesian independence to the present.

1.1.1 Ancient and pre-colonial Period

Archeological studies of the Indonesian population suggest that a major contributor to the population of Indonesia was the migration of peoples from the South of China in the area of Yunnan and Ton Kin in the New Bronze Age between 3,000- 5,000 B.C. by sea to the islands that are currently the sovereign territory of Indonesia and the Philippines. In around 100 B.C. ties were established between traders from the South of China and the population inhabiting the archipelagos of Indonesia.[1]

Indonesia received its Hindu religious and cultural influence in the first century B.C. from the South East of India, which came to prosper especially in the areas of Bali, Sumatra and Java islands. Not long after, it is believed that Indonesia came to receive the influence of Buddhist religion and culture, later to prosper into the establishment of the Buddhist Empire of Sri Vijaya empire, expanding from the area of what is now Indonesia to the Malayan peninsula and the Southern of Thailand.[2]

Later, Indonesia received influence of the Islamic religion from trading ties between merchants from the Middle East who travelled to the islands of Indonesia, especially to Sumatra. The Muslim Empire of Indonesia became well established in the 16^{th}-17^{th} century, with its epicenter situated in the northern part of Sumatra, leading to the spread of the religion and culture of Islam as well as the Malay language, which is the origin of Bahasa Indonesia that is currently the official language of Indonesia. [3]

After, the Muslim empire had expanded to cover the entirety of the Malay peninsula as well as parts of Sumatra under the establishment of the Malucca empire which became a strategically important and prosperous trading center of the region of Southeast Asia.[4]

1.1.2 Indonesia during the colonial period.

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[1] Brown Colin, A Short History of Indonesia, (New South Wales: Allen &Unwin, 2003), p. 1-9.

[2] Davisakd Puaksom, History of Indonesia, (Bangkok: Muangboran Press, 2004), p. 2-4.

[3] Phuwadol Thongprasert, Indonesia: Past and Present, (Bangkok: Chulalongkorn University Press, 2004), p. 9-11.

[4] Arnat Anantapak, History of Indonesia: Unity of difference, (Bangkok: Se-Education Press, 2012), p. 2-3.

During the colonial period, the spread of influence in respect of culture, belief and religion, in Indonesia by western nations first started when the Portuguese came to establish a trading post at the town of Kochin in the East of India. In 1509, which later spread to Indonesia. In 1509 there was a conflict concerning trade disputes between the Portuguese and the Sultanate of Maluku whereby the former used force to seize the city.

After the war, in 1511, the Portuguese succeeded in the use of force and seized Maluku to establish a trading post to maintain trading influence within the lower parts of the Southeast Asia. In this period, the Portuguese also brought with them members of the catholic clergy to spread Catholicism. [5]

Later, trading in the region became more developed, and western traders such as those from Spain and the Netherlands came to trade at this post until in 1585, King Phillip II of Spain closed the ports of Spain and Portugal to prevent the passage of Dutch ships from accessing the route to the region of Southeast Asia in the early period of the 17th century. The Netherlands then took countermeasures against Spain.

Between 1601-1641, the Netherlands Maluku from Portugal to thwart the trading influence of Spain. In doing so, the Netherlands received help from the native rulers of Maluku who cooperated with the hope of driving out Portuguese rulers due to opposing their policy to control and monopolize the spice trade. The Netherlands later expanded its influence over the surrounding areas of modern-day Indonesia and established its main trading post at Jakarta to maintain trading power in the Southeast Asian region. [6] The Netherlands also brought in protestant Christian missionaries to spread the influence of the religion in the region. After losing the war, Portugal maintained control over the area of present-day East Timor until it was invaded and seized by Indonesia in 1975.[7]

Around 1826 The Netherlands had spread its colonization of Indonesia over Maluku and other islands of Indonesia. The Dutch Government exploited the fertile lands of Indonesia through *wingewest* policy by implementing a culture policy forcing crops to be grown for economic gains, as Indonesia was now its' largest agricultural colony.[8]

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[5] Davisakd Puaksom, *supra note 2*, p. 5-6.

[6] Brown Colin, *supra note 1*, p. 10.

[7] Phuwadol Thongprasert, *supra note 3*, p. 9-10.

[8] Adrian Vickers, A History of Modern Indonesia, (London: Cambridge University

The Netherlands trading became more and more successful after it had spread its influence over Indonesia. England then began to establish trade in the region of Southeast Asia and in 1781 England seized parts of land under the control of the Dutch government by force, finally capturing the town of Pattavia (Jakarta) in 1811.

Eventually Netherlands could no longer withstand the spreading influence and military force of England and instead formed a coalition with England in the Napoleonic wars. At the end of the Napoleonic wars, the Anglo-Dutch Treaty was concluded in 1814 between the two countries in London. Under the terms of the Treaty, England was to return parts of territory it had seized to the Dutch and a means of settling control over the control and resources gained from the region was established between the two parties. Control over the territory of Maluku was handed over to England, and the area of Beluku to the South of Sumatra was given to the Dutch. [9]

1.1.3 Indonesia in the period prior to independence.

In 1901, the Dutch government came to change its policy over its rule of Indonesia. Under the new Dutch Ethical Policy (Ethische Politiek), the Dutch, as rulers of the colony were obliged to govern ethically, in contrast to the old ethos of (W*ingewest*) [10] Under the new policy, a western- style system of education was established, as well as the construction of infrastructure such as roads and railways and systems of irrigation and agriculture. However, this policy was not overly effective due to the resentment of the Indonesian people towards colonialist powers and vast underfunding by the Dutch government during the time of global economic depression in 1930. Western- style education had failed to benefit the Dutch rulers as it instead instilled Indonesians with an awareness of civil and political rights and sentiments of dissatisfaction towards Dutch rule. In 1929 riots occurred to drive out the Dutch, to which the colonial rulers responded with force. Arrests were made of the instigators and those who took part in the riots, to include Sukarno and other well-known political figures of the time. [11]

Press, 2005), p. 5-11.

[9] Phuwadol Thongprasert, *supra note 3*, p. 9-10.

[10] Robert Cribb, Development Policy in the Early 20th Century in Jan-Paul Dirkse, Frans Hüsken and Mario Rutten, eds, Development and Social Welfare: Indonesia's Experiences under the New Order, (Leiden: Koninklijk Instituut voor Taal-, Land- en Volkenkunde, 1993), p. 1-3.

[11] Brown Colin, *supra note 1*, p. 1-3.

With the help of Indonesians who were discontent with the Dutch rule, the Japanese military took control of Indonesia during the Second World War in 1942, releasing it from its Dutch rulers.

In March 1945, the Japanese established the Indonesian committee on independence (BPUPKI) to prepare Indonesia for independence, however, only one meeting had taken place by the time the Allied Forces declared victory in the Second World War. Independence of Indonesia was declared by nationalist groups under Sukarno and Hatta on 17 August 1945, which was at first recognized by the Dutch. Subsequently however, in 1946, the Dutch retaliated by military force between October 1945- 1946, which led to an intervention by England who was previously its ally during the Second World War. Consequently, on the 12th of November 1946, the Linggadjati Agreement was signed by Indonesia and the Netherlands, Under the Agreement, the Dutch accepted Indonesia's authority to govern within the island of Java and Sumatra. Later, the Netherlands broke the terms of this Agreement when it used military force and arrested and imprisoned leaders of the nationalist movement, to include Sukarno and Hatta. Pressured by the international community and the United Nations General Council. Dispute was to continue however, over Indonesian expansion of its territory.[12]

[12] After receiving its independence, a dispute arose between Indonesia and the Netherlands regarding the territory around New Guinea Island due to the Netherland's refusal to hand over the Western part of the island to Indonesia. A referendum was held for the Western population to determine unification of the disputed territory under the oversight of the United Nations (UN). The result of the referendum was that the population of the Western part of the Island wished to be governed by Indonesia, resulting in its' unification from 1963, after which, Indonesia expanded its' territory to encompass both parts of the Island, Irian Jaya. In 1965, Indonesia expanded its' territory to the area of East Timor which was formally a colony of Portugal, but faced opposition from the population of East Timor. There was a situation of unrest and violence escalated until in 1999, when Indonesia faced pressure from the United Nations, a referendum was held for the population of East Timor to decide on the issue of separation. The result of the referendum was that the population wished for independence. However, prior to its independence, violence and unrest erupted between the sides opposing and supporting independence, and the United Nations had to intervene, sending in a peacekeeping force (International Force in East Timor – INTERFET) for a period of 3 years. After that Indonesia declared independence in 2002.

In the past, Indonesia has been a colony of western nations and Japan, as follows:

Period	Duration	Colonisation
1510 – 1609 (B.E. 2053 – 2152)	99 years	Under Portuguese colonial power.
1960 – 1811 (B.E. 2153 - 2354)	201 years	Under Dutch (the Netherlands) colonial power.
1811 – 1942 (B.E. 2354-2485)	131 years	Under Dutch (the Netherlands) and English colonial powers with Pattavia (Jakarta) seized by England.
1942 – 1945 (B.E. 2485 - 2488)	3 years	The Japanese army seized power in Indonesia during the Second World War from 1942 – 1945 until the end of the war and Japan was on the surrendering side. The Netherlands immediately regained control after the Japanese occupation.

1.1.4 Indonesian independence

At the time Indonesia declared its independence, its Interim Constitution was promulgated followed by the first Constitution in 1945, the main principles declared under it was that Indonesia was a unitary State, to be governed under a United Structure, with a President as the head of State. Sukarno was sworn in as president and declared the principles of Pancasila, which is to constitute the core moral principles of Indonesia.[13]

Four years after the promulgation of the 1st Constitution, the 2nd Constitution of Indonesia was promulgated in 1949. It stipulated that the country be ruled under a federation regime and the name of the country was changed to the United States of Indonesia, only to face major opposition to the idea of federal rule. The 3rd Constitution

[13] The principles of Pancasila, Its five tenets include: 1. Belief in the one and only God 2. Just and civilised humanity 3. The unity of Indonesia 4. Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives and 5. Social justice.

of Indonesia was promulgated in 1950. It stated that the country be ruled once again under a united structure as it originally had been under the first Constitution. Finally, in 1959, Sukarno declared that the Constitution of Indonesia 1949 (the first Constitution) was to have force.

President Sukarno came into presidency in the midst of political and economic problems. In 1959, he dissolved parliament and established in its place, the People' s Consultative Assembly, under a regime of " guided democracy" , to denote the rule by a strong leader with authoritarian tendencies in the governance and administration of state. In terms of international relations, Indonesia maintained a foreign relations policy of *konfrontasi*, being more conservative towards Western countries, while receiving aid mainly from socialist and communist States. Support was given for this policy from the nationalist parties of Indonesia.[14] Tensions between the nationalist parties of Indonesia and the Islamist parties who wished to separate the Maluku Free State from Indonesia.

At the end of Sukarno' s presidency, there was a surge in popularity of the Indonesian national Communist party (PKI). Factions were formed within the Indonesia military, culminating in political unrest in 1965 that was known as the 30th of September movement or the *Gstapu* incident. (Gerakan September Tiga Puluh: GSTAPU) It was during this time that General Suharto seized power and reinstated rule under the political ideology named "The New Order". Suharto's government then accused former President Sukarno of giving undue support to the PKI and subsequently, the PKI political party was ordered to be disbanded, resulting in mass arrests and killing of communist supporters and civilians.[15]

In 1967, Suharto played as deputy role instead of Sukarno and he was elected to be the president for 7 times, in 1967 to 1998. Sukarno was supported by military and occupational group called *Golongan Karya*. Thus, The Army middle in Indonesia politic and used New Order Policy to change the government structure. The Muslim leader was promoted and more support to Masjid and Muslim school. Furthermore, Propaganda has been used to negate the bad image of Sukarno[16]. However,

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[14] Wittaya Sucharittanarak, "Indonesian politics in the Reformation Era" Collection of academic Articles in political science, 19 years of political science STOU (2001), p. 178-197.

[15] *Ibid*, 180

[16] Thai Word Affair Center of Institute of Asian Studies Chulalongkorn University, "New Regulations (Orde Baru): A Tool Supporting President Suharto's Power," Retrieved

the country's economy came to be more developed, with a greater in-flow of foreign investment. However, Sukarno received much criticism regarding corruption and the protection of familial interests.

Towards the end of the presidency of Suharto in 1997, the economic crisis affected the entire region of Southeast Asia, including Indonesia. Major conflict broke in the month of May 1998 (*Kerusuhan Mei 1998)* as a result of the dissatisfaction of the population of Indonesia in the administration and government of State, economic downturn, high rates of inflation, and high rate of unemployment. During this incident, property and goods of retailers who increased prices were vandalised and burnt, especially those belonging to Chinese Indonesians. The Government was pushed to intervene resulting in the death of many university students. This compelled President Suharto to resign from presidency and to declare the Vice President to step in, in accordance with the terms of the Indonesian Constitution, marking an end to a total of 30 years in office.

In 1998, Vice President Bacharuddin Jusuf Habibie became President under the terms of the Indonesian Constitution and in 1999 conducted an election in the People's Consultative Assembly. As a result, Abdurrahman Wahid became elected as President. Throughout the duration of his term, he received support from the media and religious groups. However, he later came to suffer a loss at a vote of no confidence due to asset mishandling and corruption and was removed from office in 2000, bringing an end to his 2-year-term in office.

In 2001, a presidential election was held through the People's Consultative Assembly, with Megawati Setiawati Sukarnoputri, the daughter of former President Sukarno being elected as the first woman President of Indonesia, 23 July 2001 to 19 October 2004. Throughout her time, Indonesia faced problems of continuing world economic downturn and the terrorist problem on the island of Bali.

A direct election for presidency of Indonesia was held for the first time in 2004, which initially resulted in the appointment of Susilo Bambang Yudhoyono as President. In the beginning he received little support from the population of Indonesia as his appointment was made in a second attempt of the procedures since there was no clear majority under the terms of the Constitution. His popularity increased when during his Presidency, economic conditions came to improve and he became appreciated for his role in solving inter-racial conflicts and problems related to terrorism. Susilo Bambang Yudhoyono was re-elected in the following term and served in office for 10 years.

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on 22 October 2015 from http://www.thaiworld.org.

In 2017, a direct Presidential election was held[17] and Joko Widodo became elected as President. Joko Widodo was a former mayor of the town Solo, a country-side resort town, and the first President who was not formerly in the Indonesian military. During his Presidential term, he focused on combating corruption, promoting tourism and is the current President of Indonesia.

1.2 Demographics of Indonesia

The Indonesian demographic comprises many ethnic groups, as such, one of the most important morals it adheres by is "Bhinneka Tunggal Ika" or "Unity in Diversity," which is to denote unity among over 300 different ethnic groups. This consists of the Javanese, Sundanese, Malay and Maduranese, as well as others including those of Indian, Chinese and Arabic origins.

Currently, (2016) Indonesia has the largest number of population in the region of Southeast Asia, with approximately 255 million people. The demographic of Indonesia can be separated into the following: Firstly, working age (15-64 years) at 42.3 percent of the population, secondly, 26.2 percent of the population are of 0-14 years. Thirdly, 17.1 percent of the population are aged 15-24 years, and finally, 14.4 percent of the population are aged over 55. [18]

In terms of the density of population, most of Indonesia's population lives on the island of Java, on which the capital city of Jakarta is situated. The density of population is as follows: Firstly, 74% of the population live on the island of Java, secondly, 6% of the population live on the island of Sulawesi, thirdly, 5% of the population live on Sumatra, fourthly, 4% live on the island of Borneo. The remaining

[17] A person who is elected as President under the terms of the Constitution must have at least 50% of the total votes. In absence of a candidate receiving at least 50% in the first round of elections, another must be held whereby the first two candidates receiving the most votes are the only candidates. The person who receives the most votes out of the two will become appointed as president.

[18] ASEAN Center of the Federation of Thai Industries, " Indonesia: general information," Retrieved on 22 October 2015 from http://www.fact.fti.or.th/th.

population are scattered around the smaller islands such as Malukku and Iran Jaya and make up 7% of the population. [19]

As the territory of Indonesia covers a vast amount of land and population that is scattered across the expanse of the country, each region has its own unique culture, custom, religion and occupation according to their native origins. These can be separated into three main groups.

1) Population of Indonesia inhabiting the shores of the islands are mostly engaged in trading and entrepreneurial professions and are Muslim, having culture and tradition that is influenced by the religion of Islam.

2) Population inhabiting the mainland areas of other islands. People in this group engage mainly in agricultural professions and their culture and traditions are influenced mainly by traditional beliefs from their ancestors such as *Kotong Royong*or community- based cooperation and *musyawarah- mufakat* or consensus decision-making. [20] There are cultures, customs and traditions of the natives.
The occupation of the population is diverse, such as agriculture, cultivation, livestock. On the flat land of the island according to ancestors [21]

3) The population in the capital cities of the island of Java are people who are of the Devarada Buddhism and Hinduism religion are influenced in their culture and tradition by those beliefs.

1.3 Languages of Indonesia

The official language of Indonesia is the Bahasa Indonesia, as declared by the Declaration of *Sumpamuda* on the 28 October 1928. This was to be officially enshrined in Section 15 of the Constitution of the Republic of Indonesia 1945. [22]

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[19] Central Intelligence Agentcy, "The World Factbook," Retrieved on 22 October 2015 from https://www.cia.gov/library/publications/the-world-factbook/rankorder/2119

[20] The term "gotong royong" means communal help, working in unity. The term "musyawarah-mufakat" means consensual decision-making in a democratic manner.

[21] Deddy Mulyana, Ilmu Komunikasi Suatu Pengantar, (Jakarta: PT Remaja Rosdakarya Bandung, 2008).

[22] Indonesia's Constituiton of 1945, Reinstated in 1959, with Amendments though 2002.

Ariticle 36" The nation language shall be Indonesian (Bahasa Indonesia)."

It is to note that Bahasa Indonesia is an Austronesian language[23] and is written in Roman script. It is similar in character to Malay, having words of Sanskrit, Dutch and Portuguese origins, reflecting the influences received from colonial nations in the past. Presently, Bahasa Indonesia is used in education, for official government purposes and in the mass media. However, parts of the population still use local languages which are their mother tongues, such as, Javanese and Sundanese.

1.4 Religions and religious beliefs in Indonesia.

It is to be noted that Indonesia provides religion freedom as it does not specify any certain religion as the national religion but it provides the principle in relation to beliefs and assures the religion freedom in the Constitution of the Republic of Indonesia 1945 (B.E. 2488) as follows: "the State shall be based upon the belief in the One and Only God and the State guarantees all persons the freedom of worship, each according to his/her own religion or belief"[24] In this regard, the former President Suharto once prescribed the religion guarantee under the Law Preventing Religious Persecution (Law No.5 of 1969) and the six religions are Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism and Confucius. Such law recognized Protestant Christianity and Catholicism are two separate religions and recognized Confucius as a religion. Subsequently, on the 27th of January 1979 (B.E. 2522), the Cabinet had a resolution stating that Confucius was not a religion followed by Directive by the Minister of Home Affairs No. 77/2535 POUD on the 25th of July 1990 (B.E. 2533) confirming that the religions guaranteed by law are: Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism.[25]

Currently (as of 2016), Indonesia has the World's largest number of Muslim population. The order of the number of population by religion and religious

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[23] The term Austroneasean comes from the Latin word "austro" meaning south winds and the Greek word "nesos" meaning islands. The term denotes languages of Indonesian islanders.

[24] Indonesia's Constitution of 1945, Reinstated in 1959, with Amendments through 2002 Article 29

1. The State shall be based upon the belief in the One and Only God.
2. The State guarantees all persons the freedom of worship, each according to his/her own religion or belief.

[25] Heriyanto Yang, "*The History and Legal Position of Confucianism in Post-Independence Indonesia*," Marburg Journal of Religion (2005), Volume 10, No. 1, p. 1-8.

beliefs is as follows: Firstly, Islam 86.1%; second, Christian 8.7%; third, Hindu 1.8%; fourth, Buddhist and Confucian 3.4%.[26]

1.4.1. Islam

Islam has entered into Indonesia since the 13th Century via Malaga from trading with non-locals who were Muslim.[27]

Muslim in Indonesia is consisting of two sects of Sunni Muslim who make up 99% and Shia Muslim who make up 1%.[28] Both sects strictly follow the teachings of the Quran, but differ in the belief of the descendants of the founder, Prophet Mohammed. Sunni Muslims do not believe the founder appointed a descendant, and therefore that a person may be appointed to carry out his task, whereas Shia Muslims believe that in the direct ancestral lineage of the founder of the religion, and that no person may be appointed.

1.4.2 Christianity

In Indonesia the Christian population is divided into 2 denominations, Protestantism 70 percent and Christian and Roman Catholic 30 percent. In which both sects believe in the same God But different beliefs about certain teachings Scripture reference Respect for the Virgin Mary, saints and religious ceremonies[29]

1) Protestant Christianity, arrived in Indonesia around the 1600s after the United East India Company of the Netherlands was established with the objective of conducting trade in Indonesia and claiming colonial provinces for the Kingdom of the Netherlands. [30] The main difference in the teachings of Protestant Christianity and Catholic are protestant Christianity is that they accept the 39 canonical scripture with the exception of the Deutero-Canonical Scripture. Protestant Christians believes only in the virtue of good deeds in setting an example as opposed to the idolization of the Virgin Mary and the Saints and do not focus on religious ceremonies.

2) Catholicism Catholic Christian, arrived in Indonesia for the first time from the 1500s onwards when trade was conducted between the Indonesians and the

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[26] ASEAN Center of the Federation of Thai Industries, "Indonesia: general information," Retrieved on 22 October 2015 from http://www.fact.fti.or.th/th.

[27] Clifford Geertz, The Religion of Java, (Chicago: University Of Chicago Press, 1976), p. 1.

[28] Central Intelligence Agency, *The World Factbook*, Retrieved on 22 October 2015. from https://www.cia.gov/library/publications/the-world-factbook.

[29] *Ibid*.

[30] Clifford Geertz, *supra note 27*, p. 10.

Portuguese in the island of Flores and East Timor. Later, the Portuguese began to send in missionaries to spread religion in the region. Catholicism received much opposition however, due to the opposition by the Indonesians against the attempt of the Portuguese in monoplising the spice trade within the region[31]. Beliefs refer to 46 canonical scripture. Its scripture include the Deutero- Canonical Scripture, which believes in the Virgin Mary, the Saints and holy redemption in the same stature as that of Jesus Christ. Catholicism makes particular reference to ordained ministers and religious ceremonies.

1.4.3 Hinduism

Hinduism is a polytheistic religion, its teachings based on the concept of enlightenment. According to the teachings of this religion, in order to attain liberation, a human being must acquire self-knowledge (atma jnana), which is to realize that one's true self, or soul (*atman)* is identical with the transcendent self Brahman, which is similar to the Buddhist belief on Nirvana. The Hindu religion is ceremonially-centered.

Hinduism was introduced to Indonesia for the first time at around the 5th century A.D. to the area of Sumatra and Java from contact with traders from India. It also contains Islamic influences.

It is to note that Hindu beliefs and religious ceremonies shape a large part of the foundation of the cultural roots of Indonesia, for instance, the Sanskrit and Palva languages which later evolved to become Javanese and New Javanese and other native Indonesian languages which later evolved to become Javanese and New Javanese and other native Indonesian languages which remains popular today in Bali.[32]

1.4.4 Buddhism

Buddhism came to Indonesia for the first time in around the 2nd century A.D. to the area of Sumatra and Java islands. Buddhism began spreading with the influence of the Sri Vijaya empire and later spread to other parts of Indonesia. Buddhist cultural heritage of note are the Borobudur temples which are structures built in the style of Buddhist influences mixed with Hindu and traditional beliefs and is situated in central Java.[33]

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[31] *Ibid.,* p. 12.

[32] Phuwadol Thongprasert, supra note 3.

[33] *Ibid.*

Most Buddhists reside in the area of the capital city of Indonesia, Jakarta. Buddhist teachings focus on attaining liberation by Nirvana and the Four Noble Truths to solve all problems.

1.4.5 Confucianism

Confucianism was brought to Indonesia by Chinese traders in the 3rd century in the region of Java. Later, there was a renewal of interest of the religion and the *Tiong Hoa Hwee Koan* religious institution was established in Jakarta and Supreme Council for the Confucian Religion in Indonesia (Majelis Tinggi Agama Konghucu Indonesia) was constructed in 1955.

Most of the followers live in the capital city Jakarta. Confucianism is a belief based on the philosophical foundations of Buddhism, in particular, personal ethics, governance, ethical relationships, fairness in society and purity.

(2) Overview of the social and cultural aspects of Indonesia

For the part of the research concerning Indonesia' s domestic and international policies on social and cultural aspects, the researchers have studied data on the overview of the social and cultural aspects of Indonesia. This includes Indonesia's social and cultural policies and data on international agreements made by Indonesia, as follows:

2.1 Social and cultural policies of Indonesia

The main social and cultural policy which plays a great role in the life of Indonesians and the governance of the country are the Pancasila, the policy on the promotion of culture, the policy on the promotion of education and the society, to be detailed as follows.

2.1.1 Pancasila

The social and cultural policies of Indonesia are founded on the fundamental moral principles of Pancasila, which includes 1. Belief in the one and only God; 2. Just and civilised humanity; 3. The unity of Indonesia; 4. Democracy guided by the inner wisdom in the unanimity arising out of deliberations amongst representatives and 5. Social justice. This core set of principles was established to encourage unity in the diversity of the Indonesian people,[34] and is represented in the national symbol,

[34] Ken Ward, "Soeharto's New Order and its Legacy," Retrieved on 22 October 2015 from http://press-files.anu.edu.au.

the Garuda.[35] The principle was first declared in the speech of President Soekarno on the 1 June 1945 to the Investigating Committee for the Preparation of Indepedence (*Badan Penyelidik Usaha Persiapan Kemerdekaan Indonesia*, BPUPKI).

Initially, there was criticism of the first version of the Pancasila by conservative Islamic groups on the grounds that a man-made set of principles should be placed higher than the teachings of the holy Quran. The Pancasila was therefore amended to be more compatible with Islamic beliefs, as is seen in the current form. The Pancasila is also recognized in the Law on Government and Civil Service administration (Law No. 11 of 1983)

2.1.2 Policy on the Promotion of Culture

Article 32 of the Constitution of the Republic of Indonesia 1945 states that Government has a duty to promote culture that is symbolic of the nation. This includes the promotion of the native culture of Indonesia,[36] and the promotion of nationalism as part of the Pancasila principles. In Part 11 of the Constitution on Education, it prescribes the duty to promote culture on the Ministry of Education and Culture.[37]

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[35] State emblem of Indonesia is called Garuda Pancasila. The numbers of feathers was meant to symbolize the date of Indonesian Proclamation of Independence; 17 feathers on each wings, 8 tail feathers, 19 upper tail feathers (under the shield, above the tail), and 45 neck feathers; all symbolize the date on which independence was decalared, the 17th August 1945. The shield on the Garuda has a wild buffalo, depicting the people of Indonesia, a tree symbolizing nationalism, cotton and rice plants depicting social justice, whereas the golden star at the center represents belief in one God. On the scroll is the national motto: "Bhinneka Tunggal Ika", roughly means "Unity in Diversity". Garuda Pancasila was designed by Sultan Hamid II of Pontianak, and was adopted as national coat of arms on 11th February 1950.

[36] Indonesia's Constitution of 1945, Reinstated in 1959, with Amendments through 2002 Article 32

1. The State shall advance the national culture of Indonesia among the civilisations of the world by assuring the freedom of society to preserve and to develop cultural values.

2. The State shall respect and preserve local languages as national cultural treasures.

[37] The Constitution of the Republic of Indonesia (1945) defines "culture" as things expressed by the Indonesian people to convey the identity of Indonesia.

The Government of Indonesia gives great importance to the promotion of culture and has set the agenda of cultural promotion in its 5-year Medium Term Development Plan since the 4th plan (Year 1984-1988) until the current plan (the 6thMedium Term Development Plan 2015-2019) which sets out the following:

1) The promotion of the education of history, historical places and historical artifacts

In the promotion of the education of history, a six-volume National History of Indonesia was written and published in 1981 detailing historical events of Indonesia from ancient history to contemporary history. Measures under the policy also included the allocation of budget to promote the registration of historical artifacts and places. The policy also promoted the establishment of historical museums in the capital of each province, as well as training of museum staff and financial grants to privately-owned museums.[38]

2) The promotion of arts

Indonesian policy on the promotion of art previously focused on the promotion and development of art by the main groups and ethnicities of Indonesia,[39] for instance Javanese, Sundanese and Malaya. Currently, there is a shift towards the promotion of art by ethnic minorities such as the Madura, Batak and other groups of people. In doing so, it was government policy to allocate more budget and autonomy to regional government agencies. [40] The government also took steps to promote folk theaters as well as to establish cultural centers (*Taman Budaya*) in every capital of every province which will host exhibitions of different forms of art. It organized national art festivals, giving national and regional awards, as well as prizes and grants to winners.[41]

3) The Promotion and Aevelopment of Books, Language and Literature

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[38] Haryati Soebadio, Cultural Policy in Indonesia, (Paris: UNESCO, 1985), p. 38.

[39] Donald K. Emmerson, Indonesia Beyond Suharto Polity Economy Society Transition, (New York: Routledge, 2015), p. 270.

[40] Tod Jones, "Indonesian Cultural Policy in the Reform Era," Retrieved on 22 October 2015 from http://doi.org.

[41] Haryati Soebadio, Cultural Policy in Indonesia, p. 40.

The Indonesian government policy prioritized the improvement of rates of literacy.[42] Measures under the policy to promote and develop books, language and literature therefore included programmes to encourage reading by the general public, to include: "Bringing Books into the Village" campaigns,[43] as well as Government cooperation with the State publisher, (Balai pustaka) publishers of higher education institutions, and privately-owned publishers, as well as international publishers to translate books into Bahasa Indonesia. It also promoted the publication of research and academic titles. Indonesia has a National Library that is funded by the government, and under the government policy, budget has been allocated to regional libraries both privately and government owned. Training is also given to library staff, for example, a training programme with institutions under the care of the British Library Schools. In the promotion of language and literature.

In addition, in the promotion of language and literature, the first national standard spelling system were introduced in 1972.[44] In establishing and developing the system, collaboration was extended to linguists specialists from Malaysia in the research and study of the *Bahasa* language under the Joint Ministerial Mandate between the Government of Malaysia and Indonesia in 1975. The Government also prescribed native languages such as Javanese, Sundanese and Madurese languages as Indonesian national culture, and it was Government policy to promote research and analysis to enable to preservation of these native languages.

Government policies to promote literature also saw initiative by government to promote the translation of consolidating unwritten literature and the translation of old scriptures into modern Indonesian language, in cooperation with higher education institutions both domestically and abroad.[45]

4) The Development of Cultural Treasure

The Indonesian government policy on the development of a cultural treasure consists of measures to compile and consolidate historical evidence relating to culture, including historical places, artifacts and objects depicting traditional regional

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[42] Institute for International Cooperation of the German Adult Education Association (DVV), "Increasing Literacy in Indonesia," Retrieved on 22 October 2015 from http://www.dvv-international.de.

[43] Haryati Soebadio, Cultural Policy in Indonesia, p. 38.

[44] Tod Jones, "Indonesian Cultural Policy in the Reform Era", p. 147–176.

[45] J. Lee, " Language Education Policies in Indonesia," Retrieved on 22 October 2015 from: http://www.languageeducationpolicy.org.

culture. Measures under the policy include allocation of budget to promote education, research and analysis of excavated items, allocation of staff, establishment of local offices and projects to coordinate work, as well as training of local staff on an on-going basis. Results achieved in the development of cultural treasure include the publication of findings in international journals and the production of related documentaries.

5) The promotion of local religious beliefs

The Indonesian government's policy on local and religious beliefs is firstly to evaluate local beliefs and practices so as to screen out those practices which are harmful or dangerous. The Indonesian government also provides accurate information on those beliefs and practices with a view to unity among Indonesians.

2.1.3 Social and Educational Policies of Indonesia

Indonesia has the following social and educational policies:

1) Promotion of education

One of the most important goals underlying the policies on the provision of education from the past to the present is the inclusiveness in the provision of education, the improvement of quality in education provision and the effectiveness of education provided. Policies have over time, been adapted to conform to the changing conditions of society and contemporary events. At present, the policy on education is geared towards decentralisation, and consist of 3 general directives: 1. The expansion of access to education 2. The improvement of quality and relevancy of education and 3. Increasing transparency and accountability.[46]

1.1) Expansion of Access to Education, The Law on education (Law No. 20 of 2003) prescribes the provision of education of 7-15 year olds free of charge. The Law gives discretion to local government bodies responsible for education to formulate a syllabus that is culturally relevant to local needs. It also requires that budget be allocated according to the number of enrolled students instead of the number of educational institutions so as to allow more inclusive provision of education. Measures from the policy include the (*Biaya Operasional Sekolah*, BOS) which is to directly allocate part of the educational budget to educational institutions.[47]

1.2) Improvement of Quality and Relevancy of Education, Part of the Indonesian Government's policy for the improvement of the quality and relevancy of education are measures to allocate 20 percent of the educational budget to the

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[46] International Bureau of Education, Country Report: Indonesia, " Policy on Inclusive Education," Retrieved on 22 October 2015 from http;//www.ibe.unesco.org/.

[47] *Ibid*.

renovation of educational institutions itself, especially in the renovation of classrooms and school facilities of educational institutions in regional parts of Indonesia. Additionally, the Government has allocated budget for the improvement of textbooks used for basic-level education. In doing so, the government has purchased copyright to textbooks, thereby reducing their price by approximately 60 percent, as well as to subsidise the purchase of textbooks by educational institutions based on the number of enrolled students. Other measures include the insurance of educational quality by establishing a system of standards for educational institutions under the Law on National Education (Law No.20 of 2003). The three standards are International Standard Schools, National Standard Schools and Minimum Standard Schools. It is required that every district of every province has at least one International Standard School, and that every school satisfy with the Minimum Standard Schools requirements. [48] In the improvement of the relevancy of educational curricula, the Indonesian government has a policy to prioritise native culture and traditions in the regional parts of Indonesia. In doing so, it has elevated the provision of non-formal education to be as important [49]

1.3) Increasing Transparency and accountability, the Indonesian government's policies to increase transparency was the current president's (Joko Widodo) [50] observations that Indonesia has in the past, been challenged by problems of corruption leading to the delay in economic and social development. As part of the current policies to remedy these problems, the president demanded for a Mental Revolution (*Revolusi Mental*) Measures for implementation of this vision include teaching Indonesians from a young age to develop a counter-corruption conscience so as to enable the development of good human resources for future political personnel by adding these elements to the national educational curriculum. Additionally, transparency KPIs are also used for educational institutions and cooperation is encouraged between schools at the district and provincial levels. For example,

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[48] Anna Robinson-Pant, Learning knowledge and skills for agriculture and improving rural livelihoods: Reviewing the Field, (Paris: International Fund for Agricultural Development (IFAD), 2016).

[49] Mari Yasunaga, Non-Formal Education as a Means to Meet Learning Needs of Out-of School Children and Adolescents, (Paris: International Fund for Agricultural Development (IFAD), 2014).

[50] Joko Widodo, former mayor of the town Solo was elected President of Indonesia in 2014 and became the first person elected to presidency who did not previously come to power from the Military.

Teachers Law No. 1 prescribes educational qualifications for educational staff as well as provides better and more remuneration according to their line of work and their local living conditions including promotion of cooperation between higher educational institutes in the locality with the capacity to conduct researches to integrate knowledge of the personnel.[51]

2) Social policies of Indonesia

The Indonesian government has measures to improve living conditions and the quality of life for the disadvantaged population of Indonesia. To this end, the Ministry for Development of Disadvantaged Regions (KPDT) was established. The agency was tasked with building infrastructure and improving government services provision in the lesser accessible regions, as well as to implement measures to provide relief in the times of natural disasters. Additionally, the Indonesian government also has a policy to promote gender equality in access to education by equally distributing scholarships and grants between male and female students.

It can be seen that one of the unique features of Indonesia consists of the vastness of its territory as well as the diversity of its population. The social and cultural policy of Indonesia therefore prioritises unification of the many races and religions of the Indonesian people, and has done so since the declaration of its independence. Indonesia greatly prioritises the issue of religious beliefs, as it can be seen that the Constitution protects rights to worship and practice all religions, even though the vast majority of the population are Muslim, the Constitution also recognizes other official religions of Buddhism, Hinduism, Catholicism and Protestant Christianity. One final feature that has been so prominent in the area of government policies is the Pancasila, which is now prescribed as part of the Constitution of Indonesia.

2.2 Indonesia's social and cultural international agreements

In regards to information on Indonesia' s social and cultural international agreements, it was found that Indonesia has made measures for international cooperation in the form of bilateral cooperation with States parties as well as cooperation with civil society organisations as well as multilateral cooperation through the ASEAN organisation. The following are details of forms of cooperation that are of interest:

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[51] Mae Chu Chang, Teacher Reform in Indonesia: The Role of Politics and Evidence in Policy Making, (Washington: International Bank for Reconstruction and Development (The World Bank, 2014).

2.2.1 international co-operation within the ASEAN

In terms of international co-operation within the Association of Southeast Asian Nations (ASEAN) Indonesia became one of the founding members of the organisation [52] on the 8th August 1967. ASEAN founding purposes are to establish political, economic and social co-operation, to promote peace and security in the region, as well as to cooperate with other countries and international organisations outside of the ASEAN. Presently, the ASEAN Economic Community (AEC) has been established to build economic co-operation between the ASEAN member States. The ASEAN operates under the three organizational pillars. These three pillars include the the ASEAN political-security community (APSC), the AEC or the ASEAN economic community and the ASCC, or the ASEAN socio-cultural community.

In addition to the AEC which became fully implemented at the beginning of 2016, the ASEAN member States have also established the ASEAN Socio-Cultural Community Blueprint to implement the social and cultural elements of the Community. This includes 6 dimensions of cooperation, including; 1. Human development, 2. Social welfare and protection, 3. Social justice and rights, 4. Ensuring environmental sustainability, 5. Building ASEAN identity and 6. Narrowing the development gap. Indonesia has also played part in the ASEAN Socio-Cultural Community[53] in being party to the following agreements:

1) Agreement on the Establishment of the ASEAN Coordinating Centre for Humanitarian Assistance on Disaster Management, The Agreement is an agreement between ASEAN member States to establish a centre to facilitate international cooperation between the member States or international organisations in the management of disasters. The centre also receives and gathers data for analysis and develops measures to manage disasters and is situated in Indonesia.

2) Agreement on the Establishment of the ASEAN Centre for Biodiversity, The Agreement is an agreement which establishes a centre for biodiversity to facilitate cooperation between member States as well as between member States and international organizations to preserve and promote sustainability and biodiversity of species, as well as to ensure the fair distribution of access to species between the member States.

3) ASEAN Agreement on Disaster Management and Emergency Response

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[52] Consisting of Indonesia, Malaysia, the Philippines, Singapore and Thailand.

[53] Association of Southeast Asia Nations, "ASEAN Legal Instruments: ASCC," Retrieved on 25 December 2016 from htp://agreement.asean.org/ /by_pillar/3.html.

,as Indonesian territory covers a vast number of islands of different sizes, it is a country which faces many a natural disaster. The ASEAN Agreement on Disaster Management and Emergency Response is therefore a priority for Indonesia and equally for other countries within the region of Southeast Asia. The said agreement establishes measures to minimize damage caused to life, public property, the economy and the environment of ASEAN Member State as follows:

3. 1) Measures prior to a disaster, for instance; risk assessment, surveillance, disaster alerts and preparation, etc;

3. 2) Measures during a disaster, for instance, emergency responses and relief;

3. 3) Post-disaster measures, for instance, restoration and providing relief for victims.

In addition to measures to reduce damage, member States also cooperate through academic means, research and capacity building for agencies and personnel in the prevention of damage. The measures are predicated on a member State providing aid to its' own people, and in the provision of aid under the provision of the Agreement only when it exceeds their capacity to do so in a sustainable manner.[54]

4) ASEAN Agreement on Trans boundary Haze Pollution, This agreement concerns the prevention and surveillance of smoke and haze occurring across State boundaries caused by severe land and forest fires. It promotes the observation of international laws by member States to establish international co-operation on the prevention of forest fires and the management of natural resources. It states that there is a binding duty of the member State in which the source of the haze has started to notify relevant and necessary information and causes to other States who may be affected by the haze, in order to prevent damage to life, health and property, as well as to establish surveillance measures to solve issues when haze occurs.

5) Agreement on the Augmentation of the ASEAN Science Fund, This agreement is an agreement between ASEAN member States to promote the development and advancement of Scientific knowledge in the region. It's objective is to promote and support scientific research. It stipulates that each member State shall pay 1 million US dollars into the Fund annually to serve as a revolving fund for scientific research funding.

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[54] Helpage International, " ASEAN Agreement on Disaster Management and Emergency Response," Retrieved on 22 October 2015 from http://www.helpage.org/.

6) Agreement of the Establishment of the ASEAN University Network[55], This agreement is an agreement under the Charter of the ASEAN University Network. Its objective is to establish and develop the strengths of the network of universities of ASEAN member States. In doing so it supports cooperation and development of lecturers, scientists and alumni within the ASEAN region by establishing education support campaigns such as library networks, networks for exchanging research and academic work, student exchange, scholarships, research cooperation, etc. Universities wishing to participate in the network must be reputable in at least one field of academic knowledge and must have experience in cooperating with other universities in the region or internationally.

7) Agreement on the Establishment of the ASEAN Cultural fund, This agreement establishes a fund to support cultural campaigns of member States of the ASEAN. Campaigns must comply with the requirements set out by the ASEAN Committee on Culture and Information to access funding.

8) Agreement for the Promotion of Cooperation in Mass Media and Cultural Activities[56] ,The objective of the Agreement for the Promotion of Cooperation in Mass Media and Cultural Activities is to promote mass media and cultural activities by promoting cooperation in dissemination via radio and television in each member State as well as film festivals, exchanging cinema artists, co-funding for films and the organizing of other activities relating to the promotion of mass media and cultural activities.

In addition to international agreements of cooperation with other ASEAN member States, Indonesia has also established relationships and entered into other forms of social and cultural cooperation and with countries outside of the region of Southeast Asia as well as other international organizations.

2.2.2 Social and cultural cooperation and with countries outside of the region of Southeast Asia and International organizations

Indonesia began to establish international cooperation with other countries and international organizations after the Sukarno presidency, with the reason being Indonesia's foreign relations policy during Sukarno's presidency had focused on

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[55] Association of southeast asian nations, "Agreement of the Establishment of the ASEAN University Network," Retrieved on 12 January 2017 from http://agreement.asean.org/

[56] Association of Southeast Asian Nations, " Agreement for the Promotion of Cooperation in Mass Media and Culture Activities Cameron Highlands, 17 December 1969," Retrieved on 12 January 2017 from http://asean.org.

establishing relations with countries under Communist rule, foregoing establishing relations with Western countries. In contrast, the foreign relation policy during Suharto's presidency focused on expanding relationships with Western countries due to the President's political stance in eradicating Communism. Additionally, during Suharto's presidency, specific economic agendas had been laid out, leading to more direction and success in forming international relations, especially in regards to making social and cultural cooperation agreements with other countries and international organizations. For example, Indonesia has entered into bilateral and multilateral agreements such as the Charter of the Organization of Islamic Cooperation: OIC, United Nations Educational, Scientific and Cultural Organization: UNESCO, as follows:

1) Charter of the Organization of Islamic Cooperation: OIC, This Charter's aim is to establish cooperation and relationship between member States. It focuses on respect for State sovereignty, non-intervention of domestic affairs, and the resolution of disputes by peaceful means. Its objective is to provide a forum for establishing a core interest group in international arenas. Indonesia is among one of the most Islamic-populated countries in the world and became a founding member of the OIC in 1969.

Currently, (as of 2016), the OIC has 57 members and is the largest Muslim organization in the world. Initially, Indonesia maintained a limited involvement within the OIC to preserve its relationship with Western countries at times when there was disagreement between members of the OIC and the latter. Once such issues were resolved, Indonesia became more prominent in its involvement in the OIC. For instance, it took on a more active role especially in other international forums such as AFTA and APEC in representing the OIC. It played part in acting as negotiator in the Moro peace negotiations between the native Muslim population and the Philippines government, and led to the establishment of a special administration zone in the Philippines in 1996.[57]

2) Agreements under the United Nations Educational, Scientific and Cultural Organization: UNESCO, Indonesia is a party to the UNESCO (United Nations Educational, Scientific and Cultural Organization) and Agreements under the UNESCO consists of 1. Agreements on cultural expression and 2. Agreements on material culture.

2.1) Agreements on cultural expression

[57] Anak Agung and Banyu Perwita, Indonesia and the Muslim World: Islam and Secularism in the Foreign Policy, (Copenhagen: Nordic Institute of Asian Studies Press, 2007), p. 27.

Indonesia is party to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005, the objective of which is to provide a framework for international cooperation to promote culture. Measures under this Convention include prescribing methods of production of cultural goods and services. Additionally, Indonesia is party to the Convention for the Safeguarding of the Intangible Cultural Heritage 2003, the objective of which is to provide a framework for international cooperation to conserve cultural heritage such as music, literature, fine arts, sculpture, performance arts and films, etc.

In the implementation of the abovementioned Conventions, Indonesia has enacted two legislations. Firstly, the law on cultural expression Law No. 24 of 1997 established the Traditional Performance Arts Fund, and the law on the registration of cultural artifacts (Law No. 5 of 1992) provided for the registration of performance arts and native and contemporary works of art with the Directorate General for Cultural Values, Arts and Film under the oversight of the Ministry of Culture and Tourism.[58]

2.2) Framework agreements on material culture

Indonesia is party to the Convention concerning the Protection of the World Cultural and Natural Heritage 1967. The objective is to provide a framework for international cooperation in the conservation and promotion of world heritage, to include both natural and man-made sites.

As a result of becoming party to the Convention, Indonesia has enacted the following legislation to implement its obligations: Firstly, the law on conservation of historical sites and cultural heritage (Law No. 5 of 1992) and following amendments (Law No. 11 of 2010) which sets up a framework for the registration of historical sites and cultural heritage, giving power to the State to make measures to protect the destruction of historical sites and cultural heritage. Additionally, the law on the conservation of underwater artifacts Law No. 48 of 2009 provides measures to supervise the protection, conservation and access to historical artifacts which are situated under water and in the sea.

In addition, the implementation of the Convention frameworks have led to the registration of the following natural and constructed World Heritage sites: The four constructed sites are 1. The Borobudur Temple Compounds, 2. The Cultural Landscape of Bali Province: the Subak System 3. The Prambanan Temple Compounds (*Candi Prambanan*) and 4. The Sangiran Early Man Site. Additionally, there are 4 natural

[58] Asia-Europe Foundation (ASEF), "Public Policies for Cultural Diversity: The Indonesian Experience," Retrieved on 22 October 2015 from http://www.asef.org/811.

World Heritage sites of 1. The Ujung Kulon National Park, 2. The Komodo National Park, 3. The Lorentz National Park, and 4. The Tropical Rainforest Heritage of Sumatra.

(3) Overview of political and security policies of Indonesia

Indonesia has in the past, been colonized by Portugal and the Netherlands and been under occupation by Japanese military forces. After its independence in 1945, Indonesia was ruled in the form of a republic state by democratic regime of government with the President as head of State and the executive and the formational principles of governance were the principles of Pancasila. There were 7 main organizations of government; the People's Consultative Assembly (MPR) functioning as the legislative body, the People's Representative Council (DPR), the Regional Representatives Council (DPD), the President, the Courts of Justice and the Audit Board of the Republic of Indonesia (BPK RI). Each of the organizations powers and duties are as prescribed by the Indonesian Constitution,[59]and functions to maintain political and State security according to the policies of the President.

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[59] The governing organizations of the Indonesia according to the latest amendment of the Constitution of the Republic of Indonesia (1945) are as follows:

1. The People's Consultative Assembly (MPR) is the legislative body of Indonesia, consisting of the People's Representative Council (DPR) with 550 members and the Regional Representatives Council (DPD) with 128 members who are all elected. The MPR has 3 main functions: to amend the Constitution, to appoint the President and Vice President and to remove the President from office

2. The House of People's Representatives (DPR) is composed of 550 members from the election, has the primary obligation to approve the budget and oversee the government's work, with a 5-year term of consideration, each legal draft must be discussed and received sharing opinion between the DPR and the president. Any legal body that does not receive the approval of the president cannot be re-considered. At the same time, the body of the law has been approved by the President and passed the voting from the DPR, but the president did not sign for any reason within 30 days, it shall be deemed effective as legally, but DPR no authority to open the debate. President/Deputy President The removal of the president/Deputy presidential must follow the constitution procedure, namely DPR, must use 2/3 vote of the attendee (with a number of not less than 2/3 of total number of DPR members). To ask for removal of the Constitutional Court to consider and if the Constitutional

Court considers the DPR proposed to be proposed by the following (the final authority for the removal of the President/Vice President on MPR)

3. Regional Representatives Council (DPD), a new institution, with the first elections held on April 5, 2014, to replace the representatives of regional organizations and social / professional group that has ever existed. (Coming from the appointment of the members of DPD elected from each province four people totaled 128 by the DPD is responsible, in addition to acting in the MPR is to propose and comment on draft laws related to decentralization. to the region The collapse / Provincial Total Natural resources management Including monitoring budget spending, taxation, education and organized religion to the DPR for information on matters that the DPD is not responsible for screening lawmakers like Senate of Thailand.

4. Regional People's House of Representative (DPRD) is an organization formed to promote decentralization. Under the provisions of the constitutional amendment in 2000 are set to divide the region into a regional district (regency) and District / Municipal (Kota) and held an election. DPRD members at all levels (with the DPR and the DPD).

5. The President is the leader of a country that is directly elected. The Constitution states that the President is the head of government and commander of the army. The president, in office for 2 consecutive days (the period of 5 years).

6. The Court of Justice is an organization established by the Constitution. The Constitution states that the judiciary is under the supervision of the Supreme Court. And the second level down to the Constitutional Court. The Constitutional Court was established according to the provisions of the constitutional amendment in 2001 by the current Constitution states that the appointment of Supreme Court judges. Commission on Judicial (Judicial Commission) was named to the DPR approval and then submitted to the President to appoint a judicial commission members appointed and removed by the president with the approval of the DPR.

7. The Committee shall highest (Supreme Audit Board: BPK) is a new agency to agency, established under the provisions of the amended Constitution. The budget must report to the DPR DPD and DPRD (local, provincial, district and parish councils) BPK members will be selected by the DPR, which must listen to opinions of DPD and appointed by the President.

Indonesia has a complex historical and political background and a diverse component of religion, ethnicity and foreign influences. The political and security of Indonesia can be separated into 4 distinct periods, as follows:

3.1.1 Politics and national security in Indonesia during the Sukarno Presidency 1945-1967

After the declaration of independence from the Netherlands, Indonesia first focused on constructing unity between its diverse ethnicities, races and religions. The policies on national security during the Sukarno era therefore focused on nation-building and uniting territories of Indonesia. Initially, the Netherlands had refused to recognize Indonesia's declaration of independence, resulting in several events of armed conflict and finally resulting in intervention by the United Nations to resolve the conflicts peacefully.

In terms of political and security policies regarding physical geographic issues, Indonesia pursued international relations under a confrontational policy (*konfrontasi*) for example, in the case of annexing the Irian Jaya territory from Malaysia in 1969, and the annexation of East Timor as part of the country in 1976.

In this initial period, Indonesia maintained its distance from relations with western countries, preferring instead to pursue international relations with communist states, having received aid from them in the prior era when it was colonized by the Netherlands. At the same time however, it attempted to maintain a politically non-aligned stance in the polarization between communist and the democratic states, as it may be seen in President's Soekarno's role in the hosting of the Asia-Africa Conference at Bundung in 1955, leading to the establishment of the Non-Align Movement (NAM). Subsequently, Suharto also became chairman of the NAM.

In later years however, there was dissent among Indonesia's military forces which, combined with unrest that arose from political and racial conflicts, as well as poverty and slow-down in economic development due to a lack of clarity and direction in the government's economic development strategy, leading to the eventual uprising entry into power of General Suharto in 1967.

3.1.2 Political and national security during the Suharto presidency 1967-1998.

At the beginning of the Suharto presidency (1967-1989), the Indonesian government received support from the Functional Groups (*Golongan Karya*) and the military. The government ruled based on the New Order policy whereby the military played a major part in the maintenance of overall national security as well as political and social security. The military had a dual purpose (*dwifungsi*) in both civilian and defence

matters and all civil servants were to take an oath of allegiance to the rulers for national prosperity (*monoloyalitas*) and more focus was had to the role of the regional population in urban politics. Initially, there was vast success in the development of the country under the said policy.[60]

In regards to international relations during the Suharto presidency, Indonesia began to look towards regional cooperation, for example in the case of its foreign relations with Malaysia, by using the policy of " Asian Solutions for Asian Problems."

However, towards the end of the Suharto presidency (between 1980-1998) there was dissatisfaction among the people regarding governance due to the declining economy of Indonesia that was due to regional economic turbulence. This economic downturn resulted in the resignation of investors from the country, leading to currency devaluation and high inflation. Combined with several incidents of political unrest between 1997- 1998 where major conflict broke out between Chinese Indonesians and Indonesians, whereby there was dissatisfaction with Chinese Indonesians who were perceived to be privileged citizens. During the incident, known as *Kerusuhan* Mei 1998 wide-scale attacks were made to Chinese Indonesian citizens and their property in Jakarta, and the Government used armed response resulting in the deaths of university students. This eventually led to the resignation of President Suharto.[61]

3.1.3 Post- Suharto Political and Security Policy 1998-2014

The period of political history after the Suharto presidency ended with the president's resignation in 1998, Yusuf Habibi was appointed as President is known as the reform era (*reformasi*) [62] In this political atmosphere, the role of the military was lessened and the governing power of the state was decentralized to regional government bodies such as regional heads of government and village leaders. Legislation which limited the power and political role of regional government was cancelled with a view to cease tension between the native Indonesian population and the Chinese Indonesians and to promote harmony and unity among the population as

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[60] Aspinal and Fealy, Soeharto's New Order and its Legacy, (Canberra: The Australia National University Press, 2010).

[61] Onanong Thippimol, "The Role of Indonesian Student Movement and the fall of Soeharto," (Master Degree Thesis of Fine and Applied Art, Thammasat University, 2005).

[62] Aspinal and Fealy, Soeharto's New Order and its Legacy, 2010.

a whole.[63]The Habibi government enacted a law on the unification of the country (Law No. 6 of 2000) to prohibit the use of the term *pribumi* and *non-pribumi* in classifying native Indonesians (*pribumi)* and non-native Indonesians (*non-pribumi*) as well as to revoke the law which required that *non-pribumi* population display a resident permit in any official activity. Instead, a Law was enacted to allow the use of an Identification card as sufficient proof of identity for official services. The political measures of the *reformasi* era also included the focus on democratic governance, for instance, the allowance of establishing new political parties, increasing rights of freedom of expression and eventually, the free first election since 1955 was held under the supervision of the General Election Commission (KPU) which was a new body established by Law No.3 of 1999 on the General Election in place of the old electoral commission which was considered not to be fully non-partisan as it operated under the authority of the government. [64]

Additionally, during the Habibi presidency, a referendum was held for the people of East Timor on the 30th August 1999, the outcome of which was that 75% of the population voted for independence from Indonesia. It was as such, that the Democratic Republic of Timor- Leste. [65] Became established. However, this referendum led the the view of Indonesians that the Government had acted in a way that led to the loss of the country's territory, which led to a loss of popularity of President Habibi,[66] and in 1999, President Habibi declined to submit himself for presidential candidacy due to the lack of support from his political party.[67]

A general election was held after the end of the Habibi presidency in which Abdulraman Wahid became president on the 26th December 1999. During his presidency, the domestic policy was to further promote democracy in Indonesia.

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[63] Marcus Mietzner, The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance, (Washington: East-West Center, 2006).

[64] The Council on Foreign Relations, "Indonesia After Suharto," Retrieved on 22 October 2015 from https://www.foreignaffairs.com/articles/asia.

[65] Supapan Tungthongpairoj, "East Timor," Asia Journal of Institute of Asian Studies Chulalongkorn University (2006) Volume 1, p. 38-50.

[66] Marcus Mietzner, The Politics of Military Reform in Post-Suharto, (Indonesia: Elite Conflict, Nationalism, and Institutional Resistance, 2006).

[67] Harold Crouch, Political Reform in Indonesia After Soeharto, (Singapore: Institute of Southeast Asian Studies, 2010), p. 11-24.

During his presidency, Freedom of speech was increased and State power was reduced, for example, the disbandment of the Ministry of Information which was previously thought to be the Indonesian Government's agency responsible for promulgating the government's ideology during the New Order Era, as well as the disbandment of the Ministry of Social Security was generally perceived to be one of the most corrupt organizations of the Indonesian Government.[68]

In terms of national security, president Wahid had plans to give the region of Aceh independence from Indonesia, but due to immense criticism of the policy, only implemented measures to increase regional autonomy for the region's local government and the withdrawal of military supervision. During the Wahid presidency, violent incidents of conflict took place between the Madurese and the Dayaks whereby the Madurese were killed in Kalimantan in the month of February 2001. This incident became the most violent in the history conflict between the two ethnic groups and the Indonesian military were dispatched to perform peacekeeping tasks in the region.[69]

In 2000, president Wahid was pressured to resign amid allegations of corruption in funds transfer of the State Logistics Agency (BULOG) and funds donated by the Sultan of Brunei in aid of Aceh and Megawati *Soekarno Butri* was appointed in his place.[70]

The political and security policies during the presidency of Megawati *Soekarno Butri* was in most senses similar to those of the Wahid presidency. Her stance was mainly seen to be non-interference of the policies and affairs laid down by the previous government, as it was perceived that her role was to be in office during the interregnum of an elected government. Main policies included peacekeeping and the promotion of unity of the nation. Foreign policies included expanding ties with India and Pakistan and further foreign relations were expanded with China, the United States, Singapore and Australia. An amendment was made to the Constitution of Indonesia during her presidency to enable direct voting of the president in 2004.

The first direct elections for the Indonesian presidential office of was held, resulting in the appointment of Susilo Bambang Yudhoyono as president.

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[68] Greg Barton, Abdurrahman Wahid: Muslim Democrat Indonesian President, (Hawaii: University of Hawaii Press, 2002), p. 290.

[69] Supannee Kanchanatthiti, Aceh: Modern international history encyclopedia, (Bangkok: Office of the Royal Society, 2012).

[70] Greg Barton, Abdurrahman Wahid: Muslim Democrat Indonesian President, p. 304.

Incidents of significance in political and security measures in this era included a new approach towards Aceh where aid was dispatched for disaster relief and negotiations were made between the Indonesian Government and the Aceh Free Movement resulting in the signing of the MOU between the Government of the Republic of Indonesia and the Free Aceh movement 2005 in Finland on the 15 August 2005. Military and police presence was withdrawn from the region by the end of 2006 and pardons were granted to political convicts. Political power was handed and establishment of political parties were permitted in Aceh, as well as the establishment of autonomous rule which allowed the region to form its own political, cultural and economic policies.[71]

Additionally, President Yudhoyono played major part in the rebuilding of the country in the wake of the Tsunami which occurred on the 26 December 2005. The Indonesian government responded by sending military troops to dispatch relief in the areas of Nangroe, Aceh, Darussalam, and North Sumatra. Emergency relief funds were sent to local and regional government agencies for intermediary relief and further budget was allocated to enable reconstruction of damaged infrastructure and to help rehabilitate those affected by the disaster. Other measures included the prevention of capitalists from buying up damaged lands previously meant for use by the locals. To this end, Law No. 2 of 2005 was enacted to establish the BRR (Agency for the Rehabilitation and Reconstruction for the Region and Community) to work in cooperation with the Badan Pertanahan Nasional (BPN, National Agency for Land) in affected areas.[72]

3.1.4 Security and Political policy of Indonesia from 2014

In 2014, Jokodo Widodo, former mayor of the town Solo was elected to presidency. During his presidency, the political and security policy of Indonesia was set out in the Medium Term Development Plan (RPJMN 2015-2019) Indonesia currently has priority in the 5 following areas: 1. Suppression of terrorism; 2. Border security; 3. Illegal fishing; 4. Piracy and crimes against sea vessels; and 5. Human trafficking.

1) Suppression of Terrorism

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[71] Kirsten E. Schulze, The Free Aceh Movement (GAM): Anatomy of a Separatist Organization, (Washington: East-West Center, 2003).

[72] Rokhmin Dahuri, "Pre-and post-tsunami coastal planning and land-use policies and issues in Indonesia," Retrieved on 22 October 2015 from http://www.fao.org/forestry.

After the incidents of terrorism at the World Trade Center in the United States of America on the 11 September 2001, it was alleged that Indonesia was a hotbed for fostering terrorist activity. Indonesia took clearer steps to show its' policies in the prevention and suppression of terrorism, both in the regional and international area by entering into international cooperation and agreements.

In terms of domestic policies and measures on the suppression of terrorism, Indonesia established the Special Detachment 88 unit (*Detasemen Khusus 88*) to combat, prevent and suppress terrorism when in 2003, an incident in the tourist resort of Kuta, Bali happened whereby 200 deaths were recorded. The special forces unit receives training and cooperation from Australian and United States special forces.

In addition, the Indonesian Government has had a policy of de-radicalization to combat and prevent radicalization among its people through information and support campaigns.[73] It also maintains close cooperation between State agencies as well as the private sector and the people. Activities include education and support for prisoners convicted for terrorism-related crimes,[74] as well as the establishment of the National Counter-Terrorism Centre (*Badan National Penanggulangan Teroisme: BNPT*) to function as the center of co-ordination between police, military, the Attorney General. Indonesia also established the Indonesia Peace and Security Center Sentul (IPSC) for the conduct of academic cooperation and training to prepare for and prevent terrorism.

2) Border security

Indonesia has vast territory over both land and sea and expanding across many types of geographic features of plains, islands and sea. It shares sea borders with 10 different countries and land borders with 3 countries. One of the main problems is the lack of a single agency to oversee and regulate the many different types of borders both at the central and the regional government levels. Other issues include the lack of international agreements between Indonesia and other countries over the boundary of some areas such as the land boundary between Timor Leste, the sea boundary between Ashmore Reef with Australia, the land and sea boundaries between itself and Papua New Guinea and the boundary between Singapore in the

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[73] Strategic Studies Center of National Defence Studies Institute, "Weekly analysis of the strategic and security situation of ASEAN", Volume 19/57 Retrieved on 22 October 2015 from http://www.sscthailand.org/

[74] Milda Istiqomah, De-radicalization program in Indonesian prisons: Reformation on the correctional institution, (Perth: Cowan University Press, 2011).

area of Batam Island. Its initial measures have been to increase cooperation between relevant government agencies by establishing a single agency and to initiate negotiations with other countries with a view to establishing clearer boundary agreements.

3) Illegal Fishing

The definition of illegal fishing is fishing that is prohibited by law in the areas which are reserved for traditional fishing methods or for small boats, for example, using industrial fishing vessels or prohibited nets or surrounding nets with light implements which causes damage to the environment and affects the sustainability of the ecosystem of the sea or ocean in the long term.[75]

The Indonesian government took steps to initiate negotiations with other countries with a view to prevent and suppress illegal fishing acts, and has taken more serious steps after the European Union voiced its concerns over the lack of action against the matter in the region of Southeast Asia. Indonesia had been pressed to take measures since the European Union had threatened to take action by prohibiting various goods, especially sea food into its member States. Indonesia therefore enacted the Coastal and Small Island Management law (Law No. 27 of 2007) which provided for the registration of fishing vessels by local authorities and the law on the registration of vessels (Law No. 31 of 2004) which provides for procedures and stricter penalties.

4) Crimes on board sea vessels and piracy

As an important trading post, the area of the Strait of Malacca is where the most incidents of piracy take place in Indonesia. The Indonesian government's policy is to focus on the areas of discrepancy under its obligations under the Article 100 of the 1982 United Nations Convention on the Law of the Sea (UNCLOS) on the duty to cooperate in the repression of piracy. The Article states that all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State, which in literal reading of the text, precludes acts committed on areas where the boundary has not been

[75] Regional Plan of Action to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated Fishing in the Southeast Asia Region, "Model Fisheries Legislation," Retrieved on 22 October 2015 from http://www.rpoaiuu.org.

delineated with clarity.[76] Currently, Indonesia has maintained more stricter policies in the regulation and prevention of piracy by closely cooperating with neighbouring countries in the form of Coordinated Patrol agreements, for example with Malaysia, Singapore and Thailand in (Malacca Straits Coordinated. Patrol: MSCP) and piracy incidents have been shown to decrease.

5) Human Trafficking

Indonesia faces human trafficking issues as an exporting, transferring and recipient state of human trafficking. It has been classed as Tier 2 on the United States Human Trafficking watch list according to the US Department of State.[77]

The most common form of human trafficking which takes place in Indonesia is the luring of human trafficking victims to find employment abroad through an agency, often known as PJTKIs who will pay for initial costs of travel and settlement, and as soon as the victim is settled abroad, will withhold the passport of the victims and over-calculate the costs and interests of travel paid so that the victim is unable to pay the amount and unable to return to his or her country of origin due to lack of travel documents and funds.

Indonesia enacted Law no 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons which was the first step dealing with human trafficking issues. The said Law prescribes a penalty for those directly involved in human trafficking as well as those who take part in aiding, finding employment, transfer or receives through means of deception, coercion or threat in exchange for monetary interest or interest from a victim. In 2008 the Indonesian government established the Taskforce for Prevention and handling of human trafficking in Law No. 69 of 2008 to facilitate coordination between police and other agencies with the task of regulating labour, social security, tourism and immigration.

In addition, the Indonesian government also prioritises the rehabilitation of victims of human trafficking in its National Action Plan for trafficking in person by People's Welfare Coordination which establishes emergency shelters for victims as well as provides support to victims of human trafficking as well as witness protection.

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[76] Rizal Sukma, " Indonesia' s Security Outlook, Defence Policy and Regional Cooperation," Retrieved on 22 October 2015 from http: // www. nids. mod. go. jp/ joint_ research/ series 5 /pdf/5-1.pdf.

[77] Australian Institute of Criminology, "Experiences of trafficked persons: An Indonesian sample," Retrieved on 22 October 2015 from http://www.aic.gov.au/.

3.2 Indonesia's international cooperation and agreements in the field of politics and national security

In terms of international agreements under the ASEAN Politic-Security Community, Indonesia has been involved in the following conventions and agreements with Southeast Asian countries:

3. 2. 1 ASEAN Convention Against Trafficking in Persons, Especially Women and Children.

The objective of this Convention is to prevent and suppress human trafficking, especially in relation to women and child victims. The Convention provides that member States should prescribe in their domestic laws, penalties for human trafficking crimes, organized human trafficking, laundering of proceeds, corruption, and intervening with access to justice. The Convention also provides that member States should have policy and measures for victim compensation, and to cooperate with other member States in the enforcement of relevant law.

3.2.2 Agreement between the Government of the Republic of Indonesia and the ASEAN relating to the Privileges and Immunities of the ASEAN Secretariat.

This Agreement was made between the ASEAN Secretariat and the Government of Indonesia. The objective of the Agreement is to facilitate the operations of the ASEAN Secretariat on matters such as its legal status in Indonesian Law, the use of land, privileges and immunities relating to its physical presence, taxation, communication, access as well as diplomatic immunities for the people working for the ASEAN Secretariat.

3.2.3 Protocol to the ASEAN Charter on Dispute Settlement Mechanisms.

This Protocol to the ASEAN Charter on Dispute Settlement promotes dispute settlement by means of consultation prior to the use of arbitration facilities. Where parties to a dispute refuse to enter into arbitration, it gives the right to submit a request to the ASEAN Coordinating Council to decide on the method of dispute settlement.

In addition to the method of consultation as a means to resolve dispute between member States, the protocol also provides for Good offices, Mediation and Conciliation. Disputing parties can agree to choose any of these dispute resolution mechanisms at any time. Where the disputes cannot be resolved between parties, it will be deemed an "Unresolved Dispute," and disputing parties may submit the matter to the ASEAN Summit to resolve the matter. In the case where a party

refuses to act in compliance with the terms of a settlement, the other party may also submit the matter to the ASEAN Summit for consideration.[78]

3.2.4 Agreement on the Privileges and Immunities of the Association of Southeast Asian Nations

The objective of this Agreement is to prescribe diplomatic privileges and immunities to the Secretary General of the Association of Southeast Asian Nations, to include officers working for the ASEAN. Protection and privileges include legal status, rights in ownership of the assets of the Secretary General, diplomatic privileges of the Secretary and officials, experts, permanent delegates and appointed officials working in a member State.

3.2.5 Charter of the Association of Southeast Asian Nations

This agreement enshrines the goals of the member States of the ASEAN. Its objective is to establish an international organisation that is effective, people-centered, and rule-abiding to promote international cooperation for the benefit of member States. The Charter provides that the ASEAN has the legal status of an intergovernmental organization, and prescribes legal personality to each member State. It provides for the rights and obligation of member States to each other, and lays out the structure of the organisation, related organisations, matters relating to privileges and immunities, decision-making procedures, dispute resolution procedures, budgetary procedures, administrative matters, the symbol and unique features of the ASEAN, admission of new members, as well as the relationship between the ASEAN and non-member States.

3.2.6 ASEAN Convention on Counter Terrorism

This Convention provides a framework for regional cooperation between member States in countermeasures, protection against and the prevention and suppression of all acts of terrorism. It defines a "terrorist" a terrorist under the Conventions on terrorism of the United Nations, and uses the framework under the UN Conventions as a guide for international cooperation between ASEAN member States. Relevant activities under the Convention include the exchange of intelligence information, protecting against funding for terrorist activities in member States, and the immigration and border controls.

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[78] Office of the Public Sector Development, "ASEAN dispute resolution mechanisms and Rules for proposing non-compliance for decision by the ASEAN Summit," Retrieved on 22 October 2015 from http://www.thaiworld.org/th/

Additionally, the Convention provides a guide in the procedure of trial for terrorism-related crimes, for example, State jurisdiction in the trial of terrorist criminals, fair trial for suspects, cooperation in investigation between member States based on their domestic laws, extradition of criminals, to exclude politics-related terrorist crimes.

3.2.7 ASEAN Framework Agreement on Visa Exemption

The objective of this Agreement is to promote unity of ASEAN member States by exempting visas to nationals of ASEAN member States when travelling to another member State. Visas are exempted for travel lasting up to 14 days for ASEAN nationals for tourism purposes. Under the terms of the Agreement, member States reserve the right of deportation, and the right to cancel implementation of visa-free travel under the terms where there is domestic unrest.

3.2.8 Agreement for the Establishment of an ASEAN Development Fund

The Agreement for the Establishment of an ASEAN Development Fund is an international agreement with the objective of establishing an ASEAN Development Fund. Under the terms of the Agreement, member States are required to pay 1 million US dollars into the fund. The Fund is separated into 2 parts, the first is designated for investment returns, and the second is for investment in ASEAN qualifying development campaigns. Campaigns receiving the fund must comply with Priority Measures stipulated in the overall blueprint of the ASEAN Community.

3.2.9 Treaty on Mutual Legal Assistance in Criminal Matters

The objective of this Treaty is to provide assistance in criminal procedures where a crime that has been committed relates to more than one Member State. This includes investigation and finding of evidence, legal document service, trial, search and arrest, examination of evidence and crime scene, information on suspects and witnesses, etc. Cooperation under the Treaty must be given with the consent of member States and be in compliance with the terms of the Treaty and the domestic Laws of the State requesting assistance.[79]

3.2.10 Revised Memorandum of Understanding on the Establishment of the ASEAN Foundation

The objectives of this Memorandum of Understanding signed by ASEAN member States are to establish the ASEAN Foundation. Funds are received from ASEAN member States as well as donors from the private sector. Its mission is to

[79] Aseanthai, "ASEAN Legal Cooperation," Retrieved on 22 October 2015 from http://www.aseanthai.net/

promote knowledge and understanding on the cooperation of the ASEAN Community, and to establish links between the nationals of ASEAN member States through various activities such as activities promoting academic studies on health and culture, activities to increase the quality of life in ASEAN member States, student and youth exchange programs, to promote cooperation between university lecturers, professionals, and scientists, as well as other activities designated by ASEAN leaders or Ministers. The head office of the foundation is situated in Indonesia, and consists of the Secretary-General of the ASEAN, ASEAN representatives appointed by each member State Government as members of the committee which has the power to consider and approve proposed campaigns and activities.

3.2.11 Treaty on the South East Asia Nuclear Weapon-Free Zone

The main principles of the treaty included refraining from developing, manufacturing, possessing or testing, controlling nuclear weapons or nuclear weapons stations in or outside of the jurisdiction under the Treaty, as well as to refrain from aiding or assisting the sourcing of nuclear weapons to other countries, and the dumping of radioactive waste, except insofar as is permitted by the agreement under the International Atomic Energy Agency. Where a member State suspects that another member State is acting in contravention of the Treaty, it allows the former to submit a request for investigation of facts. However, the Treaty allows the development of nuclear power for peaceful purposes.

3.2.12 Treaty of Amity and Co-operation in Southeast Asia

The objective of the Treaty is to establish terms of cooperation and international relations based on the respect for sovereignty of ASEAN member States, as well as mutual respect for the independence, sovereignty, equality, territorial integrity and national identity of all members, non-interference in the internal affairs of one another, settlement of differences or disputes by peaceful means and the renunciation of the threat or use of force.

3.2.13 Agreement on the Establishment of the ASEAN Secretariat

The objective of this Treaty is to establish the ASEAN Secretariat as a focal point for cooperation and exchange of information between ASEAN member States, especially in communicating and disseminating information from ASEAN Summits and meetings, ministerial meetings. The office is rotated according to the alphabet, and each member State has a term of 2 years. The Secretariat consists of 3 working groups of the Economic, Science and Technology and Social and Cultural

working groups and also includes officials working on international trade and economics, service officials, publicity officials, Secretariat aids and local staff.

It can be concluded in the overview of the politics and national security of Indonesia that the political and administrative system of Indonesia was developed with the influence of its historical, social, cultural and political background, as well as influence of colonial powers which makes Indonesia a country that is based on the principle of unity in diversity. Indonesia is diverse in ethnicity, religion and political ideals of its people, and these are what influences the structure of Indonesia's administrative organs, its legal system and the laws enacted in the country, which the research will reveal in the next parts.

Chapter 2

Government agencies relating to social, culture, political and security

In this Chapter the researcher has studied on the overall picture of the agencies related to social culture political and security to enhance understanding on their authorities and duties, mission as well as structure.

(1) Socio and Cultural

Indonesia has 9 agencies at the Ministry level on the Socio and Cultural field.

1.1 Ministry of Religious Affairs

Duties and Authorities

The Ministry of Religious Affairs duties and authorities cover formulation, determination and implementation of policies in the field of Religions such as promoting religious education, conciliate between those who have different religions and promotion Islam to the people.

Mission

In carrying out its duties, the Ministry of Religious Affairs can perform the following:

1) coordinate and supervise task implementation;

2) give guidance, and provide administrative support to all agencies under the Ministry of Religious Affairs;

3) manage property of the Ministry of Religious Affairs;

4) implementing of and supervise over the implementation of technical activities in the field of Religion Affairs;

5) Develop and implement technical work manuals on religious affairs.

6) manage and develop human resource of the Ministry.

Further, the Ministry of Religion has important tasks on supervising and formulation of religion education curriculum, facilitate and take care of citizen who want to travel to Hajj as well as promote understanding and tolerance in the society for those who has difference religions by way of giving information through various media channels.

Organization Structure

Minister of Religious Affairs is the head of the Ministry. Ministry of Religious Affairs, with the Permanent Secretary overseeing the operation of the Ministry. Ministry of Religious Affairs consists of:

1) Office of the Permanent Secretary

Office of the Permanent Secretary has the following functions; coordination of activities, plans, programs and budgets of the Ministry of Religious Affairs and providing administrative support covering administration, personnel, finance, housekeeping, cooperation, public relations of the Ministry of Religious Affairs; giving advice and plan of organization's structuring and administration; coordination and preparation of legislation and legal advocacy; management property of the Ministry, including other duties provided by laws or the Minister.

2) Department of Islamic Education

Department of Islamic Education has the duty to formulate Islamic education curriculum and standard at every level

3) Department of Hajj and Umrah

The Department of Hajj and Umrah has duties to organize the formulation and Implementation of policies to assist Hajj pilgrimage such as accreditation of companies and non-profit organizations managing Hajj, manage Fund for Islamic for Hajj and make information media on Hajj.

4) Department of Islamic Community Guidance

The Department of Islamic Community Guidance has duties to create a healthy Muslim community by organizing activities with Mosques and broadcast information media about Muslim around the world on internet.

5) Department of Christian Community Guidance

The Department of Christian Community Guidance has duties to promote Christian-Protestant doctrines by determine policies and work guidelines with the goal to make evangelism correctly; promote peace and order in the society such as cooperation with churches in Indonesia to host events, to publish media, educational media and information, and to promote knowledge to Christian and people who has different religions as to strengthen living togetherness.

6) Department of Catholic Community Guidance

The Department of Catholic Community Guidance has duties to promote Christian-Catholic doctrines by determine policies and work guidelines with the goal to make missionary correctly; promote peace and order in the society such as cooperation with churches in Indonesia to host events, to publish media, educational media and information, and to promote knowledge to Christian and people who has different religions as to strengthen living togetherness same as Protestant.

7) Department of Hindu Community Guidance

The Department of Hindu Community Guidance has duties to promote Hindu preaches by determine policies and work guidelines with the goal to make preach correctly; promote peace and order in the society such as cooperation with religious organizations in Indonesia to host events and to publish media, educational media and information.

8) Department of Buddhist Community Guidance

The Department of Hindu Community Guidance has duties to promote Buddhism missionary by determine policies and work guidelines with the goal to make missionary correctly; promote peace and order in the society such as cooperation with

religious organizations in Indonesia to host events and to publish media, educational media and information.

9) The Halal Products Guaranteed Agency

The Halal Products Guaranteed Agency has duties to inspect and certify Halal product sold in Indonesia.

1.2 Ministry of Social Affairs

Duties and Authorities

Ministry of Social Affairs has the duties of policies formulation, rules and guidelines determination, carry out social rehabilitation, social security especially those in need such as the poor, victims of natural disasters, as well as enhance peace and generosity in the society.

Mission

In carrying out its duties, the Ministry of Social Affairs performs the following function;

1) Determination of criteria and data of the poor and needy.

2) Setting social rehabilitation standards.

3) Coordination of task implementation, guidance, and administration support to all organizational elements within the Ministry of Social Affairs.

4) Management of Ministry's property

5) Perform and supervision over the implementation of policies and strategies

6) Providing and implementation of technical guidance on social welfare

7) Research on social welfare human resource management and development

8) Implementation of support that is substantive to all elements of the organization within the Ministry of Social Affairs.

9) Support to the Ministry

The final goal to be achieved by the Ministry of Social Affairs during 2015-2019 through the implementation of social welfare, are:

1) Improve citizen potentiality to access the 4 basic needs, namely food, drug, clothing and shelter;

2) Fulfillment of basic rights and inclusiveness for the poor and vulnerable, persons with disabilities, and other marginalized groups, carry out activity to give information on state aids for living, provide help to people in need, carry out activity that strengthen family institute, do research on various fields such as poverty

reduction, possibility to access public services and increase social opportunity for the less-fortunate;

3) Increased quality and management of social welfare.

Organization Structure

Minister of Social Affair is the head of the Ministry. Ministry of Social Affair, with the Permanent Secretary overseeing the operation of the Ministry. The law prescribes the structure of the Ministry of Social Affair is Ministerial Regulation of the Ministry of Social Affairs No. 20 of 2015, which is as follow.

1) Secretariat General

The Permanent Secretary is the head of the executive. The Secretariat General has the following functions; coordination of activities, plans, programs and budgets of the Ministry of Social Affairs; promote and support agencies under the Ministry covering personnel, finance, public relations, giving advice and plan of organization management and administration; coordination and preparation of legislation and legal advocacy; management property of the Ministry, including other duties provided by laws or the Minister.

2) Department of Social Protection and Social Security

Director General is the head of the department. Department of Social Protection and Social Security has duties to help victims of disasters by provision of food, clothing and temporary shelter. The department also aid people facing hardship such as victims of trafficking and illegal Indonesian workers who are deported.

3) Department of Social Rehabilitation

Director General is the head of the department. Department of Social Rehabilitation has duties to help and restore the following groups of people; orphans, elderly, person with disabilities, ex drug addicts, victim of human trafficking, poor people including people in difficulties such as victims of natural disasters, family which parents are drug addicted.

4) Department of Social Empowerment

Director General is the head of the department. Department of Social Empowerment has duties to take care of a person, a family or a group of persons who need social welfare, empower potentiality of institutions which provide social welfare, reinforce and honor a person who empower family institute and social institutes, managing social fund and promote welfare of remote indigenous communities.

5) Department of Poor Assistance;

Director General is the head of the department. Department of Poor Assistance has duties to administrate and provide welfare to poor people in rural-, urban-, coastal areas and small remote islands.

1.3 Ministry of Education and Culture

Duties and Authorities

The Ministry of Education and Culture has the duty to of policies formulation, administration, guidelines provision, support research and performing duties under education laws such as provision of compulsory education of the country from early childhood education, basic education, secondary education, community education, and socio-cultural knowledge.

Mission

In performing the duties, Ministry of Education and Culture perform following functions:

1) formulation and determination of policy in for early childhood education, basic education, secondary education, community education, as well as cultural management;

2) education facilitation for early childhood education, basic education, secondary education, community education, as well as cultural management;

3) implementation of policies in the field of quality improvement and welfare of teachers and other educators.

4) coordination and providing administrative support to all agencies of the Ministry of Education and Culture;

5) management of state property;

6) perform and supervision of the implementation of policies and strategies;

7) determination and implementation of technical guidance on educating and cultural field;

8) develop, educate and protect language and literature;

9) implementation of research and development in the field early childhood education, basic education, secondary education, and community education, as well as cultural management;

10) implementation of substantive support within the Ministry.

Ministry of Education and Culture also perform further tasks such as providing compulsory education and training, develop and certify educational personnel, create

access to education and culture for all, promote and educate through various media, create learning materials such as Indonesian dictionary, including teaching materials.

Organization Structure

Minister of Education and Culture is the head of the Ministry with the Permanent Secretary overseeing the operation of the Ministry. Ministry of Education and Culture consists of:

1) Secretariat General

Permanent Secretary is the head executive of the secretariat general. The Secretariat General has following functions; coordination of activities, plans, programs and budgets of the Ministry; promote and support agencies under the Ministry covering personnel, finance, public relations, giving advice and plan of organization management and administration; coordination and preparation of legislation and legal advocacy; management property of the Ministry, including other duties provided by laws or the Minister.

2) Department of Teachers and Education Personnel

Director General is the head of the department. Department of Teachers and Education Personnel has duties to oversee educational personnel, such as screening test, placement, transfer of teachers, teacher training, instructional guidelines and teacher welfare.

3) Department of Early Childhood Education and Community Education

Director General is the head of the department. Department of Early Childhood Education and Community Education has following duty: coordination, develop curriculum, teaching and training methods as well as education personnel; build public schools; allocate funds to support schools which provide early childhood education; and educate on family institution.

4) Department of Primary and Secondary Education

Director General is the head of the department. Department of Primary and Secondary Education has following duty: coordination; build, develop, as well as grant the permission to the establishment of elementary and secondary schools; develop curricula and guidelines for both elementary and secondary education and for person with disabilities. In addition, the Department also has an online teaching and learning project.

5) Department of Culture

Director General is the head of the department. Department of Culture has duties to coordinate, carry out policy and organize activities related to the preservation

of culture, arts, belief in God, history, culture and appointing cultural ambassador. The Ministry also manage museums throughout Indonesia.

1.4 Ministry of Justice and Human Rights

Duties and Authorities

The Ministry of Justice and Human Rights has the duty to draft quality laws, supervise legal service and legal enforcement in Indonesia, overseeing government operations to be in accordance with human rights principles.

Mission

In performing the duties Ministry of Justice and Human Right perform the following functions:

1) Formulation, determination, and implementation of the policies in the field of justice, penalization, immigration, Intellectual property, and human rights;

2) Coordination of task implementation and supervision of the implementation of duties within the Ministry;

3) Management of state property the Ministry;

4) Provision of advice and support to every agency under the Ministry;

5) Make and implementation of technical guidance on justice and human rights;

6) Development of national legal system;

7) Implementation of research in the field of justice and human rights;

8) Implementation of human resource development;

Further, the Ministry's main functions are: legislation drafting; define the law pattern of the country; correctional administration; provision of legal aids such as legal education and legal counseling

Organization Structure

Minister of Justice and Human Right is the head of the Ministry with the Permanent Secretary overseeing the operation of the Ministry. Ministry of Justice and Human Right consists of:

1) Department of Human Rights

Department of Human Rights has duties to formulation of policies, plans and human rights law in Indonesia. It also coordinates and monitors the implementation of other agencies to promote human rights related to the work of that agency. The department also provide information on human right to the citizen.

2) Department of Legal Administration

Department of Law Administration has duties to provide legal and human rights education to the people of Indonesia through the implementation of the Department's projects.

3) Department of Intellectual Property

Department of Intellectual Property has duties to develop policies on intellectual property law, register including store information of intellectual property, provide technical advice on matters relating to intellectual property such as registration and revocation of registration.

4) Department of Research and Development of Human Rights

Department of Research and Development of Human Rights has duties to carry out research to support implementation of human rights concept into the execution and provision of services to citizen by public agency and officers.

5) Department of Legislation

Department of Legislation has duties to make law of Indonesia. It works divide into legal drafting and harmonization of laws throughout Indonesia due to the federal political system of Indonesia.

6) National Legal Development Board

National Legal Development Board has duties to develop, modernize and harmonize Indonesian laws. The committee was established in 1958 with the aim of improving Indonesian law in the colonial era and establishing a guideline for the Indonesian legal system.

7) Department of Immigration

Department of Immigration has duties to formulate Indonesia's immigration policies. It has the power to set up passport standard, approve immigration status, investigate and track illegal immigration and coordinate with the Ministry of Foreign Affairs on Immigration.

8) Department of Human Resources Development for Judicial Affairs

Department of Human Resource Development for Judicial Affairs has duty to develop officers of Ministry of Justice to be moral correct and respect human rights.

9) Department of Corrections

Department of Corrections has duties to formulate policies and guidelines regarding correctional work, build prisons and maintain prisons safety, determine the daily activities routine of inmates including providing career training for inmates.

1.5 Ministry of Public Works and Public Housing

Duties and Authorities

The Ministry of Public Works and Public Housing has the task of formulation, determination and implementation of policies on in the field of public works and national housing, which are: water resources management, road management, housing provision and settlement development, housing finance, drinking water system, wastewater management system and environmental drainage and waste management, construction services on road building, water management plan, housing and public housing projects, city planning and granting of construction permit.

Mission

In carrying out its duties, the Ministry of Public Works and Public Housing performs the following;

1) coordinate and supervision task implementation;

2) give guidance, and provision of administrative support to all agencies under the Ministry of Public Works and Public Housing;

3) manage property of the Ministry of Public Works and Public Housing;

4) implementing of and supervise over the implementation of technical policy and strategy of integrated infrastructure development of national public works and public housing as a whole;

5) making and implementing technical guidance in the field of public works and public housing;

6) research in the field of public works and public housing; and

7) manage and develop human resource of the Ministry.

Organization Structure

Minister of Public Works and Public Housing is the executive head of the Ministry, with the Permanent Secretary overseeing the operation of the Ministry. Ministry of Public Works and Public Housing consists of:

1) Office of the Permanent Secretary

Office of the Permanent Secretary is headed by the Permanent Secretary. Office of the Permanent Secretary has the following functions; coordination of activities, plans, programs and budgets of the Ministry of Public Works and Public Housing; fostering and providing administrative support covering administration, personnel, finance, housekeeping, cooperation, public relations, archives, and documentation of the Ministry of Public Works and Public Housing; giving advice on planning of organization's structuring and administration; coordination and preparation of legislation and legal advocacy; management property of the Ministry, including other duties provided by laws or the Minister.

2) Department of Water Resources

Department of Water Resources is headed by the Director General. Department of Water Resources has the duty to formulate and implement policies in the fields of water resources management, conservation- and utilization of water resources and control of polluted surface water sources, and utilization of groundwater. The Department of Water Resources also set norms, standards, procedures, and criteria in the field of water resources management, providing technical guidance, evaluate, report and supervise in the field of water resources management; management strategy implementation of the Department of Water Resources, including carrying out other duties provided by laws or the Minister.

3) Department of Highways

Department of Highways is headed by the Director General. Department of Highways has the duty to formulate and implement policies in the field of road operations with the main focus of public roads. The Department of Highways also performs the following functions: implementation of policies in the area of strengthening connectivity; furnishing norms, standards, procedures, and criteria in the field of road operations; providing technical guidance, supervision evaluation and reporting in the field of road operations, including carrying out other duties provided by laws or the Minister.

4) Department of Human Settlements

Department of Human Settlements is headed by the Director General. Department of Human Settlements has the duty to organize the formulation and implementation of policies in the area of human settlement development such as urban managements, development of water supply system, development of wastewater and garbage management and development of drainage system. The Department of Human Settlements also has the following functions; preparation of norms, standards, procedures, and criteria of settlement development; provision of technical guidance in the field of urban managements, development of water supply system, wastewater and garbage management and development of drainage system; evaluate, report and supervise implementation of projects of human settlement development, including carrying out other duties provided by laws or the Minister.

5) Department of Housing Provision

Department of Housing Provision is headed by the Director General. Department of Housing Provision has the duties of organizing the formulation and implementation of policies in the field of housing provision, which are: providing accommodation for officials; providing public housing for persons with special need

such as persons with disability, persons with brain malfunction, low income people; fostering housing construction; preparation of norms, standards, procedures, and criteria in the field of organizing the provision of housing; providing technical guidance and supervision in the provision of housing provision; implementation of evaluation and reporting in the field of providing housing, including carrying out other duties provided by laws or the Minister.

6) Department of Construction Development

Department of Construction Development is headed by the Director General. Department of Construction Development has the duty to organize the formulation and implementation of policies in the field of construction services such as building and construction. The Department of Construction also has the following function; empower and supervise the implementation of construction services carried out by communities and local governments; preparation of norms, standards, procedures, and criteria in the field of construction services development; furnishing technical guidance and report; evaluation and supervision in the field of construction, including performing other duties as prescribed by laws or ordered by the Minister.

7) Department of Housing finance

Department of Housing finance is headed by the Director General. Department of Housing finance has the duty to formulate and implement policies in the field of housing finance which are: develop housing finance system; implement the policy to assist and provide housing finance for low income people and low income communities; furnishing norms, standards, procedures and criteria in the field of housing finance; provide technical guidance; evaluate, report and supervise projects in the field of housing finance; and carrying out other duties as prescribed by laws or ordered by the Minister.

1.6 Ministry of Tourism

Duties and Authorities

The Ministry of Tourism has the task of organizing governmental affairs in the field of tourism such as development and foster tourism destinations, tourism industries, and tourism institutions, promotion Indonesia tourism international and islands tourism.

Mission

In carrying out its duties, the Ministry of Tourism performs the following: formulates and determine policy in the field of tourism; coordinate policy

implementation between agencies; set up technical guidance; develops and support development of tourist attractions as well as improving the quality and competitiveness of tourism; coaching and providing administrative support to all organizations under the Ministry of Tourism; and supervises the implementation of duties under the Ministry of Tourism.

Organization structure

Minister of Tourism is the executive head of the Ministry, with the Permanent Secretary overseeing the operation of the Ministry. Ministry of Tourism consist of:

1) Office of the Permanent Secretary

Office of the Permanent Secretary is headed by the Permanent Secretary. Office of the Permanent Secretary has the following tasks: organizing and coordinating of activities, plans, projects and budget of the ministry; giving administrative support to all agencies under the ministry covering human resource administration, finance, public relations; advise on and plan organization management, coordinate on legal drafting and litigation, manage ministry' s property as well as carrying out other duties as prescribed by laws or ordered by the Minister.

2) Department of Tourism Destinations and Tourism Industries Development

Department of Tourism Destinations and Tourism Industries Development is headed by the Director General. Department of Tourism Destinations and Tourism Industries Development has the task to manage, formulate and implement cultural-, natural- , and man- made tourism destinations development policies, such as restaurants on the beach and water sport centers, as well as increase tourism industrial competitiveness. In performing its duties, Department of Tourism Destinations and Tourism Industries Development performs the following function: policy formulation, coordination and implementation in tourism destinations and tourism industries development; developing infrastructure necessary for tourism; tourism industry partnerships; community empowerment in tourism; preparation of laws and standards in the field of tourism destination and tourism industries development; providing technical guidance; supervision implementation, evaluation and reporting in the field of tourism destination and tourism industries development ; and carrying out other duties as prescribed by laws or ordered by the Minister.

3) Department of International Tourism Promotion

Department of International Tourism Promotion is headed by the Director General. Department of International Tourism Promotion performs the following functions: policy formulation, coordination and implementation in the field of tourism marketing at international level such as cultural performance and public relations;

policy formulation, coordination and implementation in the field of tourism development in foreign countries; preparing materials for the preparation of plans; and carrying out other duties as prescribed by laws or ordered by the Minister.

4) Department of Archipelago Tourism Promotion

Due to its geography, Indonesia has established this department to specially promote and develop archipelago tourism. Department of Archipelago Tourism Promotion is headed by the Director General. Department of Archipelago Tourism Promotion performs the following functions: policy formulation, coordination and implementation archipelago tourism development, which included all the stakeholders such as locals, local business and local governments; market data analysis inclusive islands local development in both private and public sectors; preparing materials for the preparation of plans and programs; providing technical guidance; monitoring, evaluation, reporting and analysis of activities; and carrying out other duties as prescribed by laws or ordered by the Minister.

5) Department of Tourism Institution Development.

Department of Tourism Institution Development is headed by the Director General. Department of Tourism Institution Development has the task of policy formulation, coordination and implementation in the field of tourism institution development; giving education, providing training program and competence development of human resources in the field of tourism; providing technical guidance; monitoring, evaluation, reporting and analysis of activities; and carrying out other duties as prescribed by laws or ordered by the Minister.

1.7 Ministry of Youth and Sports Affairs

Duties and Authority

The Ministry of Youth and Sports Affairs has the task of promoting sport and youth building as well as national sports performance, in line with the vision of the National Long-Term Development Plan (RPJPN) 2005-2025 which stipulated that "Indonesia is an independent, advanced, just, prosperous and competitive nation".

Mission

The Ministry of Youth and Sports Affairs has the importance tasks to formulate and determine policy in the field of youth empowerment and – development; sports culture fostering, improve sports performance, develop leadership; coordinate policy implementation; implement policies; give technical guidance and supervise the implementation of duties of agencies; provide administrative support to all organizations under the Ministry of Youth and Sports Affairs; organize sport events,

especially at the youth level as to foster sport skills, good characters and sport spirit; and cooperate with other domestic and international agencies.

Organization structure

Minister of Youth and Sports Affairs is the executive head of the Ministry, with the Permanent Secretary overseeing the operation of the Ministry. Ministry of Youth and Sports Affairs consist of:

1) Office of the Permanent Secretary

Office of the Permanent Secretary is headed by the Permanent Secretary. Office of the Permanent Secretary has the task of coordinating of tasks, plans, projects and budget implementation, coaching and providing administrative support, covering administration, personnel, finance, public relations, to all agencies under the Ministry of Youth and Sports Affairs; advice and plan organization planning and management; coordinating legislation drafting and litigation, as well as implementation of other functions provided by the Minister.

2) Department of Youth Empowerment;

Department of Youth Empowerment is headed by Director General. Department of Youth Empowerment has the task of policy formulation, coordination and implementation in the field of youth potentiality development and capacity building, educate youth education and enhance youth creativity; compilation of laws and standards to promote youth capacity; providing technical guidance; monitoring, evaluation, reporting and analysis of activities; and carrying out other duties as prescribed by laws or ordered by the Minister.

3) Department of Youth Development;

Department of Youth Development is headed by Director General. Department of Youth Development has the task of policy formulation, coordination and implementation to support youth leadership, youth entrepreneurship, youth organization, support infrastructures which crucial for youth development such as youth centers, support youth partnerships with public and private sectors, and youth awards as well as to supervise of scouting; compilation of laws and standards; providing technical guidance; supervision implementation, evaluation and reporting; and carrying out other duties as prescribed by laws or ordered by the Minister.

4) Department of Sport

Department of Sport Culture is headed by Director General. Department of Sport has the task of policy formulation, coordination and implementation in the field of sports education management of sport education, sports recreation, sports center,

sports school; development of traditional sports such as Pencak Silat[80], Sepak Takraw; foster sports partnerships between agencies; giving awards; compilation of laws and standards in sports; providing technical guidance; Monitoring, analysis evaluation and reporting of the implementation; and carrying out other duties as prescribed by laws or ordered by the Minister.

5) Department of Sports Achievement Improvement;

Department of Sport Achievement Improvement is headed by Director General. Department of Sport Achievement Improvement has the task of policy formulation, coordination and implementation in the field of sport science and sport technology; personnel- and sports organizations development and increase; sports and athletes promotions and support; sport standardization and sports infrastructure development, such as volleyball and badminton fields; sport industry promotion; sports achievements promotion; compilation of laws and standards; providing technical guidance; monitoring, analysis evaluation and reporting of the implementation; and carrying out other duties as prescribed by laws or ordered by the Minister.

1.8 Ministry of National Development Planning/ National Development Planning Agency

Duties and Authority

The mission of the Ministry of National Development Planning is as follow: formulate policies of planning, budgeting, regulation, and institutions in a harmonized national development plan (inter-regional, or between the central and regional levels); perform planning control over national development plan implementation, as to ensure harmonized country development achievements.

Mission

Missions of the Ministry of National Development Planning can be divided into 4 following fields:

1) policy and decision making: preparation of national development plans, revenues and expenditure budget plan; control and evaluate the implementation of the development plan; decision-making in the handling of urgent and large-scale issues, according to the assignment;

2) think- tanks: assessment and formulation of policies in the field of development planning, and other policies; Strengthening planning capacity at the

[80] Indonesian martial arts.

central and regional levels in creating innovative and creative funding mechanisms; participatory planning through cooperation with universities, professional organizations, and civil society organizations;

3) Coordination: plan national development strategies, facilities infrastructure design; coordinate and cooperate with foreign countries and international organization such as UN; coordination of strategic activities to address urgent issues of the country;

4) administration: preparation and management of monitoring reports on implementation of development plans; give guidance and general information on national development plans to other agencies.

Organization structure

Minister of National Development Planning is the head executive of Ministry of National Development Planning, with the Permanent Secretary overseeing the operation of the Ministry. Among all Ministries, the Ministry of National Development Planning have a highest number of the agencies, which are:

1) Office of the Permanent Secretary;

Office of the Permanent Secretary is headed by the Permanent Secretary. Office of the Permanent Secretary has the task of coordinating of activities, plans, projects and budget of the Ministry of National Development Planning; support and providing administrative support to every agency under the Ministry covering personnel administration, finance, public relations; advising and planning organization management; coordinate and draft laws and litigation; manage Ministry property as well as implementation of other functions provided by the Minister.

2) Department for Human, Society and Culture Development

Department of Human, Community and Cultural Development is headed by Director General. Department of Human, Society and Culture Development has the task of policy making; coordinate policy implementation in the field of human, community and cultural development; preparation of integrated national development plans as well as formulate programs and activities of ministries and national institutions in the field of human, community and cultural development; coordinating and controlling national development plans to be within the framework of synergies between the government work plan and the estimated state revenue.

3) Department for Politics, Law, Defense and Security

Department for Politics, Law, Defense and Security is headed by Director General. Department for Political, Legal, Defense and Security has the duty to organize the coordination, formulation and implementation of policies; monitoring, evaluation and control of national development planning in the fields of politics, law, defense

and security; coordination of national regulatory frameworks and institutional frameworks; coordinating and synchronizing the implementation of- , as well as coordinating the launching and acceleration of the implementation of development programs and activities in the fields of politics, law, defense and security.

4) Department of Population and Employment Affairs

Department of Population and Employment Affairs is headed by Director General. Department of Population and Employment Affairs has the duty to formulate and implement of policies; monitoring, evaluation and control of national development planning and implementation in the field of population and manpower such as poverty reduction, social welfare, small- , medium enterprises and cooperatives development; coordinating and controlling the national development plan in the framework of synergy between the government work plan, the draft state revenue and expenditure budget; and coordinating the launching and acceleration of the implementation of development programs and activities in the field of population and manpower.

5) Department of Economics

Department of Economics is headed by Director General. The Department of Economics has the task of organizing the coordination and formulation of the macroeconomic framework; coordination, formulation and implementation of policies; monitoring, evaluation and control of national development planning in the economic field, such as macroeconomics planning and public statistical analysis, state finance and monetary analysis; delivery of financial trade and investment services, international economic cooperation, and Industry, Tourism and Creative Economy.

6) Department of Marine and Natural Resources

Department of the Ministry of Marine and Natural Resources is headed by Director General. Department of Marine and Natural Resources has the task of organizing the coordination, formulation and implementation of policies, as well as monitoring, evaluation and control of national development planning in the field of maritime and natural resources such as food and agriculture, forestry and water resources conservation, fisheries, energy, minerals and mining resources, and environment.

7) Department of Facilities and Infrastructure

Department of Facilities and Infrastructure is headed by Director General. Department of Facilities and Infrastructure has the duty to organize the coordination, formulation and implementation of policies; monitoring, evaluation and control of national development planning in the field of facilities and infrastructure such as

irrigation, transportation, energy, telecommunication and informatics, Public Private Partnership and Design; as well as implementation of other functions provided by the Minister.

8) Department of Regional Development

Department of Regional Development has the task of coordination and formulation of regional macroeconomic frameworks; coordination, formulation and implementation of policies; monitoring, evaluation and control of regional development planning in the regional field such as spatial and land use planning, local, regional, underdeveloped and rural areas development, transmigration, and Regional Autonomy; as well as implementation of other functions provided by the Minister

9) Department of Development Funding

Department of Development Funding is headed by Director General. Department of Development Funding has the task of coordination, formulation and implementation of policies in the field of national development planning and development, international development cooperation, allocation of funding; as well as implementation of other functions provided by the Minister.

10) Department of Development Monitoring, Evaluation and Control

Department of Development Monitoring, Evaluation and Control is headed by Director General. Department of Development Monitoring, Evaluation and Control has the task of formulation of national development plans; monitoring, evaluation and control over policies implementation, programs and development activities; as well as implementation of other functions provided by the Minister.

1.9 Ministry of Manpower and Transmigration

Duties and Authority

The Ministry of Manpower and Transmigration has the task of formulation, determination and implementation of policies in the field of manpower.

Mission

Ministry of Manpower has the importance duty to improve the quality of planning and development programs in the field of manpower and transmigration; improve the effectiveness, efficiency and optimization of financing the development of manpower and transmigration fields; labour skill development; improve quality and effectiveness of the implementation of laws; cooperation with foreign governments and international organization; and improve the quality of occupational safety and health (OS&H) system management at work place.

Organization structure

Ministry of Manpower and Transmigration is the executive head of the Ministry, with the Permanent Secretary overseeing the operation of the Ministry. Ministry of Manpower and Transmigration consist of:

1) Office of the Permanent Secretary

Office of the Permanent Secretary is headed by the Permanent Secretary. Office of the Permanent Secretary has the task of coordinating of activities, plans, programs and budget; enhancing and providing administrative support to all agencies under the Ministry, covering human resource management, finance, public relations; providing advice and plan organization management; coordinate legal drafting and litigation, as well as implementation of other functions prescribed by laws or ordered by the Minister.

2) Department of Training and Productivity Development

Department of Training and Productivity Development is headed by the Director General. The Department has the tasks of formulation and implementation of policies and standardization in the field of labour training and productivity development such as training program, training of instructors and coaching staffs, development of training facilities, apprenticeship, and productivity; determination policy of coordination and implementation; compilation of laws and standards in the field of labour training; providing technical guidance and evaluation in the field of standardization of training program, instructor, coaching, counselor, professional training, training facilities, apprenticeship and productivity, as well as implementation of other functions prescribed by laws or ordered by the Minister.

3) Department of Labour Relations and Social Security

Department of Labour Relations and Social Security is headed by Director General. It has the tasks of formulation and implementation of policies and standardization in the field of labour relations development and social security such as guidance for employer and employee, wages, and settlement of labour disputes; implementation of policies and technical standardization in the field of guidance of working conditions, welfare; analysis of discrimination on employment, labour relations; establishment of standards, norms, guidance, criteria, procedures and evaluation in the field of labour relations and social security; providing technical guidance; as well as carrying out other duties as prescribed by laws or ordered by the Minister.

4) Department of Guidance and Placement of Domestic Workers

Department of Guidance and Placement of Domestic Workers is headed by Director General. It has the tasks of formulation and implementation of policies and

standardization in the field of job training, job market analysis and job guidance, increase productivity and placement of domestic workers; implementation of technical policies and standardization; improving the legislation in the field of placement and expansion of employment opportunities; developing the use of job mediation and counseling; facilitating the placement, protection and controlling the use of foreign workers; providing technical guidance and evaluation; as well as carrying out other duties as prescribed by laws or ordered by the Minister.

5) Department of Labour Inspection

Department of Labour Inspection is headed by Director General. It has the tasks of formulation and implementation policies in the field of guidance on supervision of labour norms, work standards of women and children, occupational safety and health; formulation of guidelines, standards, norms, criteria, procedures, and evaluations in the field of labour; providing technical guidance and evaluation which aim to reduce the level of occupational accidents and diseases, reduces violation of labour norms, reduce child labour and improve the quality of working environment conditions; as well as carrying out other duties as prescribed by laws or ordered by the Minister.

(2) Politics and Security

Indonesia has 3 important ministries which are related to politics and security.

2.1 Attorney General of the Republic of Indonesia

Duties and Authorities

Attorney General has the duties to prosecute both civil and criminal cases for the public interest, cooperates with foreign state agencies and international agencies in the field of international cooperation in criminal cases.

Mission

Section 30 of the Law No. 16 of 2004 lays down the powers and duties of the Attorney General's Office in a broad sense, namely; conduction of criminal proceedings; investigation together with the police force; issuance a prosecution order; represent state agencies in civil cases; promotion of legal knowledge to the people; research and develop the law relating to public prosecution, as well as making of crime statistics.

Organization structure

Attorney General is the head of the office and appointed by President. Attorney General of the Republic of Indonesia consists of:

1) Attorney General of Development office

Attorney General of development office oversees the administration of the Attorney General' s office, as well as performs the following duty: planning, administration, finance, housekeeping, human resource management, as well as cooperation with foreign state agencies and international agencies.

2) Intelligence Department

Intelligence department carries out intelligence operation relating to cases in the prosecution litigation under the responsibilities of the attorney general.

3) General Crime Department

General crime department has a duty to prosecute general criminal cases such as burglary, fraud, body injure and murder.

4) Specific Crime Department

Specific crime department prosecutes complex criminal cases or that need specialization such as human trafficking cases, white- collar crime and criminal organizations.

5) Administrative Cases Department

Administrative cases department prosecutes administrative cases.

6) Internal Audit Department

Internal audit department monitoring and auditing financial transactions such as procurement and budget spending to be in accordance with laws and regulations.

2.2 Indonesian National Police

Duties and Authorities

The Indonesian National Police is responsible for the public security and public order, laws enforcement. It stresses cooperation with every governmental agency and takes proactive action to prevent and suppress crime.

Mission

The Indonesian National Police carrying out its duties and authority by way of:

1) Maintain security and peace in the society;

2) Prevent, suppress and reduce crime;

3) Ensure traffic safety;

4) Develop the capacity of the police in their duties and in situations of domestic threat, peace and security;

5) Enforcing the laws according to the code of conducts to be impartial, transparent, verifiable and proportionate, as to establish legal security and uphold social justice;

6) Aid and networking with other public and private entities, including international organizations.

Further, Indonesian National Police has improve its services so that the citizen can conveniently and swiftly received the services by establishing the Integrated Police Service Center (IFMS) to serve the public in various areas such as grievances, daily record, issue a certificate of lost, issue a driver's license, issue a criminal history certificate, automotive registrations, issue various types of permits related to public order and safety such as outdoor performances, marches, demonstrations and fireworks, as well as providing information to the public, cooperation with the courts, prosecutors and international agencies to conduct investigations and prosecution.

Organization Structure

The National Police Commissioner is the highest- ranking officer of the Indonesian National Police, who report directly to the President. The National Police Commissioner has the authority to oversee regional and metropolitan police commissioners. The National Police is divided into central police and regional police. Central police office is metropolitan police office and regional police offices are provincial police region, provincial police และ and police stations.

2.3 Ministry of Defense

Duties and Authorities

The Ministry of Defense has duties to conduct, determine, plan and supervise defending and safeguarding peace and security of the nation domestically and internationally, overseeing army force, as well as disaster alleviation and mitigation.

Mission

In carrying out its tasks, Ministry of Defense formulates, determinates and implements policies in the field of defense, including research to improve its performance make and enforce technical manuals and disciplines; supervise and evaluate the execution of duties in the Ministry of Defense; provide training and education; personnel management; and providing materials and equipment.

Organization Structure

Minister of Defense is the executive head of the Ministry, directly responsible to the president. The Permanent Secretary has executive power to oversee the general operation of the Ministry. Ministry of Defense consists of:

1) The Secretariat General

The Secretariat General has the following functions: coordination of activities, plans, programs and budgets of the ministry; providing administrative support to agency under the ministry covering personnel, finance, public relations, giving advice and plan of organization's structuring and administration; coordination and preparation of legislation and legal advocacy; management property of the ministry, including other duties provided by laws or the Minister.

2) Department of Defense Strategy

Department of Defense Strategy has duties to coordinate and formulate national strategic defense plans, strategic plan for deployments, cooperate with foreign governments and international organizations in the military field and carry out military surveying to gather and produce defense data.

3) Department for Operations

Department for Operations has duties to allocate budgets to all projects and agencies under the department of the Ministry of Defense, plan budget and budget spending management.

4) Department of Defense Potential Evaluation

Department of Defense Potential Evaluation h as duties to evaluate, analyze, report and advise on national defense ability and potentiality. It also analyzes resources for national defense such as arm force and army equipment and materials.

5) Department of Personnel and Armament

Department of Personnel and Armament duties are personnel basis management, army strength augmentation as well as equipment and materials management.

6) Department of Supply

Department of Supply has duties to build infrastructure for national defense, supply and maintenance including procurement of equipment and materials of Indonesia Armed Force.

Chapter 3

Education Law

In Chapter 3, the researcher will present Indonesian law related to education. The research is divided into three parts: preliminary information, Essence of the law and the role of the relevant agencies, as follows:

(1) Preliminary Information

The simplest means of measuring the educational level of a particular country can be analyzed from the amount of literate population .In Indonesia, (the literacy rate of the population is 93.9 per cent)data as of 2015[81], (which is relatively high compared to other countries in the world and ranked 7th among ASEAN member countries .In providing for education for the population of Indonesia, the Constitution of the Republic of Indonesia, 1945, provides that the Government of the Republic of Indonesia is responsible for protecting the citizens and territorial integrity, by promoting social welfare to improve the intellectual quality of the people in the nation, in order to create peace, independence, and social justice. The Indonesian government, therefore, issued the National Education Act 2003[82]" national education system " guaranteeing the right of every Indonesian citizen to have equal access to education . Those between the ages of 7 and 15 must receive compulsory basic education and parents have the right to choose the place of education for their children.

The Indonesian Education System can be divided into three types, namely, formal education, non-formal education, and informal education. The non-formal and informal education are considered unique educational management in Indonesia because it has a vast territory consisting of many islands, which are far from the city,

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[81] The World Factbook. Central Intelligence Agency. "Country Comparison to the World of Literacy Rate". The figures represented are almost entirely collected by the UNESCO Institute for Statistics (UIS) on behalf of UNESCO with 2015 estimates based on people aged 15 or over who can read and write. Retrieved on 22 October 2015 from https://www.revolvy.com.

[82] Act of the Republic of Indonesia No. 20 (2003) on National Education System.

rendering access to formal education system being strenuous. In order to overcome this difficulty, while taking into consideration the unique characteristics of the population, geography and local culture, the Indonesian government had set different education standards to accommodate the particular nature of the population, geography and local culture.

1.1 Formal Education

Indonesia's educational system history is very similar to Thailand's. It started with religious education by religious institutions, which focused on teaching about the Islamic religion and the Arabic language, without the need of any exams to evaluate grades. In addition, students can freely enter and leave this education system at any time. Afterwards, in the colonial era, Indonesia was colonized by the Netherlands. The Dutch introduced a European-style education system to establish a school for the Dutch and European citizens living in Indonesia[83]. Later, in 1870, the school was established for Indonesians and gave the Indonesians the opportunity to study in the aforementioned system. But during the early stages, the schools were still divided between the Dutch and European, and the Indonesians. Until in 1975, the separation of the education system was less strict and in 1998, at the end of the Suharto's presidential reign, Islamic schools were improved to teach other worldly contents in addition to the contents on the Islamic religion as well.[84]

At present, the education system in Indonesia can be categorized into 4 levels of education: pre-primary education. basic education, senior high school, and higher education, as follows:

1.1.1 Pre-primary education

Pre-primary education provides education for children from birth to age 6 with the purpose of giving health support, socialization, parenting, and education, helping children to develop mentally, physically, and intellectually. The education develops the children's thinking system, skills and creativity so they can further adapt to change in the environment of primary school.

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[83] OECD/Asian Development Bank, Education in Indonesia: Rise to the Challenge, (Paris: OECD Publishing, 2015), p. 70.

[84] *Ibid,* 71.

According to the law on national education system,[85] there are three types of pre-primary education programs:[86]

1)Kindergarten (*taman kanak-kanak* or TK) and pre-school for Islamic education (*raudhatul athafal* or RA) for children between 4 and 6 years old, being accredited by the Minister of Religious Affairs.

2)Group play (*kelompok bermain* or KB) and child care facility (*tempat penitipan anak* or TPA) for children between 2 and 4 years old.

3) Integrated childcare center (*pos pelayanan terpadu, posyandu*) for health protection and services for children from birth up to 6 years old.

Pre-primary education is mostly taught by the community or private organizations rather than the State. In addition, the Islamic education program is under the supervision of the Ministry of Religion. The contents consist of lessons on Pancasila, religion, language, creativity, social skills, and emotional development to further help children to develop.[87]

1.1.2 Basic education

Indonesia's compulsory basic education consists of education in primary school and junior high school. The goals of basic education are to provide that students have the basic skills to develop themselves, to grow up and to be good citizen. The studies in primary school equal to 6 years and 3 years of junior high school, totaling 12 years of basic education.[88] The junior high school graduates are awarded a primary certificate called the *Ijazah Sekolah Menengah Pertama* (SMP), which can be divided into two categories according to the curriculum: the *Sekolah Menengah Atas* (SMA) - for the general education and the *Sekolah Menengah Kejuruan* (SMK) – for professional diploma.

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[85] Act of the Republic of Indonesia No. 20 (2003) on National Education System

[86] *Ibid*, p. 86.

[87] UNESCO, "World Data on Education 2010/2011," 7th ed, Retrieved on 23 February 2017 from http://www.ibe.unesco.org, p. 13.

[88] Indonesia has a policy to extend compulsory education for 12 years by 2020. Information from UNESCO, "Country Report: Indonesia, Indonesian Public Policies on Inclusive Education," 2008, Retrieved on 22 October 2015 from http://www.ibe.unesco.org/National_Reports/

In addition, Indonesia's basic or compulsory education has unique characteristics. There are two types of schools: general primary and secondary schools for general students; and special primary and secondary schools for handicapped[89] children. Such schools are special schools for visually impaired children, -for children with hearing disabilities, -for the mentally handicapped, -for the intellectually disables, -for children with problematic emotional and social behaviors, - for children with multiple disabilities, and -for autistic children, etc.

1.1.3 Senior high school education

Senior high school education is education for the purpose of enhancing knowledge from primary and junior high schools, to provide knowledge to increase and further develop the student's skills. It focuses on preparing students to have jobs and careers as well as preparing for higher education. The study duration is 3 years. There are various types of high school education such as general education, vocational education, religious education, service education, and special education as follows.

1) General education is a general secondary education program consisting of normal academic subjects, and specifically designated subjects to prepare students for further study in higher education.

2) Vocational education is divided into various fields such as agriculture and forestry, technology and industry, business and management, community living, tourism, and arts and craft.

3) Religious education is study specifically for the purpose of religion.

4) Service Education is education to increase knowledge and skills for students who are interested in a career to serve the country such as government officials or employees.

[89] State Act no. 8 of 2016 provides for the widespread recognition of the rights and obligations of persons with disabilities. One of them is the right to quality education at all levels. The disabled must be educated by qualified teachers just like regular students. The State must provide appropriate educational facilities. In implementing the law, federal and local governments must include programs that address disabilities at all levels of basic education, such as the provision of literacy and navigation for visually impaired people. The provision of sign language education for people with hearing disabilities, or to arrange schools for people with disabilities near the domicile of people with disabilities, including to provide scholarships for people with disabilities whose parents have insufficient funds.

5) Special education is education for students with physical or mental disabilities.

Indonesia academic calendar year is divided in two semesters, January to June and July to December. There are school breaks during the month of December and Islamic religious holidays (which the Ministry of Religion schedules on a yearly basis. The second semester begins in January and ends in mid-June[90]. The evaluation of studies are conducted using a standardized National Test in each designated level: the last year of primary school, junior high school, and senior high school.[91] This is to ensure that the standard of education is universal within the country.

1.1.4 Higher education

Higher Education is high academic education for students that have graduated from senior high school to further develop in-depth knowledge in the academic and professional levels. There are five categories of higher education institutions: academy, polytechnic, college for specialization, institute and university,[92] and the studies are sub-divided into two groups: university education and other educational institutions i.e. academy, polytechnic, college for specialization, institute.

1) University education is under the responsibility of the Ministry of Research, Technology and Higher Education.[93] It is divided into 3 levels. The first level is Bachelor degree, which requires 3 - 4 years. The second level is Master degree, which requires 2 years. The last level is Doctor of Philosophy (Ph.D), which takes 3 years. The purpose is to expand knowledge in science, technology and research in order to develop the student's experimental and experiential skills to enhance their experience in various fields, in particular, the study of medical sciences, medicine, dentistry and science. As for studies in the post-graduate level (Master's and Ph.D degrees, are a continuation of education from the graduate level of studies. Post-graduate level

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[90] The School Year, Retrieved on 11 November 2017 from https://angloinfo.com/ how-to/indonesia/family/schooling-education/school-year.

[91] UNESCO, "Country Report: Indonesia, Indonesian Public Policies on Inclusive Education," 2008. Retrieved on 22 October 2015 from http://www.ibe.unesco.org/ National_Reports/ICE_2008/indonesia_NR08.pdf.

[92] Act of the Republic of Indonesia No. 20 (2003) on National Education System Article 20 (1) "Higher education institutions can take the form of academy, polytechnic, college for specialization (sekolah tinggi), institute, or university".

[93] Ministry of Research, Technology and Higher Education of the Republic of Indonesia," Retrieved on 26 January 2017 from www.ristekdikti.go.id/

studies are also administered by Universities and are under the administration of the Ministry of Research, Technology, and Higher Education.

For admission to a university, senior high school graduates, with a certificate from their schools, will be selected based on 2 types of grades to the total of 100%: the scores from the school which equals to 40% and a national evaluation called the *Ujain Akhir Nasional* (UAN), or passport which constitutes 60%, amounting a total of 100% for selection for admission into universities.

2) Other educational institutions (academy, polytechnic, college for specialization and institute) are different from the university. Graduates from these institutions will receive a certificate of graduation. This will take up to 4 years depending on the type of registered institution. Each institution operates differently. An academy provides only vocational education, which operates by community's institution. The curricular contents are related to professions that is needed or deficit in the community. Vocational training by the *Balai latithan kerja* (BLKs)[94] is supervised by the Ministry of Manpower and Transmigration[95]. Institute focuses on research, college for specialization focuses on specific or specialized fields, and polytechnic focuses on technical career paths. Upon graduation from any type of education from these institutes, students will receive a Diploma depending on their credit hours as follows.

- Diploma I (D I) is a one-year, full-time study program of 40-50 credits. A Diploma categorized as D I will be given upon graduation.

- Diploma II (D II) is a two-year, full-time study program of 80-90 credits. A Diploma categorized as D II will be given upon graduation.

- Diploma III (D III) is a three-year, full-time study program of 110-120 credits. A Diploma categorized as D III will be given upon graduation.

- Diploma IV (D IV) is a four-year, full-time course of 144-160 credits. A Diploma categorized as D IV will be given upon graduation.

Based on the above mentioned information, it can be seen that Indonesia puts great importance on vocational education. Indonesia's vocational education can be allocated into two different systems, (1) vocational education, which is part of the national education system under the National Education System Act of 2003, and (2) Professional training/internship training as defined in the Employment Act of 2003.

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[94] Law on Higher Education (Law No. 12 of 2012) Article 59

[95] OECD/Asian Development Bank, Education in Indonesia: Rise to the Challenge, p. 157.

Vocational education can be sub-divided into 2 levels: a 3-year course at vocational schools which is equivalent and equal to a diploma from a high school education, but students are given practical rather than theoretical knowledge (This is the same as a vocational certificate education or vocational training in Thailand) and; vocational courses in higher education [96]for a duration of 1-4 years. Upon graduation, students will receive a certificate of higher education. In addition, some universities may offer vocational courses for Bachelor degree graduates.

Table 1: Indicates the education system in Indonesia.

Age	Grade	Level	Formal Education		Vocatinal Education				Non-formal Education
		Higher Education	Islamic S3 Program	Strata 3 Program	Specialist Program 2				Open University
			Islamic S2 Program	Strata 2 Program	Specialist Program 1				
22	16		Islamic Strata 1 Program	Strata 1 Program	Diploma 4 Program	Diploma 3 Program	Diploma 2 Program	D1 Program	
21	15								
20	14								
19	13								
18	12	Secondary Education	Islamic upp. Secundary School (MA)	General Upper Secondary School (SMA)			Vocational Secondary School (SMK)		Paket C
17	11								
16	10								
15	9	Basic Education	Islamic low. Secundary School (MT)	Lower Secondary School (SMP/SLTP)					Paket B
14	8								
13	7								
12	6		Islamic Primary School (MI)	Primary School (SD)					Paket A
11	5								
10	4								
9	3								
8	2								
7	1								
6		Pre-school Education	Islamic Pre-school	Kindergarten (TK)					
5									
4									

Remarks:
Strata 1, 2, 3 (S1, S2, S3) are equivalent to Bachelor, Master, Ph.D.
Specialist programs are programs for academic and/or professional further education
Basic eduction is compulsory and free of charge
Pre-school is optional

Source: TVET in Indonesia from http://www.unevoc.unesco.org/

1.2 Non-formal Education

The purpose of non-formal education is to educate people outside of the educational system, and people who lack of access to the system due to sexual

[96] Law on Higher Education (Law No. 12 of 2012) has defined the term "vocational education" that is "professional education. Technical or higher education, which is defined in the form of a diploma course is intended to prepare students to enter the workforce with the skills required in the particular work. The educational institutions are able to develop such courses so that students can study at Masters and PhD levels in the specialty of it. "

limitations, former basic knowledge, economic status, social status, and family status etc.

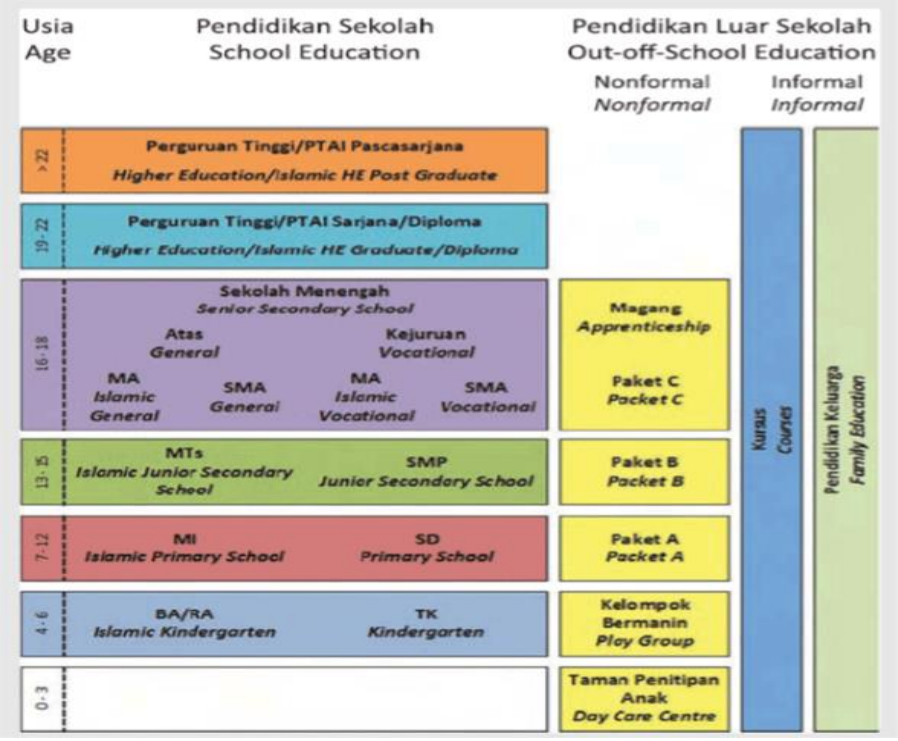
This type of education is modified to provide education through long distances via satellite. Small schools serve as educational institutions for primary to high school in a “special design education, which focuses on extracurricular activities i.e. excursions or off-site activities. Non-formal education in Indonesia can be divided into 3 levels:

1) Educational level equivalent to primary school (Package A)

2) Educational level equivalent to junior high school level (Package B)

3) Educational level equivalent to senior high school (Package C) (focuses on vocational skills training)

Figure 1: Comparison of Indonesia’s curricular in the education system and non-formal education



Source: UNESCO, "*World Data on Education 2010/2011*", 7th ed.

The management and administration of non-formal education is supervised by the Ministry of Education. In addition, non-formal education in Indonesia supports and values women. Since most Indonesian women get married at an early age, they do not have the opportunity to study. The government, therefore, puts importance to promoting non-formal education to allow Indonesian women to read and write. This

will contribute to the development of the economy, society, including health and well-being, and the political participation of the population as well.[97]

In addition to the above mentioned non-formal education, Indonesia also permits the provision of informal education. It is a family education course, taught in the family, with the purpose of providing students with knowledge, numeracy skills, literacy, and the use of the Bahasa language in communication, including lessons on ethical and morality principles and good citizenship.

Table 2: Indicates the age and education levels in Indonesia.

Age	School Year	Education Level	Education Delivery	
			Decentralised	Centralised
Above 22	23			Doctoral (includes general & Islamic, and vocational, academic & professional)
	22			
	21			
	20			Master (includes general & Islamic, and vocational, academic & professional)
	19			
22	18	Higher Education		Undergraduate (includes general & Islamic, and vocational & academic)
21	17			
20	16			
19	15			
18	14	Secondary Education	General senior secondary & vocational senior secondary (SMA & SMK)	Islamic general senior secondary & Islamic vocational senior secondary (MA & MAK)
17	13			
16	12			
15	11		Junior secondary (SMP)	Islamic junior secondary (MTs)
14	10			
13	9			
12	8	Basic Education	Primary (SD)	Islamic primary (MI)
11	7			
10	6			
9	5			
8	4			
7	3			
6	2	Early Childhood Education	Kindergarten (TK)	Islamic kindergarten (RA)
5	1			

Source: MOEC (Ministry of Education and Culture (2013). *Overview of the Education Sector in Indonesia 2012 - Achievements and Challenges,* p. 10.

(2) Essence of the law

One of the important reasons for Indonesia's declaration of independence is to make national life smarter,[98] which is the government's intention to provide

[97] Currently, Indonesia has graduated student from such non-formal education. More than 3 million people have in the country. Source: Country Background Report on Education Sector in Indonesia, Ministry of Education and Culture, Jakarta OECD / Asian Development Bank, Education in Indonesia: Rise to the Challenge, 246 - 251]

[98] USAID, "Study of the Legal Framework for the Indonesian Basic Education Sector," 2nd ed, 2009. Retrieved on 24 February 2017 http://pdf.usaid.gov/pdf_docs/

education to the population. Article 31 of the Constitution of Indonesia states that "Every Indonesian citizen has the right to education and that the government provides a national education system that is arranged by law[99]." As a result, the government allocates 20% of the country's total annual budget to support education each year. For this reason, Indonesia is a country that pays great attention to the population's education. Since the declaration of independence, Indonesia has issued several important legislations related to education, in order to effectively manage the educational system.

The evolution of the education system in Indonesia at the early stage began after the independence declaration, around 1945 - 1972. Before that, while Indonesia was colonized by the Netherlands and Japan, both colonies established educational systems for the Indonesian people. The main purpose of education at that time was to maintain public order under the ruling of the colonial empires during World War II.[100] Thus, the literacy rate was very low. Furthermore, the lessons were taught mainly by Dutch or Japanese teachers, resulting in language barrier. So, when Indonesia declared independence, the government reformed its education system. The government adopted Act no. 4 of 1950 and Act no. 12 of 1954[101] on the principles of managing the school's teaching. This was the key law in creating a basis for the educational system. It stipulates that the state has a duty to educate Indonesian people equally throughout the country. In addition, it established the Executive Committee for the Central National Assembly on December 27, 1945, which supervised the early stages of education based on the principles of "Pancasila"[102]. The principles of education enshrined in the curriculum must also be in accordance with the Board's resolution, according to Article 4 of the 1950 Act. The foundation of education lies in

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Pnadt232.pdf.

[99] Article 31 of the Constitution of 1945 stipulates that every citizen has the right to education and that the government provides a national education system that is arranged by law.

[100] D. Teeuwen msc & H. Doorn, "Education in the Netherlands East-Indies," สืบค้นเมื่อ 25 กุมภาพันธ์ 2560 จาก http://indonesia-dutchcolonialheritage.nl

[101] Law No. 4 of 1950 และ Law No. 12 of 1954 on the Principles of Education and Teaching in School.

[102] Shigeo Nishimura, " The Development of Pancasila Moral Education in Indonesia," Southeast Asian Studies, 33(3). (1995).

the principles of Pancasila, the Constitution of the Republic of Indonesia and the national culture of Indonesia[103]. The Pancasila principles consist of five key elements:

1) Faith in God;

2) Humanism;

3) Indonesian nationalism;

4) The principle of democracy where sovereignty belongs to the people;

5) Social Justice.

In addition, Indonesia has developed following laws concerning education.

2.1. Presidential Instruction Decree No. 10 of 1973

In 1973 - 1988, the Indonesian government announced the distribution of opportunities and equality in education in accordance with the Decree, with the key element of modifying the national education system to be more generalized. In 1976,[104] Indonesia had developed a standard nationwide curriculum[105]. The Decree further established the compulsory education at the primary school level. It stated that by 1984, [106] all Indonesians between the age of 7 and 12 have to be educated for at least 5 years.[107] Afterwards, the Presidential Decree of 1994 later modified that all Indonesians between the age of 7 and 15 have to be educated for 9 years: from primary to junior high school.

2.2 Decision of the People's Consultative Assembly No. IV of 1999

In 1999, the Indonesian government made a policy of reforming the education system once again according to the resolution of the National Advisory Council on the National Strategic Plan Framework (GBHN 1999), which set out guidelines for reform. It placed emphasis on improving curriculum standards to address the diverse needs of students, improving curriculum standards in accordance with local living conditions, and diversification of the forms of education to better suit each profession.[108]

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[103] The foundation of education lies in the principles of Pancasila, the Constitution of the Republic of Indonesia and the national culture of Indonesia.

[104] UNESCO, "World Data on Education 2010/2011".

[105] Daniel Ness and Chia-Ling Lin, International Education: An Encyclopedia of Contemporary Issues and Systems, (2015), p. 419.

[106] Presidential Instruction Decree No. 10 of 1973.

[107] UNESCO, "World Data on Education 2010/2011".

[108] UNESCO, "World Data on Education 2010/2011", p. 3.

Therefore, it enacted two legislations to decentralize management of education: (1) Law No. 22 of 1999 on Local Governance to authorize some decentralization of educational management to local administrative organizations, such as budget allocations for school equipment and law enforcement, and (2) Government Regulation No 25 of 2000 that requires the central government to set policies, guidelines, and national standards.

2.3 Act of the Republic of Indonesia No. 20 (2003) on National Education System

In 2003, Indonesia enacted the Act of the Republic of Indonesia No. 20 of 2003 on National Education System, which repealed the Second Act. of 1989 on the National Education System (Law No. 2/1989) which has been enforced for too long and is outdated.

The 2003 law establishes the objectives of national education. It includes the student's potential development in order to be a well-governed citizen, [109]with good personality and health, have academic and professional skills, creativity, and be able to live self-sufficiently, while understanding the democratic principles. This law establishes the compulsory application of the compulsory education system as prescribed by the Presidential Decree of 1994: [110] all Indonesians between the age of 7 and 15 have to be educated for 9 years, which was to be concluded by 1984. This law provides that the Bahasa language is to be used as a teaching medium.[111] However, the law provides the opportunity for local institutions to use the local language in pararell with Bahasa.

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[109] "developing the full potential of students to become religious and pious, 7 of good character, healthy, having academic knowledge, skilled, creative, self-sufficient, while becoming democratic and responsible citizens".

[110] Section 6 (1) Every seven to fifteen years old citizen shall have the right to receive basic education.

[111] Section 33 (1) Bahasa Indonesia as the language of the nation shall be the medium of instruction in the national education.

(2) Local language can be used as a medium of instruction in the early stage of education, if needed in the delivery of particular knowledge and/or skills.

(3) A foreign language can be used as a medium of instruction to support the competency of the learners in foreign language.

In addition, the Act of the Republic of Indonesia No. 20 (2003) on the National Education System is also a law that regulates the curriculum of different levels of education. Article 37 provides that "the curriculum for basic and secondary education must include: religion education, civic education, language,[112] mathematics, science, social sciences, art and culture, physical education and sports, vocational skills and local content." In addition, it also provides that "the curriculum of higher education must include: religious education, civic education and language. Furthermore, Indonesia has other legislations specifying the details and contents of the curriculum such as the Ministerial Decree No 060/U/1993, which defines the scope of the subjects, number of credits, and evaluation of grades in every semester or upon graduation from each level. Examples of course assignments at the elementary level, includes the education in accordance with the principles of "Pancasila", art and craft, and the Indonesian Bahasa language, etc. Other legislations included is the Ministerial Decree No. 061/U/1993, which defines courses at the secondary level which are sub-divided into the liberal arts, science and sociology sectors, and the Ministerial Decree No. 53 /U/1996, which prescribes the curriculum for non-formal education. As for the curriculum of vocational skills, for the purpose of professional education management in Ministry of Education and Culture[113], is stipulated in the Ministerial Decree No. 80/U/1993 governs the following:, students career guidance, teaching students to have competitive characteristics, development of professional skills and labor building, to suit the economic and industrial needs of the nation.

2.4 The Act Law No.12 of 2012 on Higher Education

The Law on the Implementation of University Education No. 22 of 1961 was the first law on higher education, which laid down the regulations governing the conduct of university education, Higher Education Institutions, the type of higher education institution, such as Advanced Schools, is a specialized institution in higher

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[112] Section 37 (1) The curriculum for basic and secondary education must include: a. religious education; b. civic education; c. language; d. mathematics; e. science; f. social sciences; g. art and culture; h. physical education and sports; i. vocational skills; and j. local content

(2) The curriculum of higher education must include: a. religious education; b. civic education; c. Language.

[113] The former names of the Ministry in 1993. The new name is the Ministry of National Education.

education. The Academy is a specialized educational institution, such as the military, public health or secretarial services. Afterward, during 1999, the Indonesian government introduced a policy to reform education with special regards to higher education and announced the Government Regulation No. 60 of 1999, which provides that the higher education institutions change their status to be more free to manage their the budget. Later in 2005, Government Regulation No. 19 of 2005, was enacted regarding education standards. Shortly afterward, the Government Regulation No. 28 of 2005 was made to define teaching standards at the higher education level, including the establishment of an agency to control the education standards. After extensive discussion between 2005-2012, the House of Representatives of Indonesia passed the Higher Education Act Law No.12 of 2012 to demonstrate the readiness to change basic education system in Indonesia. The main aim was to allow universities to have the power to manage their own curriculum and fully manage their resources like those of universities abroad. This was to promote universality and develop the potential of competitiveness in the Indonesian education market which continues to grow.

(3) Role of relevant agencies

At present, Indonesia has relevant agencies in regulating and overseeing the education system in accordance with the Constitution, namely, the Ministry of National Education and the Ministry of Religious Affairs. The tasks of these 2 agencies are as follows.

3.1 Ministry of National Education

The Ministry of Education of Indonesia was established after the declaration of independence from the Dutch colonies. Originally it was called the Ministry of Education and Culture, and has the authority to supervise ordinary education in ordinary schools (*Sekolah Dasar Sekolah Menengah Pertama*) by setting national education policy. The policies divide administration of 2 categories; the central government and the provincial administration.

1) The central government administration consists of the Office of the Permanent Secretary, the National Institute of Education and Research, government inspector, the Central Office for Basic and Secondary Education, the Central Office for Higher Education, the Central Office for Non-Formal and Informal Studies, and the Central Office for Teacher Development and Educational Personnel. These

government authorities are established to plan the implementation of ministerial policies and allocate educational budgets to the provincial educational agencies.

2) Provincial administration consists of Provincial Education Offices in every province) *kota* (and the Regency Education Offices) *kapubaten* (, who is responsible for the implementation of ministerial policies and implementation of guidelines to adapt to suit the local environment[114] and well-being together with working under the Ministry of Education, national planning, quality control and the maintenance of regional institutions.

In addition, Indonesia has established an independent commission under Article 56 of the Act of the Republic of Indonesia No. 20 of 2003 on the National Education System which is the Board of Education and the School or Madrasah Education Committee to render consultations and setting guidelines for quality assurance and educational standards of educational institutions.

Regarding higher education, there is an agency directly under the supervision of the Ministry of Education, namely the National Accreditation Board for Higher Education[115] who is responsible for assessing and measuring educational levels.

3.2 Ministry of Religious Affairs

The Ministry of Religious Affairs is responsible for overseeing ordinary education in Islamic schools. Islamic schools provide basic teaching and additional contents based on the Islamic doctrine.[116] Most Islamic schools is private educational institutions, especially at the junior high school level. For the junior high school level 56% of the total junior high schools are Islamic schools and for senior high school level, and 67% of the total senior high schools are Islamic schools.[117] For this purpose, the Directorate General for Islamic Education was established in 2005 to especially oversee educational operations. It is an agency under the Ministry of Religion and is separated from the central organization of the Ministry of Religious Affairs.[118]

3.3 Other relevant agencies

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[114] UNESCO, “World Data on Education 2010/2011”, p. 5.

[115] *Ibid*, p. 7.

[116] "World Bank and Education in Indonesia". World Bank. 1 September 2014.

[117] Daniel Ness and Chia-Ling Lin, International Education: An Encyclopedia of Contemporary Issues and Systems, (2015), p. 422.

[118] UNESCO, “World Data on Education 2010/2011” p. 7.

Apart from the two main agencies responsible for education as stated above, there are also other important agencies: (1) the Ministry of Social Affairs, which oversees the standards and quality of educational institutions in kindergarten and pre-school education, such as day care centers, which are mostly established by private organizations or foundations to meet the standards set by the state coupled with supervision by the Ministry of Education, the Ministry of Research which is responsible for monitoring standards of higher-level education, and the Technology and Higher Education and the Ministry of Women Empowerment and Child Protection, which is responsible for promoting and providing advice on the Parenting Program, a curriculum for early childhood care and education.[119]

Chapter 4

Labor laws

In Chapter 4, the researcher will present the Indonesian laws related to labor issues. The study is divided into three parts: preliminary information; key points of the laws; and the role of the relevant agencies.

(1) Preliminary Information

[119] Sumargi, "Understanding Parenting Practices and Parents' Views of Parenting Programs: A Survey Among Indonesian Parents Residing in Indonesia and Australia," Journal of Child and Family Studies, 24(1). (2013), p. 141-160.

Indonesian labor law is related to political change of the country. While Indonesia was still governed by the Netherlands, Indonesia did not become a party to any of the ILO's conventions. After Indonesia's independence in 1949, in the following year (1950), Indonesia became a party to the following ILO conventions;

- Forced Labor Convention, 1930 (No. 29)
- Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)
- Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)
- Underground Work (Women) Convention, 1935 (No. 45)

After that, Indonesia has gradually become an important member of the International Labor Organization (ILO). Since 1949, Indonesia has enacted labor laws in various fields, such as the Ordinance on child labor (Order No. 9 of 1949), Act on labor agreements between labor unions and employers (Law No. 21 of 1954) and Labor Code (Law No. 25 of 1997) The Labor Code (Law No. 25 of 1997) was subsequently repealed by the Labor Code (Law No. 13 of 2003 on Manpower). At present, the Law No. 13 of 2003 on Manpower is the main labor law in Indonesia, so it is called the Labor Code.

The Labor Code contains a total of 193 articles, divided into 18 titles. It has the concept of incorporating various labor laws into a labor code, for simplicity in understanding the labor law system and ease of search, like other laws enacted in the period after the independence. The content of the Labor Code reflects the Indonesian labor laws.

The Indonesian labor law is based on the principle of *Pancasila* and the 1945 constitution (Article 2 of the Labor Code), with the principle of working together through coordination among workers, various sectors and between the federal government and the local government (Article 3 of the Labor Code). The labor code has four main objectives: (1) to support and promote the use of human resources to their highest potential as well as behold human dignity; (2) create equal opportunities for workers and create jobs that meet the needs of local and community development; (3) protect the labor's welfare; and (4) improve the living conditions of the labor force and their families (Article 4 of the Labor Code).

It is worth noting that some part of the Labor Code uses the term "manpower" instead of "labor" because Indonesia views labor in a broad sense, meaning that labor is defined as both economic capital and social capital. In terms of country development, labor also has implications both as a developer and as a success of country development. For this reason, the law defines another term "labor

(*ketenagakerjaan*)" , which means any activity related to a person who is in need or seeking employment both before, during and after employment (article 1 of the Labor Code)[120].

In addition to the above mentioned, the Labor Code governs the following: rules for employment; State duty to promote, oversee and regulate employment and skills development through the provision of professional workforce training and the placement of internships; duties of employers and employees; employment agreements; termination and dismissal of employment; rules on foreign workers; occupational safety; benefits in cases of retirement, work accident and death and health insurance. Thus, the Labor Code comprehensive covers all labor issues, in terms of employment, occupational health, working environment, protection of labor rights, establishment of labor unions and migrant workers. This research will address the topics in the next article.

The Labor Code is the main law that sets the Indonesian labor standards. It is not possible to entail full details on certain labor issues. Indonesia has therefore enacted specific labor laws for specific labor issues. The important ones include:

- Law No. 39 of 1999 on Human Rights
- Law No. 21 of 2000 on Trade Union
- Law No. 2 of 2004 on Industrial Relation Disputes and Settlements
- Law No. 8 of 2016 on Disabilities, in conjunction with Government Regulation No. 43 of 1998 about the efforts to improve social welfare for people with disabilities (Government Regulation No. 43 of 1998 on efforts to improve social welfare for persons with disabilities)

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[120] Article 1

Under this act, the following definitions shall apply:

1. Manpower affairs or labour (*ketenagakerjaan*) refer to every matter that is related to people who are needed or available for a job (*tenaga kerja*) before, during and after their employment.

2. People available for a job or person available for a job (*tenaga kerja*) is every individual or person who is able to work in order to produce goods and/or services either to fulfill his or her own needs or to fulfill the needs of the society.

3. A worker (*pekerja*) / labourer (*buruh*) is every person who works for a wage or other forms of remuneration.

(2) Essence of the laws

As mention above, Indonesia gives importance to domestic workers by joining many international labor conventions and ratifying them by enacting the Labor Code as well as other laws to protect rights and freedom of the labor in Indonesia. Important laws are as follows:

2.1 Labor Code (Law No. 13 of 2003 on Manpower)

As mentioned above, the Labor Code consists of 193 articles, 18 Titles, of which are hereby summarized.[121]

Title 1 General definitions

The Code gives 33 definitions used in this Code and secondary legislation issued in accordance with this Act, as well as other labor laws. The important examples are: "People /Person available for a job" means an individual who can work to produce goods or services to meet their own or social needs; and "Workers /laborers" means all people who work for wages or other forms of compensation.

Title 2 Fundamental values, General principles and Purposes of the law

This title governs fundamental values of labor development which are the Pancasila and the 1945 Constitution (Article 2 of the Labor Code)[122]. Manpower development is carried out based on the basic principle of integration through functional, cross-sector, central, and provincial/municipal coordination (Article 3 of the Labor Code).[123] Manpower development has 4 objectives, namely: empowering

[121] International Labour Organization, "ILO databases and resources," Retrieved on 22 October 2015 from https://www.ilo.org/ inform/databases.

[122] Section 2

Manpower development shall have the Pancasila and the 1945 Constitution as its statutory bases.

[123] Section 3

Manpower development shall be carried out based on the basic principle of integration through functional, cross-sector, central, and provincial/municipal coordination.

and making efficient use of people available for a job optimally and humanely; creating equal opportunity and providing manpower that suits the need of national and provincial/ municipal developments; providing protection and welfare to labor; and improving the welfare of the labor and their family (Article 4 of the Labor Code)[124].

Title 3 Equal Opportunity

This title stipulates one important of the labor law principle that person who are able to work shall have equal opportunity to get employment and are equally treated from the employer.

Title 4 Manpower Plan and Information

The Code imposes 2 important impose duties on the government, namely to set policies on labor and labor development, both at macro and micro levels. The policies shall be based on information from various indexes. Such policies are; policy to create equal employment opportunities for citizen and worker, and social welfare policy for employees.

Title 5 Job Training

The law set out that persons who can work, have the right to an internship that enable them to work, to improve and to develop their skill, which fit their abilities, interests and aptitudes.

Title 6 Job Placement

The law defines the rules of jo placement, which divided into domestic and overseas work. It also stipulates regulations on the implementation of public and private sector (employment agent) and employment agency.

Title 7 Duties of Government to Increase the Employment Rate

It is important for governments and societies to support each other in increasing employment rates.

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[124] Article 4

Manpower development aims at:

a. Empowering and making efficient use of people available for a job optimally and humanely;

b. Creating equal opportunity and providing manpower (supply of people available for a job) that suits

the need of national and provincial/ municipal developments;

c. Providing protection to people available for a job for the realization of welfare; and

d. Improving the welfare of people available for a job and their family.

Title 8 Employment of Foreign Workers

It regulates employment of foreign workers. Entrepreneurs who wish to employ foreign workers must obtain written permission from the Minister. Details on the employment of foreign workers will be explained later.

Title 9 Employment Relations

It defines labor relations between entrepreneurs and worker, when a labor contract (Article 50) is concluded. The contract can be done verbally or in writing. (Article 51). A written employment contract must contain the specific content required by the law (Article 52). The Code also regulates the sub-contraction between entrepreneurs. Employees of subcontractors must receive at least the same welfare and employment conditions as those employed by the entrepreneurs who subcontract.

Title 10 Protection, Payment of Wages and Welfare

It defines employment conditions, which is divided into 3 categories; Labor Protection, Wage and Welfare.

Chapter 1 Labor Protection. It composes of 5 following parts.

Part 1 Person with disabilities

Employers who hire workers with disabilities shall provide protection to suit the character and severity of the disability. The details will be regulated in secondary legislation (Article 67).

Part 2 Children

In principle, the law prohibits entrepreneurs from hiring child labor (Article 68). Nonetheless, the employer is allowed to employ children aged 13-15 years to do light work, when the child's guardian grant their written permission and conclude the work contract with the employer (Article 69). On another hand, the law guarantees that children over 14 years of age can work or produce work as a part of school curriculum or training curriculum (Article 70). Children can also work if the work develops their potentiality or talents, and the work is under the direct supervision of the parent (Article 71).

It is evident that the Indonesian law is different from that of Thailand, which strictly prohibits employers from employing children under 15 years and does not match with vocational training in vocational training schools. Whereas Thai law focuses on prohibiting employers from certain conduct to child labor, as to guarantee of appropriate working conditions for the child. Indonesian law emphasizes the work of children under the supervision of the exercise of the parental authority, such as

parents and teachers, which could handle the children like the adult workforce. Nonetheless, it prohibits children to work more than 3 hours a day (Article 71).

Part 3 Women

The law does not impose a ban on female workers working at night, namely from 11 p.m. to 7 a.m. However, such workers must be 18 years or older and the employer must provide them food, water and transport (Article 76).

Part 4 working hours

Employers can work maximum 40 working hours per week. There are 2 types of schedule working hour: (1) 6 working days per week, 7 hours per day; and (2) 5 working days per week, 8 hours per day (Article 77). Overtime is allowed no more than 3 hours per day, and altogether no more than 14 hours per week a (Article 78). However, this rule is not applicable to certain types of businesses or works that have specific nature, such as fisheries. Their working hours and leave will be set in specific secondary laws. Ministry Regulation No. 11 of 2010 on working hours and leave of sea labor set working hours for se labor at maximum 12 hours per day, not including the break time, which must be at least an hour per day. There are two types of working hours for fishery: (1) For a set of 3 consecutive working weeks, the labor will be entitled to have a one day leave at the end of the second and the third week; (2) For a set of 4 consecutive working weeks, the labor will be entitled to have a one day leave at the end of the second week and 5 days leave after the fourth week (Article 3). This working schedule must be set in the employment contract (Article 4). Any change of this working schedule must be informed to Local Labour Bureau (Article 5). In addition, the Labor Code also provides for layoffs and dismissal in Article 79 to Article 85, which will be touched upon later.

Part 5 Occupational safety and health

Guarantee the rights of all workers to be protected in work safety and occupational health, including human dignity and religious values (Article 86). The company must establish occupational safety and health in the management system (Article 87)

Chapter 2 Wage

In chapter of this Labor Code, the principle that all workers are entitled to appropriate compensation for their livelihood is guaranteed. It is the government's duty to set a wage policy. This includes the minimum wage rate, overtime rate, payment method and payment arrangement (Article 88). The rate will be determined differently in each local area according to the cost of living in that area (Article 89).

The employer, employee, Employers' associations and labor unions cannot agree to lower wages than legal minimum wage (Article 91).

Chapter 3 Labor welfare,

Confirms the right of workers and their families to receive social benefits (welfare) from their employers[125]. Details are specified in specific law (Article 99)

Title 11 of the Code set out labor relations.

It defines the relationship or treatment of employment between the employer, the employee, employers' associations and labor unions'. In title has the most numbers of regulations. It is divided into 8 chapters.

Chapter 1 General Conditions

Defines the duties of the three parties involved in labor (tripartite), namely: labor, government and entrepreneurs. The government has the duty to formulate policies, provide services, and act in accordance with the laws. Labor and labor union have the duty to work for the smooth production system and business of the entrepreneur. The Labors also respect the democracy, develop themselves and fight for their own welfare and their families. The entrepreneur has the duties to set the operation of the organization to be transparent, democratic and fair and providing welfare to the labors (Article 102)

Chapter 2 Labor Union

It recognizes the right of workers to gather and join the labor union. The union can charge the fee to its fund and administer the fund for its operation, including the fund to be used for the strike (Article 104).

Chapter 3 Entrepreneurs' Organization

This chapter confirms the entrepreneurial rights of incorporation and joining an employers' association (article 105).

Chapter 4 Bipartite Cooperation Institutes

Employers with 50 or more employees are required to have an institution for bilateral cooperation. This is a forum for discussion and views sharing on issues related to the employment of employees (Article 106), with members from representatives of employers and workers selected by both parties (Article 107).

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[125] The Labor Code uses the term "employer" (employer) in the event that the relationship between employers and employees, specifically using the word "entrepreneur" in order to give significant coverage to the management of the entity. and by using the word "company" in order to determine the specific functions of the company.

Chapter 5 Tripartite Cooperation Institutes

It governs that a tripartite institution shall be established to consider, provide comments and recommendations to governments and stakeholders on policy making and labor problems. Members of tripartite institutions are from the National Tripartite Cooperation Institute, locals Institute for Tripartite Cooperation, Tripartite cooperation institutions by type of business from central and local parts of the country. Members must be representatives of government, entrepreneurs, and workers.

Chapter 6 Enterprise Regulation

The law stipulates that employers who employ more than 10 workers are required to provide work- related regulations, except where an agreement on employment conditions is presented (Article 108). These regulations must be prepared by listening to advice and comments from the representative of the labor or the union of that workplace (Article 110). The entrepreneurial regulations must have the content provided by laws, such as rights and duties of entrepreneurs and labors, terms of working condition, work discipline and the enforcement duration, which must be no more than 2 years (Article 11). In addition, entrepreneurs must submit the regulations to the Ministry of Labor for approval (Article 112). Amendments to the regulations require approval from the Ministry as well (Article 113).

Chapter 7 Collective Work Agreement

It determines the arrangements of employment conditions that are made between Unions and Entrepreneurs, which must be discussed to conclude the settlement and in Indonesian (Article 116). In the case where there no agreement is reached; the matter will go to the process of dispute settlement (Article 117). In negotiating an agreement on employment conditions, representatives from the labor side is a member of the labor unions that its members are more than half of the workplace. In cases where the number of union members is less than half of the laborers of the workplace, the representative of the labor union must receive a vote in favor of negotiating the matter from more than half of all workers in the business (Article 119). Where there are more than one union Labor unions, representatives from the labor union with a membership of more than half the total number of workers in the enterprise are negotiators. Where none of the unions has members more than half of the total number of workers, workers can enter into an agreement to appoint a representative to negotiate an agreement (Article 120). A labor union is obliged to make a membership card as a proof of membership of a union (Article 121). A meeting to make employment conditions must have a labor official as a witness (Article 122). The employment conditions must have the same content as work regulations, namely,

the rights and obligations of employers and workers, terms of working conditions, work discipline and validity period, which must not exceed 2 years and must be signed by the persons involved in the preparation (Article 123 and Article 124). The entrepreneur is obliged to publish the terms of employment at their own expense to all workers (Article 126). Employment agreement between the entrepreneur and any worker must not conflict with or contradict to the employment conditions (Article 127). In the case where there is no trade union in the enterprise, the entrepreneurs can issue work regulations to in lieu of employment agreements. However, there must be standards not lower than those set forth in the terms of employment (Article 129). The law covers the case of a change in ownership. The terms of employment remain in effect until its validity expires. If there is a merger, the employment conditions that give more benefits to the labor shall be in force (Article 131). It is the duty of workers, entrepreneurs and governments to be in compliance with labor laws and regulations (Article 135)

Chapter 8 Office or Institute for Labor Dispute Resolution

Part 1 Labor disputes

The law requires employers and employees or trade unions to settle labor disputes by discussion to reach a common conclusion. If no conclusions can be reached, the disputes shall be settles in accordance with the procedures set out in the law (Article 136).

Part 2 Strikes

In case where negotiation of labor dispute is not successful, workers and unions have a fundamental right to strike. This must be done in accordance with the law, in a calm and orderly manner (Article 137). Workers and unions can persuade other workers to join the strike, if this does not against the law (Article 138). In the case of business, which run for public benefit or public interest, or if a strike would affect human life, a strike must not be contrary to public interest or detriment to the safety of others (Article 139). Before the strike, workers and unions wishing to strike must notify thereof in written to the enterprise and local labor office for not less than 7 days, with details of the date, time, place of the strike, reasons and demands in the strike, signed by the president and secretary of all unions joining the strike. Where the strike is carried out by workers who are not members of a trade union, workers who strike must sign the notification. If no strike notice is handed out, employers have the right to temporarily prohibit employees who intend to strike from entering the place of production or business premises, in order to protect the equipment used in the company's production and assets (Article 140). When a government agency receives

a strike notice, it must issue a certificate of receipt of such a letter. During the strike, the government agency be responsible to help solving the problem of the strike by organizing a meeting between the disputing parties. If in the meeting, disputes can be reached by mutual agreement, the official shall be the witness of such the agreement. In case where no agreement can be reached, the official shall submit the case to the institute for labor dispute resolution. During the negotiation between the entrepreneur and the union, the strike may continue, temporarily stop or determinate (Article 141). The strike done not in accordance with the procedure and form laid out in the law is an unlawful strike (Article 142). In the case where the strike is taken place to claim the rights of the workers, which the entrepreneur has violated, the entrepreneur is obliged to pay the wage to the workers during the strike as well
(Article 145).

Part 3 Lockout

Entrepreneurs have the fundamental right to shut down their work when the negotiations between their representative and the unions is unsuccessful. The lockout is the prevention of part of or all workers from performing work. However, Entrepreneurs are not justified to lock out their workforce as retaliation for normative demands raised by workers/ labourers and/ or trade/ labour unions (Article 146). Lockouts is also prohibited from taking place at enterprises that serve the public interest and or enterprises whose types of activities, when interrupted by lockouts, will endanger human lives, including hospitals, enterprises that provide networks of clean water supply to the public, centers of telecommunications control, centers that supply electricity, oil-and-gas processing industries, and trains (Article 147). The lockout procedure is similar to that of a strike, i.e. an entrepreneur wishing to lockout must provide written notice to the labor union, labor union, and government agencies responsible for labor at least 7 days before the lockout to inform the date, time and place, including the reason of the lockout (Article 148). In reception of such notify, the officer must issue the receipt with date and time of the receiving (Article 149). The officer also has the same duty as in the case of a strike, namely to try to get both parties to mediate.

Title 12 Termination of Employment

The law set out provisions on employment termination. The provisions apply to businesses that are both juristic and non-corporate, either as a sole proprietorship or a partnership, in the private sector, government, civil society and every business that have administrators/ officials and employ people by paying them wages or other forms of remuneration (Article 150).

The Law imposes the duty upon employers, workers, unions and governments to prevent termination. Despite the effort to prevent the termination, before the termination, there must be negotiations between the entrepreneur and the trade union, which members are affected, or between the entrepreneur and workers whose employment contract is terminated. If the negotiation does not solve the problem, the employer can terminate the employment contract only when ordered by the Labor Dispute Institution (Article 151). Without the before said negotiation, they will not be able to request such an order (Article 152). The law also prohibits the entrepreneur from terminating employment in the case when employee has taken the right to leave for strike, marriage, or to look after a child (Article 153). However, in some cases, the entrepreneur does not need to seek injunctive relief from a labor disputes institution, such as when the worker is still on probation, or when it is pre-written in writing, or when the employee has asked to leave the job and clearly state so in writing that it is the needs of the employees themselves, or retirement, in accordance with the criteria set out in work regulations, employment conditions, work contract or in other laws (Article 154)

Termination which is not in accordance with the law is void and the entrepreneurs and employees continue to carry out their duties (Article 155). In case of termination, the entrepreneur will have to pay compensation, reward-for-years-of-service pay, and compensation pay for rights or entitlements that the dismissed worker has not utilized to employees. The severance pay will vary depending on the number of years worked in steps. If the worker had worked less than one year, the compensation equals to one month's salary. If the worker had worked less than two years, the compensation equals to two-month salary. This continue to the maximum compensation equal to 9-month salary. The reward money will be given to employees who had worked more than 3 years and have also varies by the number of years worked as well. For the first three-year period, the pay equivalences to two months wages, and increases by one-month wage for every additional 3 years. The maximum amount is equal to 10 months' wages in case of working for more than 24 years. The compensation for the rights that the dismissed employee is entitled to but had not exercised his or her rights are such as unused annual leave days, the cost of getting back to the place where employee was at the time of conclusion of the employment contract, housing allowance and health insurance, up to 15 percent of the sum of compensation for termination, reward for years worked and other compensation as agreed in the employment contract (Article 156). Such compensation payment also applies when the reason for termination of employment contract are as follow: merger,

transfer of business ownership (Article 163), 2-year loss of the company, force majeure (Article 164) and in case of bankruptcy (Article 165).

However, entrepreneurs has no obligation to pay severance pay or reward money when the termination is on the grounds that an employee has committed a serious offense, such as theft, misappropriation, fraudulent possession or money of an entrepreneur, persuade another co- workers or entrepreneur to commit an offense, intended or out of gross negligence caused damage to the property of the entrepreneur, put other workers in danger, disclose the secrets of the entrepreneurs that they have the duty to keep. In such cases of termination, employees are only entitled to receive unpaid compensation, such as unused annual leave days and travel expenses.

If an employee does not accept dismissal because of his or her serious offense. Employees have the right to sue the Labor Dispute Institution (Article 159). The law also imposes duty on entrepreneur to take care of the family of the employee. For example, if the employee is arrested for allegedly committing a criminal offense, during the captivity. Employer does not have to pay wages to employees, because the employee does not work. But the employer must provide financial assistance to the family of the employee. The amount depends on the number of family members who depend on their employees for their livelihood. However, the employer has a duty to pay no more than 6 months. After 6 months, the employer has the right to terminate the contract. Nonetheless, if the case finally turns out that the employee had not committed any offense, the employer must get the employee back to work. In the event an employee voluntarily resigns, he or she will not receive any compensation or reward, except for the right to compensation. The employee must inform the employer thereof in advance no least than 30 days before the date of termination (Article 162).

On the other hand, the employee may request the Labor Dispute Institution to terminate the employment contract, if the entrepreneur does not pay wages consecutively for at least 3 months or do not perform duty or order the employee to work outside the scope of duty. If the labor dispute resolution institute agrees with the employee's claim, the employees will get severance pay, compensation, reward money for years worked and compensation for unused rights the same as the case where the employer terminates the contract (Article 169).

Title 13 Labor development

For labor development, the government may provide that labor unions, entrepreneurs and relevant professional involve in the provision of labor development

activities and may award to persons or institutions that have undertaken significant labor development (Article 175).

Title 14 Labor Inspection

The law stipulates that the Ministry of Labor appoints Labor Inspector to monitor compliance with labor laws. Labor Inspectors act independently from the implementing agencies (Article 178) and submit their reports directly to the Minister (Article 179).

Title 15 Labor Inspection Investigation

The law set out that there are investigators who are civil servants who have duty and power to investigate whether the labor inspection has taken place or not, including investigating offenses related to labor (Article 182).

Title 16 Criminal Offenses and Administrative Offenses

Chapter 1 Criminal Offenses

Article 1 stipulates that criminal offenses under this Code will face a penalty of an imprisonment between one month to five years and to a fine no more than 50 million IDR (approximately 134,300 baht)[126].

Chapter 2 Administrative Offenses

Article 2 Administrative penalties

There are 8 types of administrative sanctions: warnings, written notifications, restriction of the activities of entrepreneurs, ban on business activities of the entrepreneur, revocation of previous approvals, registration, licenses or permits and prohibition of some or all production equipment (Article 190).

Title 17 Transitional Provisions

The Code governs that the secondary laws applicable prior to the date of entry into force of this Code shall remain in force so far as they are not in confliction with this Act (Article 191).

Title 18 Closing Parts

The Labor Code has repealed 15 Acts and secondary laws. It came into force on the date of its promulgation, 25th March 2003.

It is evident that the essence of the Labor Code above mentioned covers the main areas of labor in terms of protection of fundamental labor rights, employment, occupational health, working environment, dismissal, union formation, including the protection of migrant workers. Here, some aspects of the labor law are further clarified.

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[126] Exchange rate of the Bank of Thailand as of 13 July 2017 from https://www.bot.or.th

1) Leave

Indonesia's leave system is unique due to the religious values and influence. Thus, some of the reasons for leaving a job are different from those in the Western world. The 2003 Labor Code, Title 10, Chapter 1, Part 4, provides that the following circumstances give employee rights to leave.

Table 1 Reasons for leave and the period of entitled leave

Reasons for leave	Period of entitled leave (With pay)
1. marriage	3 days
2. The marriage of worker's child	2 days
3. Circumcision of worker's child	2 days
4. Baptism[127] of worker's child	2 days
5. Before and after giving birth (female worker)	1.5 months
6. After abortion	1.5 months or as ordered by doctor or midwives
7. Death of members in household	1 day
8. Death of family member	2 days
9. Female employees who has abdominal pain during her period	2 days

[127] A Christian sacrament marked by ritual use of water and admitting the recipient to the Christian community.

For daily working hours, the law requires a break time of at least half an hour for every four hours, which is not counted as work time. Weekly breaks must be not less than 2 days after 5 consecutive working days. Employee who work for at least 12 consecutive months, is entitled to a vacation of at least 12 days a year. If the worker has work in the same company consecutively, the employees will have the right to leave for at least 2 months in in the 7th and 8th work years. The employment will 2 months leave for every further six working years (Article 79). The employer also must allow the employee to chant and pray during working hours (Article 80). The reason behind may be that the Islam are required to pray 5 times a day. Moreover, the employer must allow female laborers to breast milk during work (Article 83).

2) Occupational Safety and Health Management

Labor Code guarantees all workers the right to occupational health and safety, including protection of human dignity and religious observance (Article 86). The Company shall develop a management plan for occupational health and safety (Occupational health and safety scheme) for employees in both physical and mental health (Article 87). Indonesia also has specific laws that govern specific issues. The Law No. 1 of 1970[128] on work safety has 18 articles that govern work safety for work in all forms, whether working on subterranean, underwater, and airborne areas. The law authorizes the Ministry of Labor to enact secondary laws in various matters, as follows (Article 3):

2.1) Accident prevention or reduction;

2.2) Fire prevention or reduction;

2.3) Explosion hazard prevention or reduction;

2.4) Provide employers with a means or equipment to help avoid fire or hazard;

2.5) First aid provision at work place;

2.6) Ensuring that workers are protected, by providing equipment to the employer for safety reasons;

2.7) Prevention or control of factors such as temperature, humidity, dust, soil, soot, ash, gas, radiation, noise and vibration;

2.8) Prevention or control of work-related infections;

[128] International Labour Organization, "ILO databases and resources," Retrieved on 13 July 2017 from http://www.ilo.org/inform/database

2.9) The lighting is adequate;

2.10) Setting appropriate workplace temperature and humidity;

2.11) Setting appropriate air circulation;

2.12) keep the workplace clean and hygienic;

2.13) Hygienic design of working tools, working conditions, working environments and working processes;

2.14) Measures to support mobility in transporting people, animals and things.

2.15) Protection and preservation of buildings;

2.16) Protection and support in the process of loading goods up - down. Product management and storage;

2.17) Prevention of electrical shock;

2.18) Modification and development of work safety measures.

In addition, the law stipulates that there should be legal supervision by empowering the Ministry of Labor to appoint safety inspectors and safety experts (Article 5). When a safety inspector or safety expert visits a workplace, the employer must also pay the fee. Employers are obliged to inform the dangers of work to employee before. Employers must provide adequate safety equipment as well as training in case of emergency (Article 9). When accident occurs, the employer must also report the incident (Article 11).

On the part of the employee, the law requires employee to provide information to safety inspectors or security experts. While working, employee has the duty to use accident prevention equipment and comply with safety regulations is also required. Employers also have the right to demand that employers comply with accident prevention measures. The employee has a right to refuse to dangerous work (Article 12). In case of violation, the law establishes penalties of imprisonment for a maximum term of not more than 3 months or a fine not exceeding 100,000 IDR (approximately 270 Baht)[129].

In addition, in 2014 the president issued the President Notification No. 34 of 2014 to ratify the Convention of the International Labor Organization (ILO)) No. 187 on the Framework for the Promotion of Occupational Safety and Health 2006[130], which is

[129] Exchange rate of the Bank of Thailand as of 13 July 2017 from https://www.bot.or.th.

[130] Thailand has ratified this Convention on 23 March 2016, which will come into force on 23 March 2017.

the International Labor Standards for Health and Safety that ILO had drafted as a guiding framework for the management and implementation of occupational safety and health within each signatory. The content is focused on providing basic elements that will be the driving force for occupational health and safety, which is a part of the Decent Work Agenda.

The Convention defines the duties of the State as follows:

1. The government must take steps to promote the protection of the Safety, occupational health and the working environment in an ongoing and progressive manner. The government also has a duty to define, develop and plan in various areas such as national policy on safety, occupational health and working environment. The government also has to enact rules and regulation on Occupational Health and Safety. The government also has a duty to knowledge building for personnel and agencies.

2. The government must consider implementing measures to promote the ratification of others ILO Convention on Occupational Safety and Health

3. In carrying out it tasks in 3 levels, namely: planning and policies making; enactment of necessary laws; promotion of understanding and knowledge to personnel and related agencies as well as carrying out measurements to promote implementation of the above-mentioned Convention, the government must consult with the representative of organizations of employers and employees.

In terms of safety and occupational health, Indonesia also has following specific laws: Ministerial Regulations No. 9 of 2016 on Workplace Safety and Occupational Hygiene; Ministerial Regulation No. 37 of 2016 on Safety and Health of Aircraft Energy Production; Ministerial Regulation No. 38 of 2016 on Occupational Safety and Health at Work on Pressure Vessels and the Storage Tank.

3) Foreign workers

The Labor Code regulates on foreign workers in Article 42 to Article 49. Only companies have the right to employ foreign workers (Article 42), by obtaining permission from the Minister of Labor. The employer must have an employment plan (Article 43) which specifies the job description, the need for foreign workers, where the foreign are from, the duration of working contract, and the person who will learn from the foreign worker. Knowledge transfer is what Indonesian law gives importance to (Article 45). Foreign workers who come to work in Indonesia will not be able to work in human resource management positions. The employer is also obliged to pay compensation to the state for hiring foreign worker (Article 47). After work, the employer is obliged to return the foreign worker to home country (Article 48).

3.1) authorization procedure

Relevant legislation is the Notification of the Ministry of Labor No. 16 of 2015, as amended by the Notification of the Ministry of Labor No. 35 of 2015. The law set out categories of employers who can employ foreign workers, include government agencies, international organizations, ambassadors, representatives of foreign governments including the commercial ambassador, foreign Press Agency, company or juristic person registered abroad, Limited Liability Company of Indonesia or Foundation for Social and Religious Affairs and culture, including for the management of the show. The law prohibits partnership, limited partnership, sole-proprietor and co-operative (Article 4) as well as companies investing in Indonesia (Article 4 (a) from hiring foreign workers.

3.2) The process of employing foreign workers is as follows:

1) The employer shall prepare a Manpower Plan submitted to the Ministry of Labor, except where the employer is a foreign government agency, International organizations or ambassadors (Article 5). The employment plan must contain the following information:

1.1) Reasons for employment;

1.2) Form;

1.3) Business license from related organizations;

1.4) Memorandum of Association;

1.5) Organization Chart;

1.6) Letter recommends that foreign workers be hired in specialized fields from relevant technical departments;

1.7) Certificate of domicile of a company from local government;

1.8) Tax certificate;

1.9) Letter of plan and appointment of Indonesian who will learn from the foreign workers;

1.10) Letter of intention to teach or train the knowledge acquired through the employment of foreign workers to Indonesians;

1.11) Report on workers in their enterprise. The details are as set out in the Law No. 7 of 1981 (Article 6).

2) When the employer files with the Ministry of Labor. Officials of the Ministry of Labor will consider the accuracy of the document. If the document is complete, the official will begin to assess the need for careers or skills that Indonesia lacks (Article 7). If employment meets the needs of the country and the employment plan is completely accurate, the Ministry of Labor will issue permit to the employer within 3 working days (Article 8). The maximum period of employment plan authorized

is 5 years, depending on the labor market at that time (Article 12). The law provides that the work plan can be renewed giver that the application for renewal be submitted at least 30-day before the expiration of the original employment plan (Article 30).

In addition, in cases where employers urgently need foreign workers, the law allows to submit an employment plan directly to the Director General of Employment and Labor Market Extension (Article 13). the Director General will consider and give order within one day (Article 14). The Foreign workers is this case will be able to work for no more than one month and cannot extend their employment plans (Article 15).

Foreign workers who are allowed to work in accordance with the work plan must meet the following qualifications (Article 36):

2.1) Graduated in the field related to the position that employer needs;

2.2) Qualified or experienced candidates with more than 5 years of working experience;

2.3) pledged to teach Indonesian on work;

2.4) Apply for Indonesian tax identification in case where work plan is over 6 months;

2.5) Health insurance with Indonesian insurers.

2.6) Be a member of the National Social Security for Foreign Workers in case where work plan is over 6 months.

The qualifications in 1), 2) and 3) shall not apply to foreign workers who take up managerial positions, such as executive directors, managers. Qualifications as specified in clause 1) shall not apply to foreign workers coming under the urgent employment plan. For foreign workers who come to work on temporary basis, or for entertainment business, they must meet the qualifications specified in Clause 5 only.

3) Once the employment plan is approved, the next step is to apply for a Work Permit. The required documentation includes a receipt of compensation, approval statement, a copy of passport of the foreigner to employ, a photo, a letter from a company that appoints an Indonesian citizen to learn a job, proof of qualification and work experience document, and draft employment contract (Article 38).

Employers hiring foreign workers must pay compensation of 100 US dollars per month per person (Article 40) and is prohibited from hiring of more than one foreign worker in the same position. Foreign workers cannot have more than one employer (Article 41).

In addition, the law categorized the types of application for a work permit in accordance with the prospecting working plan period: temporary work permit for up to 6 months (Article 46); emergency work permit (Article 48); work permit to work in a special economic zone (Article 50); work permit to work within water jurisdiction (Article 51); work permit to work as for a disk jockey, which is a special work permit that is not longer than 6 months and cannot be renewed (Article 52) and a work permit for a person with permanent resident (Article 53).

4) Upon receiving a work permit, the foreign worker will apply for a visa for temporary stay or to change the visa category to work in Indonesia (Article 39).

3.3) reserve occupation

Notification of Ministry of Labor No. 40 of 2012 on forbidden positions for foreign workers prohibit foreign worker to work in certain type of works, which mostly in human resources.

-Personnel Director
-Industrial Relations Manager
-Human Resources Manager
-Personnel Development Supervisor
-Personnel Recruitment Supervisor
-Personnel Placement Supervisor
-Employee Career Development Supervisor
-Personnel Declare Administrator
-Chief Executive Office
-Personnel and Career Specialist
-Personnel Specialist
-Career Advisor
-Job Advisor
-Job Advisor and Counseling
-Employee Mediator
-Job Training Administrator
-Job Interviewer
-Job Analyst
- Occupational Safety Specialist

3.4) control of the relevant authorities.

The main unit responsible for controlling and supervising the use of foreign workers is the Ministry of Labor with it regional offices throughout the country. The

regional labor office is the first instance in receiving the application for foreign workers or dispute settlement.

The regional labor office is responsible to monitor the employer's compliance with the law, including the notification of employment of foreign workers and the report on training or seminar to Indonesian workers (Article 59). If an employer is found not to follow the laws on hiring foreign workers, the Director General of the Department of Employment and Labor Market Expansion as well as the head or director of the regional labor office have the right to revoke the work permit (article 61).

There is also a general labor inspection mechanism as defined in the Law No. 3 of 1951[131] on labor inspection. It set up a labor inspector, who is empowered to inspect and enforce labor laws, such as whether the employer has complied with the employment agreement, or whether the employees' welfare benefits is proved as well as gathering information and problems to propose draft law, include the duties prescribed by other laws (Article 1). The Labor Inspector will be appointed by the Minister. Once appointed, labor inspectors can inspect the workplace. If the employer does not allow the inspector to inspect, the inspector can call on the police to help (Article 2). Labor inspectors must keep employer's records confidential. In case of violation, the inspector is punishable by imprisonment not exceeding 6 months or a fine not exceeding 600 IDRs (about 2 baht)[132] (Article 6).

2.2 The Human Rights Act (Law No. 39 of 1999)

Indonesia has another important labor rights protection law, the Law No. 39 of 1999.[133] The law contains a total of 106 provisions, divided into 11 chapters. It governs on basic human rights (Article 2), guarantees the right to be treated equally (Article 8), defines the duties of Indonesian citizens (Article 67). It requires the government to protect, support and promote human rights. This law establishes the Office of the National Commission on Human Rights, which directly under the President. The office is responsible to research Indonesian legal, which may be inconsistent with such human rights principles. It also coordinates and advises

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[131] International Labour Organization, "ILO databases and resources," Retrieved on 13 July 2017 from http://www.ilo.org/inform/database.

[132] Exchange rate of the Bank of Thailand as of 13 July 2017 from https://www.bot.or.th

[133] International Labour Organization, "ILO databases and resources," Retrieved on 13 July 2017 from http://www.ilo.org/inform/database.

government agencies on relevant issues, prepares a follow- up report of the performance of the state agency in accordance with the law.

In relation to the protection of worker rights. This law recognizes the right to work of the people as human beings according to their abilities and potential. Both men and women are entitled to equal pay and equal working conditions (Article 38). The law guarantees the right to form and join a trade union (Article 39). Everyone has the right to social security as much as necessary to improve their quality of life (Article 41) In the field of women's rights, the law recognizes women's rights to protection, including safeguarding fertility in work (Article 49). The law requires that all children be protected from tempted to take advantage of work, including work that is dangerous or likely to interfere with education or has the effect on the child's physical, mental or spiritual (Article 64).

In addition, the scope of labor law enforcement regarding the protection of Indonesian labor rights includes foreign workers. Since no law provides for an employer or agency. The state can treat foreign workers differently from Indonesian workers.

2.3 The Law No. 8 of 2016 on the Disabled

In 2016, Indonesia issued a law on the disabled (Law No. 8 of 2016)[134], which repealed the Law No. 4 of 1997 on the Disabled. The current Law has covers 153 articles and is divided into 13 chapter. It determines the rights of people with disabilities, to give have equal opportunities to people without disabilities. The law also governs on following issue: duties of the various agencies; use of the disabled rights, awards for a person who help people with disabilities. This Act aims to promote respect, support, protect and enforce the human rights and freedoms of persons with disabilities, including raising the living standards of the disabled. It also encourages people with disabilities to develop themselves (Article 3) by enforcing the rights of persons with disabilities, based on the principle of respect for human dignity, individual autonomy, engagement, equal opportunities, equality, and caring, which may be more than those for people without disability (Article 2).

The definition of the disabled is broad. It includes people with mental, physical and sensational disabilities (Article 4). Employers under this law are individuals, corporations, corporate entities, or any organizations employing workers with wages or other compensation (Article 1). Equal opportunity means giving of opportunity or

[134] International Labour Organization, "ILO databases and resources," Retrieved on 13 July 2017 from http://www.ilo.org/inform/database.

access to the disabled for the development of capacities in all areas of public and social affairs (Article 1).

This law widely recognizes the rights of people with disabilities. It can be summarized as follows (Article 5):

1) the right to live, includes being cared for and raised, without neglect, exploitation or abuse;

2) the right not to be labelled, disgusted or discriminated;

3) right to privacy;

4) right to education;

5) right to work and owning a business and cooperative;

6) right to public health;

7) political rights;

8) right to religion;

9) sports Rights, both normal sports and sports for the disabled;

10) social and cultural rights;

11) welfare rights;

12) right to mobility, such as the requirements for building, which enable the disabled to live;

13) right to public service;

14) right to disaster protection;

15) right to recovery and restoration;

16) right to communication and expression;

17) right to live on their own and participate in society; and

18) right to citizenship.

In part related to the work, the law guarantees that people with disabilities have the right to work, both in the public and private sectors, without discrimination. People with disabilities must receive the same wage amount paid to other workers who perform the same duties and are not excluded because of a disability. People with disabilities is entitled to do a job that suits their condition, just and not destroying their dignity. They must also be provided opportunity to grow and be promoted in the job (Article 11). Central and local governments have duty to monitor the above-mentioned rights of people with disabilities (Article 45), including providing vocational training for the disabled (Article 46). In the recruitment process. Employers may aid in completing the application. The employer may also provide tools and tests suitable for the disabled and flexible working time (Article 47), as well as the opportunity to be coached to determine what assistance is needed and the breaking period according to

the type and severity of disabilities. The law also encourages the government to reward individuals, including government agencies employing people with disabilities (Article 139).

Article 150 of the law No. 8 of 2016 on Disabled stipulates that all secondary legislation issued under the Law No. 4 of 1997 are applicable as long as they are not in conflict with the Law No. 8 of 2016. Therefore, Government Regulation on the efforts to improve social welfare for people with disabilities (Government Regulation No. 43 of 1998) remains enforceable. The Government Regulation No. 43 of 1998 guarantees the rights of people with physical or mental disabilities, such as right to live and right to access to public services. The law also guarantees the right of people with physical or mental disabilities to equal opportunity to receive education and employment. The law requires employers to provide equal opportunities for the disabled, by employing a physically or mentally disabled person, pay wages to the physically or mentally handicapped equal to those who has no disability, as well as to treat employee with disability the same as employee without disability (Article 26 and Article 28). The law stipulates that employer must hire one disabled person per 100 employees except the case of a business related to the use of high technology as prescribed in Ministerial Regulations (Article 29).

2.4 The Law No. 21 of 2000 on Labor Union

The Law No. 21 of 2000[135] enacted before the enactment of the current Labor Code, which has provisions on labor unions. However, the Labor Code is considered as a general law. This Act is *lex specialis,* which applies where the labor code does not touch upon.

The Law No. 21 of 2000 came into force on 4 August 2000. It governs on the importance, the rights and duties, the establishment and operation of labor unions. This law is based on the principle of the constitution that all citizens have freedom of expression, right to assembly, right to work and receive adequate compensation for subsistence as a human being as well as being treated equally by law for the exercise of such freedom and rights. Workers have the right to establish and develop labor unions that do not charge fee, independent, open, democratic and responsible. Labor union is a tool to protect, develop and fight for the benefits and welfare of workers and their families. It is also an instrument in creating a unified, dynamic and fair

[135] International Labour Organization, "ILO databases and resources," Retrieved on 13 July 2017 from http://www.ilo.org/inform/database.

relationship between the employer and employees. These rights are defined in Article 5, Article 20, Article 27, and Article 28 of the 1945 Constitution, as amended in 1992. The Convention on the Protection of Human Rights No. 98 of 1956 and the Law on Human Right (Law No. 39 of 1999)

This provision contains 193 articles and is divided into 15 chapters

Chapter 1 General Chapter

In this chapter definition used this Act are given. The important ones are: "labor unions" means an organization established and implemented for workers, whether under the hire of work contract or employment contract; "Association of unions" means unions that consists of more than one labor unions; "Confederation of Unions" means a union of more than one trade union associations; "Employer" means a natural person, partnership or juristic person, whether self-employed or not and whether they are located in Indonesia or have a domicile in a foreign country; "Company" means a business in any form, regardless whether it is a juristic person or not and whosever owns it, which employs and pays workers; "Dispute between labor unions, association of unions and the confederation of unions" means a dispute between labor unions, association of unions and confederation of unions resulting from disagreement on membership issues, or enforcement of the rights and duties of the Union. It also governs that Minister of Labor is in charge for this law (Article 1).

Chapter 2 Statutory Basis, Characters and Objectives

It defines the basic values, general principles and purpose of the labor union, association of unions and confederation of unions, which must not be against the Pancasila and the constitution (Article 3). To achieve the objectives of protection, development and fight for the benefit and welfare of workers and families, labor union, association of unions and confederation of unions have the following duties (Article 4):

1) be party to the agreement on employment conditions and labor dispute settlement;

2) Represent labor in labor cooperation institutions;

3) be an institute that creates labor relations that are harmonious, dynamic and sustainable;

4) be a channel to fight for the benefit and welfare of its members;

5) plan, act, and be a party to a lawful strike; and

6) represent employees in claims to hold company's stocks.

Chapter 3 Union Formation

It guarantees the rights of workers to establish labor union and become labor union members. Labor unions must be established by at least 10 people (Article

5). The establishment of a labor union must be voluntary, without pressure or intervention by employers, governments, political parties or any organization (Article 9). 5 or more labor unions can form an association of unions (Article 6). 3 or more association of unions can form a confederation of unions (Article 7). In establishing labor unions, association of unions or confederation of unions, regulations of the labor union, association of unions or confederation of unions must be prepared. The regulation must define the name, mission, domicile, the date of establishment and membership requirements (Article 11).

Chapter 4 Membership

It governs on membership of labor union, association of unions and confederation of unions. The membership must open to all workers without discrimination (Article 11). In a company, an employee can only be a member of one labor union. An association of unions can only be a member of one confederation of unions (Article 16). If the employee's position in the company conflicts with or has interests or conflicts with management of the union, that employee is not allowed to hold any position in labor unions but can be an ordinary member (Article 15).

Chapter 5 Notification and Registration

The law governs on the establishment of labor union, association of unions and confederation of unions, which is required to inform the local labor authorities. The notification must provide information about the founder, members who serve as corporate officers and constitution of the labor union, association of unions or confederation of unions (Article 18). Any modification thereof must also be notified to the authorities (Article 21). Procedure and method of such notification is stipulated in Ministerial Regulations (Article 24).

Chapter 6 Rights and Obligations

It determines the rights and duties of labor union, association of unions and confederation of unions. They have duty to protect and defend the rights and interests of their members (Article 27), represent their members in negotiations and in various matters related to labor relations (Article 25) and cooperation with foreign organizations (Article 26).

Chapter 7 Protection of the right to organize

The law governs on the protection of the rights of labor union, association of unions and confederation of unions. The law prohibits an employer from dismissal or reducing the salaries of the workers, who are labor union's members or participating in labor union, association of unions or confederation of unions' activities. The employer is also prohibited to persuade workers not to join the labor union, association

of unions or confederation of unions (Article 28). The employer must allow the employee to join union activities as defined in the employment conditions (Article 29).

Chapter 8 Finances and Assets

The details govern on financial and assets of labor union, association of unions or confederation of unions, which can be from these 3 sources: (1) Membership fees; (2) profits earned from activities and; (3) unconditional donations (Article 30). Staffs of labor union, association of unions or confederation of unions is responsible for overseeing and managing money and property. They must separate money and assets of the labor union, association of unions or confederation of unions from their private property (Article 32). They also have to report and disclosed information on money and assets of the labor union, association of unions or confederation of unions to other members as stipulated in the organization's constitution (Article 34).

Chapter 9 Dispute Settlement

It governs on dispute settlement between labor union, association of unions or confederation of unions by encouraging them to settlement the dispute by negotiation (Article 35). If the negotiation is unsuccessful, the dispute shall be settled as provided for in specific law, which is the Law No. 2 of 2004.

Chapter 10 Dissolution

The law governs on dissolution of labor union, association ofunions or confederation of unions. Dissolution can occur in three cases: (1) the members of the organization declares the termination in accordance with terms and conditions set forth in the constitution of the organization; (2) the company has closed and has fulfilled its obligations to the employee; and (3) the court has ordered the dissolution (Article 37) due to infringement of Pancasila or criminal offense done under the name of labor union, association of unions or confederation of unions an such offense affects the security of the country as well as have penalty of imprisonment not less than 5 years (Article 38). Dissolution of labour union, association of unions or confederation of unions does not remove any liability of the staff toward the members or other party (Article 39).

Chapter 11 Inspection and Investigation

The law stipulates that Minister of Labor has a power to appoint a labor inspector to protect the rights of employees and labor unions (Article 40). Labor inspectors can be appointed from a civil servant or a policeman (Article 41).

Chapter 12 Sanctions

It set penalties in case of violation. The penalties imposed upon the labor union, association of unions or confederation of union include the revocation of

registration (Article 42). And whoever intervenes in establishment of labor union or decision making of the of an employee to become a board member or to participate in union activity by following means: (1) dismissal, temporarily suspend from job, reduction of position or remove the employee; (2) not paying or reducing the wages of such employees; (3) intimidation; or (4) campaign against the establishment of labor union, that person is liable to imprisonment for a term of one to five years or a fine of between 100 and 500 million IDR (approximately 268,530 Baht to 1.34 million Baht)[136] (Article 43).

Chapter 13 Miscellaneous Regulation

It guarantees the right of governmental officials to unite and form a union. The details thereof, must defined in the specific law. At present such law has not been enacted.

Chapter 14 Transitional provisions

Labor union, association of unions or confederation of unions registered before this law comes into force, are required to re-inform its registration number within 1 year after this law come into force. Otherwise, it must be re-registered (Article 45).

2.5 Law No. 2 of 2004 on Labor Dispute Settlement

The law provides that "labor dispute" means dissenting opinions between employers, employer organization and workers or labor union on different views on the rights, mutual benefits, termination, and including disputes between labor unions in the same company.

Dispute settlement is divided into two categories, in and out of court. The summarization is as follow:

1) Out-of-court procedures include bilateral negotiation (Bipartite Mechanism) (Article 6), mediation negotiations (Article 8), conciliation (Article 17) and arbitration.

When labor dispute arises, the parties must initiate the bipartite mechanism, which is required by law. The negotiation will have a duration of 30 days. During the negotiation, written memorandum must be furnished (Article 3). If the negotiation is successful, collective Agreement will be made as evidence and used as a binding rule. The agreement must be registered with the District Labor Court. In case the negotiating parties cannot agree within 30 days, the negotiation is deemed as fail. Either party may file a complaint to the labor official to order the party to choose

[136] Exchange rate of the Bank of Thailand as of 13 July 2017 from https://www.bot.or.th.

a dispute settlement method, between conciliation, using the government official as conciliator or arbitration. If both parties cannot agree on the method, the dispute will be resolved by the mediator (Article 4).

The process of dispute settlement by mediation starts when the labor official refers the disputes to the mediator (Article 8), who will initiate an investigation within 7 working days (Article 10). If the conflict is resolved, a mutual agreement will be made and have the mediator as witnesses as well as be registered with the Labor Court (Article 13). In case the parties cannot agree, the mediator must make recommendations to all conflicting parties. If the parties agree to the recommendation, the agreement will be made and registered with the Labor Court. However, if the parties disagree with the recommendation, either party can file a case to the Labor Court (Article 14).

Dispute Settlement by conciliation is used for the disputation on benefits, termination of employment and disputes between labor unions. The parties will set up a conciliator, who is an expert in labor and is accredited by the Ministry of Labor (Article 18). If a mutual agreement can be reached, it will have the conciliator as a witness, and must be registered with the Labor Court. If the conflict cannot be resolved, the conciliator must make recommendations to all conflict parties. If all parties to the conflict agree thereto, they will make a mutual agreement and have it registered with the labor Court as well. In case the parties disagree with the recommendation, either party can file a case to the Labor Court (Article 23).

Dispute settlement by arbitration applies to disputes over the interests of workers, and disputes between employees and labor union or between labor unions within the same company, where all parties agree to use arbitration (Article 29). The agreement on using arbitration must be made, after which the State will provide a list of registered arbitrators (Article 30). The arbitrator may choose whether to arbitrate alone or to form a tribunal (Article 33). The arbitrator will use the methods and efforts to have the parties agree together. If such agreement cannot be reached, the arbitrator will advise all parties. If agreement can be reached, a Settlement deed (Article 44) will be made. If the parties do not agree on the advice, the arbitrator will make a written decision, in which the parties must sign. The decision will be registered with the Labor Dispute Tribunal (Article 49). The arbitration decision is binding on the parties and is final, which means it cannot be brought to the Labor Court (Article 53).

2) Indonesia has a special court to consider labor cases. The Labor Court has 2 level, namely the District Court and the Supreme Court. The Labor Court is one department of the Courts of Justice (Article 55). The trial will be conducted by one

judge and two associate judges, one from a trade union and one from the employers' organization, and a registrar at the trial. The judge must take into account the laws, the agreement in which dispute is originated, and justice. The court verdicts on labor dispute must be signed by a judge, the two associate judges and the Registrar (Article 104).

(3) Role of relevant agencies

Ministry of Labor is responsible for formulating strategic policies for labor and the development of labor mobility in Indonesia [137], including career training, entrepreneur building, labor arrangement, industrial relations, social security and labor inspection by taking into account the improvement of labor productivity and competitiveness in foreign markets.

Important departments under the ministry include Office of the Permanent Secretary and the Inspector General. The Inspectorate General is responsible for monitoring the operations and financial performance and oversee other agencies which include: Department of Training and Productivity Development, Department of Labour Relations and Social Security, Department of Guidance and Placement of Domestic Workers and Department of Labour Inspection.

Minister of Labor is in charge of the Labor Code and has the duty and power on foreign worker permission, child workers of 13-15 years of age, revision of minimum wage and enactment of secondary laws.

[137] Labor movement from one region to another which is more advance in economy such as Labor movement to be manufacturing manpower from Islands to Jarkarta.

Chapter 5

Law on Public Health

In Chapter 5, the researcher will present Indonesia's law related to public health. The study is divided into three following parts: preliminary information; Essence of the law and the role of the relevant agencies.

(1) Preliminary information

The development of Indonesia's basic health system had taken place between 1980 and 1989, with the development of hospitals, medical and other health care resources. In 1980, the Indonesian population at that time had an average life expectancy of 59.6 years[138] because Indonesia had unequal access to health care. The poor, people in rural area and less educated people suffered more and their mortality rates were higher than those in urban areas and those with higher education[139].

The World Health Organization has defined Primary Health Care (PHC), which has 1 4 principles: health education, nutrition, clean water supply and sanitation, surveillance of endemic diseases, immunization, maternal, child health and family planning, basic medical care, supplying needed medicines in the village, mental health, dental health, environmental health, consumer protection, prevention and control of accidents and non- communicable diseases[140]. At the same time, basic health development strategy was established in 1978 as a key strategy to reach the goal "Health for All by the Year 2000" announced at the city Alma-Ata. The World Health Organization defines basic health as "the provision of essential health services that are provided to individuals and families in the community through the use of appropriate knowledge and technology, acceptable and affordable for both the country and community, by focusing on self- reliance. This basic health strategy is a link between the country's basic health system and the economic and social development of the

[138] Worldbank, "Data and Research," Retrieved on 25 February 2018 from https://data.worldbank.org/country

[139] William H. Frederick and Robert L. Worden, Indonesia a country study, 6th ed. (Washington DC: U.S. Government Printing, 2011), p 156-157.

[140] Declaration VII (3) of WHO Declaration of Alma-Ata, 1978

community. This is the first service of the continuous health service process that is easily accessible to individuals, families and communities[141].

In this regard, the Indonesian government has adopted these 14 basic health principles in Law No. 23 of 1992 on Health Care, which lays the foundation of the Indonesian public health system. The Act is also a mechanism for the implementation of the basic health system because it guarantees rights of Indonesians to equally be in a healthy environment and have access to public health and social security services[142]. Article 11 (1) of the law requires the State to promote the health and public health of the people in various fields[143] such as family health, nutritional development, food and drink safety, environmental safety, occupational safety, mental health, disease control, treatment and rehabilitation, advice on public health, manufacture of pharmaceutical and medical apparatus, substance abuse prevention and control, health promotion in schools, health promotion for sport, traditional healing and healthy environment.

The Basic Health Action Framework aims to develop and establish a quality public health system that is accessible to the public. With this objective, public health resources are allocated from the national level to the regional as well as local levels. In this regard, the government has a policy of decentralization to local governments[144], with local responsibilities for corporate governance and allocating scattered budgets

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[141] Declaration VI of WHO- Declaration of Alma-Ata, 1978

[142] Amendment of the year 2000 by the People's Assembly (MPR) article 5 paragraph (1) and article 20 paragraph (1) of the 1945 constitution "the right of every citizen to live in a healthy environment and have access to health services and social insurance"

[143] Article 11 of Law No. 23 of 1992;

"The health efforts as referred to in Article 10 shall be implemented through the following activities: a. family health; b. nutrition improvement; c. food and drink security; d. environmental health; e. occupational health; f. mental health; g. disease control; h. the cure of disease and the rehabilitation of health.; i. public health counseling; j. the protection of pharmaceutical preparations and health devices; k. the protection of addictive substances; l. school health; m. sport health; n. traditional therapy; o. dimensional health".

[144] Abdullah and Stoelwinder J, " Decentralization and health resource allocation: a case study at the district level in Indonesia", World Health Popul, 2007 Vol 9, p. 5.

for equality in various provinces[145]. The above allocation of health resources is reflected in the Health Act (Law No. 23 of 1992), which defines the following types of health resources: personnel; materials and equipments that can be used for health promotion; facilities; budget; equipment management and research and development of health[146].

In addition, the government has established links to strengthen corporate governance and public health personnel management in Indonesia, with a plan of action, public sector linkages program (PSLP) and allocated budget for corporate governance projects in Indonesia. The government focuses on cooperation between policy makers, academics, and health professionals to build capacity and oversight of the basic health system[147].

Mechanisms for implementing basic health policies need health professionals. For this reason, the Health Act (Law No. 23 of 1992) requires that health officers have the duty to act in the area of health operations as prescribed in the ministerial regulations[148]. The Law stipulates that the state is responsible for developing activities related to health promotion[149] and to engage in public health policy. The Act has

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[145] *Ibid.*

[146] Article 49 of Law No. 23 of 1992:

"Health resources shall be all hardware and software used to support the implementation of health efforts, including: a. health officers; b. health facilities; c. health supplies; d. health financing; e. management of health; f. research and development of health."

[147] University of Sydney's Faculty of Health Sciences, Ministry of Health, "AusAID. (2011) Building Bridges to Strengthen Primary Health Care Governance: Indonesia Workshop Report, Bali, Indonesia," Retrieved on 9 February2017 from www.sydney.edu.au/health-sciences/ healthgov.

[148] Article 50 (1) of Law No. 23 of 1992:

"Health officers shall carry out health activities according to their respective fields of expertise and authority. (2) Provisions on the category, type and qualifications of health officers shall be stipulated by a Government Regulation".

[149] Article 73 of Law No. 23 of 1992

"The Government shall develop all activities relating to the implementation of health efforts"

established a National Health Advisory Board. The composition of the board consists of social leaders and experts[150].

However, in 2009, the Health Act (No. 36 of 2009) was enacted to replace the Law No. 23 of 1992, which was repealed. The principle of the basic health system in the Public Health Act (Law No. 36 of 2009) remains the same as in the Health Act (Law No. 23 of 1992). Some details have been revised, for example.

Organ transplants, blood and surgery Unlike the Health Act (Law No. 23 of 1992), the Public Health Act (Law No. 36 of 2009) does not contain any provision on transplantation of organs or tissues, blood transfusions, insert medications or medical instruments in the body, or surgery to recover the patient.[151] However, it governs the blood service that blood management must not be for profit and that the operator must be a federal or local government agency, including a charitable organization (Article 87)[152]. The Laws gives importance to sterilization and contagious diseases of the blood. It thereby establishes a special agency designated only to oversee for blood donation, to provide adequate blood supply and to monitor disease from blood (Article 88)[153]. The reason that the law has to govern blood donations

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[150] Article 72 (1) of Law No. 23 of 1992.

"(1) To participate in making government policies on health, the public shall give considerations to the National Health Advisory Board, whose members are made up of social leaders and other experts"

[151] Article 33 of Law No. 23 of 1992

" In curing disease and rehabilitating health, it shall be allowed to transplant organs and or body tissues, transfuse blood, implant medicines and or health devices, and perform plastic surgeries and reconstructions.

(2) The transplantation of organs and or body tissues and blood transfusion as referred to in paragraph (1) shall be done only for the interest of humanity and not for theo commerce."

[152] Article 87 Public Health Act (Law No. 36 of 2009)

(1) Organizing blood donor and blood processing conducted by the Blood Transfusion Unit.

(2) Blood Transfusion Unit as referred to in paragraph (1) may be held by the Government, local government, and / or social organizations duties and functions in the field of health.

[153] Article 88 Public Health Act (Law No. 36 of 2009)

(1) Blood transfusion services include planning, recruitment donors blood,

because Islam has a belief that blood donation and blood transfusion is forbidden. The state must play a role in making blood donations safe. There are penalties in the event of a breach. The Chapter 20 of the law defines criminal offenses: such as; buying and selling blood has a penalty of imprisonment up to 5 years and a fine up to 500 million IDR[154] (approximately 1,342,650 baht) [155]. Unauthorized surgery to change the person's identity[156] and organ sales face a penalty of imprisonment up to ten years and fine up to one million IDR[157] (approximately 2,685,300 Baht).[158]

Health Promotion for Women and Family The Public Health Act (Law No. 36 of 2009) defines a mechanism for promoting women's and family health that the state has a duty to care for infants, children and pregnant women. The state must provide midwives and neonatal care facilities for women to safely give birth (Article

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provision, blood distribution and the provision of medical treatment blood to a patient for the purpose of healing disease and health recovery.

(2) Implementation of blood transfusion services do with maintaining the safety and health of the recipient blood and health professionals from disease transmission through blood transfusion.

[154] Article 195 Public Health Act (Law No. 36 of 2009)

"Anybody who is intentionally sell and or purchase blood by whatever reasons as referred to in Article 90 paragraph (3) shall be convicted with imprisonment at the longest 5 (five) years and fine at the most IDR 500,000,000.00 (five hundred million IDR)".

[155] Exchange rate of the Bank of Thailand as of 13 July 2017 from https://www.bot.or.th,

[156] Article 192 Public Health Act (Law No. 36 of 2009)

" Anybody who is intentionally conduct plastic surgery and reconstruction for the purpose to change identity of someone as referred to in Article 69 shall be threatened with imprisonment at the longest 10 (ten) years and fine at the most IDR 1,000,000,000.00 (one billion IDR)"

[157] Article 192 Public Health Act (Law No. 36 of 2009)

" Anybody who is intentionally sell or purchase body organ by whatever reasons as referred to in Article 64 paragraph (3) shall be convicted with imprisonment at the longest 10 (ten) years and fine at the most IDR 1,000,000,000.00 (one billion IDR)"

[158] Exchange rate of the Bank of Thailand as of 13 July 2017 from https://www.bot.or.th

126)[159]. In the case of artificial insemination, the law allows only for a couple of a husband and a wife (Article 127)[160]. In addition, at the stage of parenting, the law requires mothers to breastfeed their children at least for 6 months. And the state is obliged to provide vaccination for a child (Article 128)[161]. Also, the law requires the state to educate the family planning.

Social insurance Indonesia has enacted a law on the National Social Insurance System (Law No. 40 of 2004). The law provides social security rights to Indonesian citizens in the form of welfare state. The creation of a social security system requires central agencies to define policies. The Social Security Act (Law No. 24 of 2011) was then enacted to set up an agency to oversee Indonesia's social security

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[159] Article 126 Public Health Act (Law No. 36 of 2009)

"(1) Health efforts should be directed to maternal health care so that mothers can give birth to a healthy generation and quality and reduce maternal mortality.

(2) Health maternal efforts as intended in paragraph (1) includes efforts to promotional, preventive, curative and rehabilitative.

(3) Government to ensure availability of personnel, facilities, equipment and drugs in the management of maternal health services in a safe, quality, and affordable."

[160] Article 127 Public Health Act (Law No. 36 of 2009)

"(1) Efforts pregnancy outside the natural way can only be done by married couples with legal provisions:

a. products of conception the sperm and ovum from the couple in question embedded in wife's womb from which the ova came from;

b. conducted by health personnel with expertise and authority to it; and

c. on a particular health service facility.

(2) Provision requirements concerning pregnancy outside the natural way as intended in paragraph (1) shall be provided for in a Government Regulation."

[161] Article 128 Public Health Act (Law No. 36 of 2009)

"(1) Every baby is entitled to a mother's milk exclusively from birth for 6 (six) months, except for medical indications.

(2) During breastfeeding, the family, Government, local government, and society should support mothers with babies full time and the provision of special facilities.

(3) Provision of special facilities as intended in paragraph (2) was held in the workplace and place of public facilities".

system in terms of policy and legal mechanisms to ensure the rights of the people. The details of the national health insurance system will be discussed in the next topic.

In addition, Indonesia has following laws covering other public health issues, namely:

1) In the field of narcotics- the Narcotics Act (Law No. 22 of 1997) and the Narcotics Security Act (Law No. 35 of 2009);

2) In the field of food, medicine and cosmetics- the Food Act (Law No. 18 of 2012), Pharmaceutical Act (Law No. 7of 1963), Ministerial Regulation Regarding Drug Registration (Ministerial Regulation No. 1010 of 2008) and Ministerial regulations governing drugs and food imports (Ministerial Regulation No. 27 of 2013);

3) In the field of alcohol and tobacco control- the Presidential Decree on Alcohol Control (Presidential Decree No. 3 of 1997), Regulation of the Minister of Commerce on Narcotic Drugs (Trade Minister Regulation No. 6 of 2015, and the Notification of the Ministry of Public Health on Controlling substances that cause addictive effects in tobacco (Notification of the Ministry of Public Health No. 109 of 2012).

4) In the field of communicable diseases and communicable disease control- Public Health Act (Law No.36 of 2009). Which will be explained in this chapter, not a separate heading.

(2) Essence of the laws

In this topic, the main point of the 5 groups of laws, classified according to their public health issues will be summarized. They are laws on the Indonesian Basic Health System, laws on Social Security System, the Essence of the laws in each group is as a follows: (1) Laws on the Indonesian Basic Health System, (2) Laws on Social Security System, (3) Law on narcotic drugs, (4) Law on food, medicine and cosmetics, (5) Laws on Alcohol Beverage and Tobacco.

2.1 Laws on the Indonesian Basic Health System

The main law concerning basic public health in Indonesia are the Public Health Act (Law No. 36 of 2009), which aims to gather technology information and product for health and wellness development and improving the health and quality of life of people[162]. There are 205 provisions, which are divided into 22 chapters. Its objective is to determine the health promotion in the following matters:

[162] Suriadi Gunawan, "National Health Research Systemsand Regulations for

- The rights and duties of the people, the government, and the patients;
- The government's duty to provide adequate public resources to meet the needs
- Promotion of public health by setting standards for medical treatment .Midwifery and care for infants, children, the elderly and persons with disabilities and give information on public health;
- Support people to get sufficient nutrition;
- Treatment for schizophrenia;
- Communicable disease and dis-communicable disease management;
- Promoting a healthy environment;
- Care for work-related diseases;
- Financial support;
- Public participation and involvement in public health
- The establishment of an independent health promotion organizations, which responsible for storing various public health data for analysis.

Indonesia health development is based on human rights, proportionality, maximization of benefits, protecting and respecting rights and duties (Article 2)[163]. The main purpose of health development is to raise awareness of the importance of health, creating an effort to improve health (Article 3)[164]. All citizens should have equality in access to information, to the health system and are able to freely choose health services (Article 4)[165]. This law also requires the government to plan, regulate,

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Ethical Research in Indonesia," Retrieved on 9 February 2017 from http://www.fercap-sidcer.org.

[163] Section 2 Public Health Act (Law No. 36 of 2009)

" Health development is held under the principles of humanity, balance, usefulness, protection, respect to the right and obligation, justice, gender and non-discriminative and religious norms."

[164] Section 3 Public Health Act (Law No. 36 of 2009)

" Health development aims to improve awareness, willingness, and living healthy capability of every individual so that to realize maximum community health degree being investment for the development of productive human resources socially and economically".

[165] Section 4 Public Health Act (Law No. 36 of 2009)

"Every people is entitled for health."

proceed, follow up and oversee the provision of public health services, which must be accessible by everyone. It also has the duties to expand public health services, including to classify hospitals into groups for the convenience of management, authorize public health personnel to report medical investigations such as autopsy, traumatic examination, body examination and to impose penalties on health care managers in cases such as denial of treating emergency patients.

In addition, this Act also sets out the roles and responsibilities of the public sector more clearly in public health services, especially in medical services. Other laws relating to basic health system are Law relating to health care insurance (Presidential Decree No. 29 of 2002, which stipulates universal health insurance and the National Health Insurance Act (Law No. 40 of 2004), which impose the duties to plan the medical services system and control the prices of the medical services system to be afforable for all the Indonesian population[166]. By doing so the State must consider the size of the service area, population distribution, the need for public helth and medical in each local area, for example.[167] The state has the duty to promote education and research in the medical sciences and pharmaceuticals. The state also has the duty to support the study, research and development of medical technology, of which testing in humans or animals is allowed only when there is no harm on the human or animal tested.[168] In addition, the law prescribes the government to make a list and types of drugs that all people must be access able[169], and to review the list every two years. The law also requires the state to promote other medical and public health services,

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[166] Section 14 (1) Public Health Act (Law No. 36 of 2009) The Government shall be responsible to plan, regulate, implement, cultivate, and supervise the implementation of well distributed and affordable health for the people.

[167] Section 35 (2) Public Health Act (Law No. 36 of 2009)

"The fulfilment of number and type of health service facilities as intended in paragraph (1) should be carried out by local government by observing: a. extent of area; b. health need; c. the population and distribution; d. disease pattern; e. use; f. social function; and g. capability to utilize technology"

[168] Section 44 (1) Public Health Act (Law No. 36 of 2009)

"In developing technology as intended in Article 43 a experiment of technology or technology product may be carried out on human or animal"

[169] Section 40 (1) Public Health Act (Law No. 36 of 2009)

"The Government shall establish list and type of medicine which should essentially available for the people interest"

such as: reproductive health, mental health, public health and medical services in the event of a disaster.

2.2 Laws on Social Security System

In 1992, (B.E. 2535) the Indonesian government reformed its social security system by adjusting the mission and structure of the old social security agency (*Jamsostek*) to *Badan Penyelenggara Jaminan Sosial* (Social Security Organizing Agency (BPJS)[170], separating the implementation of health insurance and social security from each other. Health insurance now is under the control of BPJS-*Kesehatan* (BPJS Health). This covers general public health insurance while health insurance of the labor is under the control of BPJS-*Ketenagakerjaan* (BPJS Manpower). Indonesia policy is to provide cheap medical treatment to its citizen because most Indonesian people earns low to middle income, which leads to the problem of inadequate medical service for all people. In 2002 (B.E. 2545), Presidential Order No. 29 of 2002 was enacted. It set out the drafting of law and action plans for universal health care. In 2004 (B.E.2547), Indonesia enacted an important law on the health insurance system management, which is the Social Security System Act (Law No. 40 of 2004).

There are 53 sections in this Act, divided into 9 chapters. It aims to protect Indonesian citizens and migrant workers, who work has been working in Indonesia for more than 6 months. The Indonesian social security system consists of 5 parts; health insurance, workplace accident insurance, elderly fund, public savings fund and life insurance. Therefore, health insurance is a part of Indonesia's social security system. Each part of the social security system governs details as follow:

1) Health insurance- The law guarantees the right of all Indonesian citizens including migrant workers who have worked in Indonesia for more than 6 months, to have the health insurance. Their family members will be providing health insurance as well against extra expense. In case the employee resigns, the health insurance membership is still valid. If the employee is unemployed for more than 6 months and is unable to pay the membership fee, the law requires governments to pay membership fees for them. Health insurance covers 4 facets of public health and medical services: (1) measures to promote health care for patients (Promotion); (2) measures to prevent disease and illness such as vaccination (Preventative); (3)

[170] Elizabeth Pisani, Maarten OliverKok and Kharisma Nugroho, "Indonesia's road to universal health coverage: a political journey", Health Policy and Planning, Vol 32, 2017, p. 270.

patient treatment (Curative); (4) recovery (rehabilitation). In case of a new treatment, the provider may ask the patient for additional fee (Article 22). The law empowers the government to set the price of medicines and medical devices.

2) Accident in workplace insurance- the law provides a work accident insurance fund by deducting money from wages. Work accident insurance covers medical expenses in work accidents. If the employee is impaired by the accident, then the employee will be compensated from this fund. However, the law set out exception where the employer must co-pay for incidents in certain accidents or treatments.

3) Elderly fund- the law requires the fund to operate on a national level. The benefits will be calculated based on the amount paid into the fund. The money paid into the fund will be deducted from monthly wage while the interest will be paid to participants after a period of 10 years.

4) Public fund- The purpose of public fund is to provide its members with assistance from the fund in the case of lack of income, whether temporary or permanent. Beneficiaries are those who are disabled by the work incident, retired person, widowed whose spouse has passed away, children who lose their parents and parents who lose their unmarried heirs.[171]

5) Life insurance- the law requires the government to provide national life insurance programs. Participants must pay insurance fee, which the law requires employers to deduct the fee from monthly wages. The insurer must pay to the insured person within 3 days from the insured person's death. (Section 43 to Section 36).

In addition, the law also set the system for health insurance by establishing the National Social Security Board, which is directly under the President. The board has the power to define policies and to make the process work systematically (Article

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[171] Section 41 Laws on Social Security System (Law No. 40 of 2004)

" The types of the pension security received in form of cash monthly are as follow:

A. Old-age pension: for beneficiant after retirement;

B. Disability pension: received by participants who has disability from accident or illness;

C. Pension for widow and widower, until died or remarried;

D. Child whose parents die, received until reaching age of 23 (twenty-three) years old, working or married; and

E. Parents, whose child that is single, die".

7). The Indonesian social security system requires employers to take part in various social security agencies. The government then has a duty to record the name of the employer or employee who joins the agencies and give the member card to the participant as well as give education and information to the public (Section 16). The Act also sets up the National Social Security Council, which is under the direct control of the president. The National Social Security Council consist of 15 members who are social security specialist and representatives from employees and employers. The Council's duty is to provide a policy on the national social insurance system. The law establishes the principle that all citizen must be registered. The employers are then required to have the employee register to the National Social Security system, especially employees under employment contract. The law also opens for self-employed such as fisherman and farmers to voluntarily register to the system. The law has changed social security agencies and health insurance agencies from profit-oriented limited liability state enterprise into the state fund within 5 years.

The detailes of this changing proves is written in the Social Security Agency Act (Law No. 24 of 2011), which will be touch upon at the end of this topic. Before 2014, Indonesia divided the health insurance system into 6 projects, based on occupation and employment types, which are;

1) The National Health Insurance Program (the "*Jamkesmas*") is a program allocating national costs in respect of health care for the poor in Indonesia. This project was initiated by the recommendation of the Ministry of Health in 2007, with the purpose of increasing access and quality of health services for the population. This is to maintain good health for all members of the program and set health services standard for all members. In addition, it is a mechanism by the state to manage the costs of excessive health services, which would create a huge burden for the state.[172]

The *Jamkesmas* is a program established by Law No. 40 of 2004. It was established as part of the State's constitutional obligation to provide welfare and protection to the people. The law requires the state to initiate health programs for people of every status (Section 2). The project is a joint management between the central government, in charge of managing the costs, and the local government, in charge of managing the development of health insurance based on the community's needs. This in turn, contributed to the development of Indonesia's health insurance

[172] Adenantera Dwicaksono, Ari Nurman, Panji Yudha Prasetya, JAMKESMAS and District Health CareInsurance Schemes, (Bandung:Perkumpulan INISIATIF, 2012) p. 10.

system. The program was supported financially by the government and used data from the Statistics Bureau[173], who was in charge of compiling a list of eligible persons to receive protection under the health insurance.[174] The eligible persons were selected on the condition that they are not eligible for any other insurances, i.e., child and youth, elderly, unemployed and self-employed persons. The latter received only some parts of the benefits in the insurance program.

2) The Civil Servants and Police Insurance Program)the " PT Askes(" is a specific health insurance for only civil servants and police .The health insurance plan is called *Kesehatan Asuransi Masyarakat Miskin*, which is a state-owned insurance company [175]. This project is a health insurance covering only necessary treatment, designated by the state, and allows treatment for both private and government hospitals[176].

3) The Armed Forces and Family Health Insurance Program) the " PT *Asabri* " is a health insurance program for armed forces and their families. It offers more comprehensive treatment than any other types of insurance . The insured persons would receive treatment from experts at a military hospital, military clinic, and every public hospital in all level of the facilities .

4) The Formal and Informal Sectors' Employees' Health Insurance Program the "*Jamsoste"* is equivalent to Thailand's social security system . It is a system that requires an application to the program and members would have to contribute fees to the fund .In return, they would receive the benefits and protection in both public and private hospitals, but the level of service available are limited to only secondary service units and tertiary service units[177].

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[173] RAND, " Indonesia National Socio-Economic Survey," Retrieved on 9 February 2017 from http://www.rand.org/labor/bps/susenas.html.

[174] Individuals who are eligible for health insurance coverage will be recorded in the health insurance system. And will receive a valid identification card for access to health services.

[175] Adenantera Dwicaksono, Ari Nurman, Panji Yudha Prasetya, *supra note 172*, p. 1

[176] International Health Policies, "Indonesia aims for universal health coverage by 2019," Retrieved on 9 February 2018 from https://www.asianscientist.com.

[177] Indonesia has a decentralized health insurance scheme with Basic health and Medical services provided by local agencies. It is divided into three levels which are:

1) Primary care centers include community health centers. (Puskesmas in

5) The Women with Pregnancy Health Insurance Program the "*Jampersal* " is a health insurance program for mothers and their child . Indonesian women can participate by registration . The insurance covers prenatal and postnatal care, consultation, deliverance, and care for pregnant women and children . Members are eligible for care at general clinics and hospitals, free of charge [178].

6) The Local Government Health Insurance Program)the "*Jamkesda* " is a program with additional coverage of the *Jamkesmas* as the *Jamkesmas* has limited protection over some groups of people . As a result, the Indonesian government supported the establishment of a local government health insurance program, which gives protection equivalent to Jamkesmas and forces all of the uninsured to be in this program, so that every Indonesian citizen has the opportunity to receive treatment equally .

From the 6 health insurance programs stated, Indonesia's former social security system has some overlapping management. Each program covers unequal treatment rights, creating a loophole in accessing health care. Therefore, in 2014, Indonesia began integrating the state health insurance system into a single project called the National Social Health Insurance (the "*JAMINAN KESEHATAN NASIONAL*" or ("JKN")), which is managed the Indonesian Social Security Agency (the "BPJS *Ketenagakerjaan*"). The latter agency is an independent agency established under Law No. 24 of 2011. [179] The protection plans where categorized into 2 systems: (1) persons

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Indonesian)It is an important organization, usually a large specialty clinic with a regular medical staff, provides services related to the treatment of common ailments, maternal and child health both before and after childbirth, outpatient medical care, vaccination and disease control.

2) Secondary care centers include community health sub centers. (Subpuskesmas in Indonesian) It is a district clinic, there are one to three nurses and a doctor on duty weekly or monthly.

3) Tertiary care centers include integrated service post. (Posyandu in Indonesian) A small clinic that open occasionally such as once per month. There are doctors, nurses and volunteer units from the area service.

[178] Social Protection, "Indonesia-Health," Retrieved on 9 February 2018 from http://www.social-protection.org/

[179] The details of the project are set out in Presidential Regulation on Health Insurance (Presidential Regulation No. 12 of 2013).

requiring paying some of their own expenses such as Indonesians with jobs, and foreign workers who have worked in Indonesia for more than 6 months; (2) State-sponsored groups which are people with low-income and the disadvantaged.

In addition, the JKN program categorized the rights to treatment into 3 levels. The first level receives the best treatment i.e. the best medicine and hospital room. The second level will receive the next best treatment and the third level is allowed only necessary treatments and is not entitled to recieve certain kind of medicines. The members receiving government support are entitled to the third level of treatment, while the members paying extra money will receive the first or second level of treatment, depending on the amount paid into the system and additional insurance purchase from a private company.

In the transition period from the old system to the new one, Indonesia has set up a method to move the names from the old system to the new system in 3 channels. In the first channel, Indonesian government will transfer the names list from *Jamkesmas*, PT Askes, PT *Asabri*, *Jamsostek*, and *Jampersal* into the new system. The second channel is to open an enrollment registration for people who are self-employed or unemployed. The third method is to have the government agencies and employers register for new officials or employees.

The proportion of payment is divided into three types. For the first type, the state will provide annual support for people with low income and the disadvantaged. The second type is for people who work regularly, whether public or private work. Payment will be jointly made by the agencies and the insured. For those state officials working for the government, the state will pay 3% of the insured person's salary, while they also pay 2%. The third type of ratio rate is for those working for private agencies. Their employers will pay 4% and employees also pay 1% of their salary. In any case, if anyone wishes to add additional coverage for their family members, they can pay an additional 1%.

In conclusion, Indonesia is effortlessly trying to develop their fundamental public health system to quickly and efficiently respond to the needs of the population. JKN's coverage includes medical treatment[180], health promotion services, and

[180] The meaning of medical treatment under Indonesian law is to be restored to its original state by medicine and medical means. The law divides the treatment into two steps. First, the patient is monitored by a general practitioner in a small public health unit such as public health Center. If there are the need to see additional specialists, the patient will be transfer to the hospital.

prevention of health problems, such as health consultation services, family planning services, basic vaccinations like polio and health checkup. Therefore, it can be considered a program that has met its objective in accordance with the Law No. 40 of 2004.

2.3 Law on narcotic drugs

Indonesia's law relating to narcotic drugs include the Law No. 22 of 1997 (the "Narcotics Act") and the Law No. 35 of 2009 (the "narcotics security system"). According to the Narcotics Act (Law No. 22 of 1997) divided narcotics into 3 types as follows:

1) Narcotics of serious offense;

2) General narcotics; and

3) Other drugs, categorized based on their violence.

The details of each type are specified in the appendix of the Law No. 35 of 2009 (the "Drug Enforcement Act"). Type 1 includes heroin and ketobemidone, type 2 includes Alphacetylmetha Anileridine, and type 3 includes Ephedrine and Buprenorphine. The classification of each type is linked to the penalties and the use of narcotic drugs for research purposes. Type 1 narcoticss can be produced under the control of the Ministry of Public Health and is for research purposes only.

In addition, the Narcotics Act contains provisions governing the use of narcotic for treatment. It stipulates that the narcotics must come from approved drug stores, hospitals, public infirmaries, clinics and physical therapists and patients can purchase only with a physician's prescription. This law requires the Ministry of Public Health to regulate the production and distribution of substances prescribe as narcotics (or substances which affect the mental and neurological system) that can be used in treatment or research as defined in the annual narcotic requirement plan. The requirement plan will be made annually to review marketing needs and necessity of production. The Ministry of Public Health is responsible for regulating import and export by means of licensing, and the Narcotic Act also requires the establishment of the National Narcotic Coordinating Board, which operates directly under the president. It is responsible for coordinating actions related to controlling, preventing and suppressing the smuggling of narcotics, by coordinating with the Ministry of Public Health, the prosecutor's office, the police, and other relevant agencies in the region. In addition, the Narcotic Act also provides for the rehabilitation of drug addicts and provides that the judge can render a judgment for drug addicts to be rehabilitated at the drug rehabilitation and treatment center, which is an additional measure to other penalties that may be inflicted. The penalties relating to narcotics are at a serious

level, i.e. persons in possession of narcotics will be imprisoned for not more than 7 years, and/or subject to a fine not exceeding 500 million IDR (approximately 1.3 million Baht).[181] It also imposes penalties for the manufacture of narcotics of imprisonment of not more than 20 years and/or subject to a fine not exceeding 2,000 million IDR (approximately 5.2 million Baht) and if the manner of the illegal act is a criminal organization the penalties imposed is either death or life imprisonment.

Later, in 2009, Indonesia issued additional legislation on narcotics, the Law No. 35 of 2009 (the "Drug Enforcement Narcotics Act"). This Act's key issue is the amendment of the Narcotics Act, by adding matters (1) concerning the prevention and suppression of the use of narcotics in youth; (2) the enjoyment of the society in controlling, preventing, and suppressing of drug smuggling; (3) Increase the detention of drug offenders from not exceeding 24 hours to not exceeding 72 hours; (4) Increased penalties for possession of narcotics to imprisonment of not more than 12 years and/or subject to a fine not exceeding 800 million IDR (approximately 2.1 million Baht); (5) Increased the fine penalties for the manufacture of narcotics to 10,000 IDR (about 26.8 million Baht).[182]

2.4 Law on food, medicine and cosmetics

Indonesia is the country, which has the biggest Muslim population in the world. Thus, it lays importance on how to regulate the process of producing food properly according to Islamic principles. The main food law is the Food Act (Law No. 18 of 2012)

1) Law on food

The Food Act (Law No. 7 of 1996) provides number of issues related to the care for Indonesian people's food consumption. The law establishes hygienic food standards in various stages, from planting or farming to transportation to storage. In addition, the law also prohibits the seller put the substance that causes the consumer to addictions. If anyone sells food that has been genetically modified, permission must be obtained. In the case of packaging, the seller must comply with the applicable

[181] Exchange rate of the Bank of Thailand as of 13 July 2017 from https://www.bot.or.th.

[182] FLEVIN, "Indonesia Law No. 35 of 2009 on Narcotics," Retrieved on 13 July 2017 from http://www.flevin.com/id.

regulatory requirements for packaging design and material selection. The Food Act (Law No. 7 of 1996) also prohibits such act using of toxic, dirty or escessively contaminated packaging, or using materials that are prohibited, and the sale of expired food. In the case of imported food; its packaging and quality must be in accordance with the rules prescribed by the authorities.

In addition to the food quality, the Food Act (Law No. 7 of 1996) also governs on the food labels, the promotion plan for necessary amount of a nutrient for the Indonesian people and the liability of food companies as well as retailers in various cases such as unhygienic cooking, use of materials or packaging prohibited by law or addition of substance that make consumers addictive.

Later, Indonesia enacted a food law in support of the changing world, the Food Act (Law No. 18 of 2012), in place of the Food Act (Law No.7 of 1996). The new law has 154 sections and is divided into 17 divisions. It stipulates the government's role in managing the food supply chain to ensure food security, meaning that people have access to food and allow the government to control prices and food production so that people in the country have sufficient food. There are various supporting measures, such as protecting farmers, fishermen nd food producers (Article 17)[183].

The Food Act (Law No. 18 of 2012) defines threats to food, such as climate change, natural disasters and toxic contamination in water (Article 22)[184]. To prevent

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[183] Section 17 The Food Act (Law No. 18 of 2012)

" Government and Regional Government is responsible for protecting and empowering Farmers, Fishermen, Fish Farmers and Food Businesses as Food producer."

[184] Section 22 The Food Act (Law No. 18 of 2012)

"(1) Food Production Threat is an event that can lead to failure of Food Production caused by:

a. climate change;

b. invasion of plant disturbing organism as well as outbreak of fish and animal diseases;

c. natural disaster;

d. social disaster;

e. environmental pollution;

f. degradation of land and water resources;

g. utilization competition of Food Production resources;

h. function shift of land use; and

the mentioned threat, the law requires the government to establish food reservation centers at the national, regional and community levels. The food reservation center is responsible for assessing the need for food storage, assessing the supply of food in each area, monitoring food prices, and finally assessing the risks of emergencies case (Section 24)[185]. When certain kind of food is not sufficed, the government can order food imports (Section 36)[186]. And the law also prohibits private companies of hoarding food exceeding state requirements (Section 53)[187].

To control of food security assurance, the law allows the state to take action by taking measures such as determine the price from the manufacturer, determine the sales price, determine tax measures or regulate the importation or exportation of goods. The Food Act (Law No. 18 of 2012) requires the government to ensure that people have enough food in terms of quality and quantity, such as giving guidelines for the public to consume enough nutrients or disseminating

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i. economic disincentive.

(2) Government and Regional Government have the obligation to anticipate and cope with Food Production threat as intended in paragraph (1) through the aid of technology and regulation. ”

[185] Section 24 The Food Act (Law No. 18 of 2012)

“National Food Reserve as intended in Article 23 is implemented to anticipate:

a. Food Availability shortage;

b. Food Availability surplus;

c. Food price volatility; and/or

d. emergency situation.”

[186] Section 36 The Food Act (Law No. 18 of 2012)

“(1) Food Import can only be implemented if domestic Food Production is not sufficient and/or cannot be produced domestically

(2) Staple Food Import can only be implemented if domestic Food Production and National Food Reserve are not sufficient.

(3) Sufficiency of domestic Staple Food Production and Government Food Reserve is determined by minister or government institution with the task of executing governmental orders in the Food sector”.

[187] Section 53 The Food Act (Law No. 18 of 2012)

“Food Businesses are prohibited from hoarding or storing Staple Food in excess of maximal quantity as intended in Section 52”.

knowledge to the people (Article 60)[188], promoting clean food consumption, banning the consumption of a certain kind of food, control of food that its ingredient can cause addictions, control of food produced by genetically modified ingredient, control of labels and packaging to have the same standard and issuing halal certification system.

For the penalties, the Act stipulates that food business operators must be punished if they commit prohibited action such as hoarding food or unhygienic food storation, using food processing methods that reduce nutritional values, adding substances that cause addiction or using packaging that is toxic to consumers.

On the issue of halal certification- The Food Act (Law No. 18 of 2012) does not require that all food must be certified to the halal standards. It generally requires that food manufacturer must produce food in accordance with the hygienic standard determined by the Ministry.[189]The packaging will receive the Halal certification if authorized by the inspection agency such as Indonesian Council of Ulema (*Majelis Ulama* Indonesia (MUI)), also known as *Lembaga Pengkajian Pangan Obat-obatan dan*

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[188] Section 60 The Food Act (Law No. 18 of 2012)

"(1) Government and Regional Government have the obligation to realize diversification of Food consumption to fulfill people's Nutritional necessity and to support healthy, active and productive life.

(2) Diversification of Food consumption as intended in paragraph (1) is directed to raise public awareness and to cultivate Food consumption pattern that is diverse, nutritionally balance and safe as well as in accordance with local wisdom and potential".

[189] Section 97 The Food Act (Law No. 18 of 2012)

"(1) Everyone that produces Food domestically for trade is required to attach label inside and/or on Food Packaging.

(2) Everyone that imports food for trade is required to attach label inside and/or on Food Packaging during entry into the territory of the Republic of Indonesia.

(3) Attachment of label inside and/or on Food Packaging as intended in paragraph (1) and (2) written or printed using bahasa Indonesia as well as containing at least information concerning:

a. product name;

b. list of ingredients used;

c. net weight or content;

d. name and address of producer and importer;

e. halal for those required;

Kosmetika (LPPOM). The MUI is an organization of the Indonesian Religious Council. The law divides Halal certification into three categories; food and beverages, cosmetics and pharmaceuticals. This applies to both domestic or imported goods to protect Muslim consumers, which are the largest consumer group in Indonesian.[190]

In 2014, Indonesia has issued a specific law on halal: the Halal Certification Act (Law No. 33 of 2014). The Act has 68 Articles and is divided into 11 divisions. It set up the Halal Inspection Agency under the government controlled called BPJPH to monitor Halal products. The MUI was changed its function to an academic unit, which is responsible for setting the inspection standard for product inspection by BPJPH. BPJPH main duty is inspecting products, service and food. It also possesses an authority to set up Halal Auditor to inspect products, service and food (Section 14 and Section 15).

For the ingredients in Halal food, the law has defined the ingredients into four categories: (1) main ingredient (2) modified ingredients such as margarine (processed oil) (3) supporting Ingredient such as carrageenan in jelly and (4) additive ingredients such as odor additives. Ingredients must be derived from animals, microorganisms or other substances derived from chemical or biological processes. Ingredients from animals prohibited by law include bodies, blood, pigs or other animals that are not killed according to the methods specified in the Sharia. In the case of plants, the law requires that all plants is Halal except toxic plants, which are harmful for human. Microorganisms and ingredients, when brought into the production process, must be placed, stored, packaged, shipped and sold separately from non-halal goods. If any manufacturer fails to comply, it faces penalty. Manufacturers will be assisted by the state by supporting information on how to comply with the law, including the promotion of products, and the right to receive Halal certification at fair costs and in fast process.

In the process of applying for Halal certification, the manufacturer must provide the following information, which will be inspected by a halal inspection officer. (Section 24): accurate information on cleanliness, storage location, packaging, transportation and place of sale. Once certified, Manufacturers must label halal and maintain production standards. When the certificate expires, it needs to be renewed. Failure to comply with the law will face enforcement measures by law (Section 26 and Section 27), include warnings, fines and confiscation of halal certificate.

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[190] Wilasinee Jam-Uritrat, "The potential of the halal product market in Indonesia," Retrieved on 8 Febuary 2017 from http://www.thaihalalfoods.com

Qualifications and duties of halal inspectors- (Section 28) The law requires that the inspectior has duty and power to monitor manufacturer at the place of production. Halal inspectors have the power to make decisions whether the manufacturer's process is correct or not. Halal inspectors must be Islamic background and possess knowledge of sharia law, especially on halal.

Application process- Manufacturers can apply for certification at BPJPH by providing the required documents such as business information, ingredients used. Upon submission of the application, BPJPH will appoint a company or an agency to inspect the compliance with halal standard within 5 days by sending a Halal inspector to the manufacture. If any ingredient is suspected of being halal, the ingredient will be tested in the laboratory.

In the cases where the product is halal certified from another country- The government can agree on recognition of halal Inspection from other countries providing that the country has the same rules as Indonesian law (Section 46). In the case of imported goods, the importer must apply for halal certification.

The law has imposed penalties for cases where the manufacturer does not maintain a halal standard. It is punishable by imprisonment not exceeding 5 years or a fine not exceeding 2 billion IDR (approximately 5.3 million Baht). It also imposes penalties on officials, if disclosure secret formula of the manufacturer. It is punishable by imprisonment not exceeding 2 years or a fine not exceeding 2 billion IDR (approximately 5.3 million Baht).

2) Law on drugs and cosmetics

The relevant legislation is the Pharmaceutical Act (Law No. 7 of 1963). There are 12 Articles and divided in 7 divisions. The Act stipulates that the state have control over the production of medicines and cosmetics. It is responsible for setting the production guidelines. The private sector can build their own factory.

In addition, there is the Ministerial Regulations governing the registration of medicines (Ministerial Regulation No. 1010 of 2008), which has 24 sectors and divided into 9 divisions. It prescribes criteria for testing drugs before placing it on the market in Indonesia. The medication must be tested on human or on animals, or other methods that represents scientific proof. The quality of the medicine must meet the criteria and the production must be in accordance with the good method of producing medicines (CPOB). The packaging must also meet standards and inform consumers.

Drugs registration for medicines manufactured in Indonesia- Only manufacturer can register with the Ministry of Public Health.

In the case registrations of drugs that is addictive- The company must obtain a license from the Ministry of Health.

In case of registration of pharmaceuticals produced under license- The company which entitle to register drug is the manufacturer, which must be stated at the end of the production contract. The contract manufacturers are responsible for the quality of medicines.

In the case of registration of imported drugs- The law allows the import of medicines that benefit health insurance project and it should also be new drugs that cannot be produced domestically. A person who has the right to register are importers of drugs licensed by foreign pharmaceutical manufacturers. When imported, the contract must state that the technology will be transferred and that no more than 5 years after importation, it will be possible to produce such drug in Indonesia, except for the patent drug.

In the case of registration of export drug- A person who has the night to register is a drug company. The drugs quality must meet the standard of CPOB.

In the case of patent drug registration- A person who eligible to register is an Indonesian companies holding a patent in Indonesia or an Indonesian company authorized by the patent holder.

The application for drug registration must be submitted to the Commission under the Ministry of Public Health. The board defines various rules. The application fee for registration must be paid. Upon submission of the registration application, the board will forward the matter to National committee for medicine evaluation, Committee for quality and security evaluation and Committee for technology quality evaluation and medicinal rationality to consider the drug. When proven that it is in accordance with the standards, the board will register the drug (Section 18). The registration period is 5 years (Section 20). Once registered, the drug must be produced within 1 year. If the registered drug has severe side effects, the registration will be annulled.

The law imposes penalties by withdrawal from the registration in the following cases: the applicant does not provide the latest drug information, faulty advertise drugs that different from the information provided for registration, the applicant has not sold the drug within one year from the date of registration or the company applying for registration has been revoked license.

In relation to the manufacture of pharmaceuticals and medical instruments- Public Health Act (Law No. 36 of 2009) governs that the state has the duty to provide medicine, medical material, equipment and instruments. And that the

production of medicines, medical materials, equipment and instruments must be produced by a process consistent with medical and pharmaceutical standards. It also required the manufacturer of medical material, equipments and instruments to be knowledgeable and hold a permittion prescribed by law.

In addition, Indonesia has taken measures to protect domestic pharmaceutical manufacturers. The Public Health Ministerial Regulation on the Registration of Medicines (Ministerial Regulation No. 1010 of 2008) set out that the registration of medicines is only admissible for foreign pharmaceutical companies that manufacture medicines in Indonesia or in partnership with local producers.[191] The law allows two-year grace-period for companies that are granted waivers to comply with legal requirements to fully comply with the laws, otherwise, its registration will be withdrawn. This demonstrates that Indonesia sets strict import licensing criteria.

In relation to the import of food and medicine- The relevant law is the regulations governing the control of drugs and the importation of food (Regulation No. 27 of 2013), which came into force on May 28th, 2013, issued by National Agency of Drug and Food Control (NA-DFC). It stipulates that the importation of food and medicine for distribution in Indonesia must register with National Agency of Drug and Food Control and shows the register number on the product label[192].

The regulations governing the control of drugs and the importation of food (Regulation No. 27 of 2013) permits the importation of food and medicine only after the circulation permit has been obtained. The permit can be applied through online licensing system. The regulation defines the label content of imported food and medicines. The label must providies Preliminary information for consumers, such as the date of manufacture, manufacturer, supplier and importer details. The National Food and Drug Administration (NAFC) has extensive duty and power, namely: developing a policy on food and drug control; providing advice on food and drug safety controls to other agencies; issuing import and export licenses for food and medicine, setting standards such as the conditions for the use of food additives and the establishment of food and drug manufacturers, licensing, regulating drug distribution, oversee the pharmaceutical industry, making guidelines for the use of of heral plants.

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[191] GBG Indonesia, "Opportunities in the Pharmaceutical Sector," Retrieved on 8 February 2018 from http://www.gbgindonesia.com.

[192] Global Trade Alert, "Indonesia: Importer permit and distribution licence requirements for food and drugs, Measure 7910" Retrieved on 8 February 2018 from http://www.globaltradealert.org/measure.

There are penalties for violating such laws, namely: warnings, suspension or revocation of license or permit or suspension or ban importation (Article 24) [193]

2.5 Laws on Alcohol Beverage and Tobacco

The main population of Indonesia is Muslims. Therefore, the regulations on alcohol and tobacco are strict. The relevant laws are as follows:

1) Law on Alcohol Beverage

The main legislation on alcohol beverage is the Presidential Decree No. 3 of 1997 (the "**Presidential Decree on Alcohol Control**"). It set a system of management of production and distribution of alcohol. The classification of alcohol is determined by the degree of alcohol. The Presidential Decree on Alcohol Control also provides that permission must be granted to manufacturers and distributors. Alcoholic products cannot be sold to people under the age of 25, cannot be sold in an area close to educational institutes, religious places and hospitals. The agency with the authority to issue a license is the Ministry of Industry and Trading, which provides that the Ministry of Public Health determines the standard quality of alcohol and is the registrar for alcoholic products.

In addition, Indonesia has amended the Alcoholic Product Sales Act in 2015. The Islamic Party in the Indonesian government proposed more stringent measures for the distribution of alcoholic products to be correlated with Islamic principles[194]. At first, the Minister Regulation No. 6 of 2015 (the "Minister Regulation on Narcotics") was enacted which prohibits the distribution of class A alcoholic beverages, which has an alcohol degree of less than 5%, such as beer and low alcohol wine, in small shops nationwide. It came into force on the 30th of January 2015. Large stores or hypermarkets, hotels, and restaurants can obtain license to sell such alcohols. The law has imposed penalties for violators, including the revokation of the trade license.

2) Law on Tobacco Products

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[193] Article 24 (1) Violation of provisions in this Regulation is subject to administrative sanction in the form of: a. writer reprimand; b. temporary suspension of importation and/or circulation activities; c. extermination or re-export; d. freezing of circulation permit; and/or e. cancellation of circulation permit; (2) In addition to administrative sanction as intended in paragraph (1), criminal sanctions can be imposed according to provisions of the regulating legislation

[194] American Chamber in Indonesia, "One More Round on Indonesian Alcohol Rules," Retrieved on 9 February 2017 from https://www.amcham.or.id/en

The main law concerning control of tobacco products is the Notification of the Ministry of Public Health No. 109 of 2012. The Notification has 65 articles and is divided into 8 divisions. The law governs on tobacco control under state responsibility, operation and management of tabacco products, public participation, surveillance and monitoring of tobacco. The law requires governments to have authority over the control of narcotic substances in tobacco, such as follows:

Manufacturing and import control- manufacturers and importers must obtain a license from the state. The manufacturers must ensure that the nicotine and tar levels do not exceed the legal limit and no illegal substances are added. The packaging of tabacco products must show the health warnings, which cover at least 20% of the packaging (Article 13).

Distribution- The Notification prohibits the sale of tobacco by automatic vending machines to youth under the age of 18 and pregnant women. It also limits media advertisements such as prohibits the advertisement on the first page of the newspaper, no advertisement of the road and limited advertising time especially during night time (Article 28 and 29). It also prohibits the promotion of sales such as free trial products and the advertising of tobacco brands with other products.

Control Tobacco effect on children and women- The Notification requires the state to educate youth and pregnant women and provide physical and psychological treatment to pregnant women and youth affected by tobacco.

Determination of tobacco-free zones-The Notification allocates areas to be tobacco-free i.e. hospitals, educational institutes, religious places, public transport, workplace, and other areas designated to be a tobacco-free zone. In addition, it provides prohibition of tobacco advertisement in tobacco-free zones. (Article 50).

State duties- The Notification requires the state and local governments to designate tobacco-free zones, preventing new smokers, and cooperate with international organizations to educate people about tobacco (Article 57).

(3) Role of relevant agencies

The Ministry of Public Health is the main agency in Indonesia. It is the state's central agency responsible for the management of health operations. Within the agency, departments on management, services and academic, are spread out throughout the country. It has a role to connect various sector related to health to work together. The Ministry of Public Health is divided into 8 divisions which are (1) General Secretariat; (2) General Directorate of Health Efforts Development; (3) General

Directorate of Disease Control and Environmental Health; (4) General Directorate of Mother-Child Health and Nutrition Development; (5) General Directorate of Pharmacy and Medical Devices Development; (6) General Inspectorate; (7) Agency of Health Research and Development; and (8) Agency of Health Human Resources Development and Empowerment.

Moreover, there are other centers as well such as the Center of Data and Information, Center of Foreign Cooperation, Center of Health Crisis Prevention, Center of Health Finance and Insurance, Center of Public Communication, Center of Health Promotion, Center of Health Intelligence and Center of Hajj Health. The central agencies are responsible for defining national policies and implementing policies, property management, reporting the assessment of duty to the president, determining policies and measures to implement the obligations arising from international treaties and guidance and oversight of regional operations including advising, counseling, training and supervising in public health.

Chapter 6

Laws on Social Welfare

In this chapter, the researcher will present laws on social welfare, which is divided into 2 parts: preliminary and essence of the laws agencies.

(1) Preliminary information

“Social Welfare” has a broad meaning including the work of the government to solve problems or to elevate the living standard of the people (or social work), or the activities of the private sector in the form of volunteer, donation, or any act for the public interests. In this chapter the researcher focus mainly on social welfare or state welfare of Indonesia. Social welfare is an important aim of every countries in helping the citizen or public members to be happy, have a good standard of living. This normally means welfare in 3 areas which are: welfare on health, welfare on

objects, such as those help on the 4 essentials for living, and welfare on mental or giving of protection on feeling and emotion (mental health), so that the people possess well-being and happy to be a part of the society, for the sake of country development in the future.

Social welfare that government of countries implement at present can be divided aid well-being into 6 types: healthcare service (as in Chapter 5 Laws on Health), education service (as in Chapter 3 Laws on Education), labour protection service (as in Chapter 4 Laws on Labour), accommodation or housing service, income and economics situation guarantee service and other services, which mean social service in general such as service to community members and families, specifically service to children, elders and people with disability.

Indonesia is deemed a country give importance to social welfare or state aids. Indonesia has enacted Law on Social Welfare (Law No. 11 of 2009) based on the fifth principle of the Pancasila and on Article 34 paragraph one of the Constitution of the Republic of Indonesia Year 1945, aiming to evoke social justice to the Indonesian people to have good living standard from the social welfare with sustainably planed and implemented welfare from the state. The law essentials are as follows:

Article 1 of the law defines social welfare as " social welfare is the fulfilment of the condition material needs, spiritual, social and citizens state in order to live a decent and capable develop themselves, so as to carry out social function. Implementation of Social Welfare is an effort targeted, integrated, and sustainable the Government, local government, and community in the form of social services to meet the basic needs of every citizen, that cover social rehabilitation, social security, social empowerment, and social protection" . Further, the law also defines the definitions of social welfare worker, professional social worker, social volunteer, social welfare institute, social protection, social empowerment, and social security. Ministry which plays an important role and is in charge is the " Ministry of Social Affairs[195].

Indonesia stipulates that implementation of welfare social is based on the following principles: solidarity; justice; expediency; integration; partnerships; openness; accountability; participation; professionalism; and sustainability.[196] The implementation of social welfare addressed to individuals, family, groups, and society with priority to those who are in poverty, neglected, has disability, live in remoteness, has social disability,

[195] Section 24 of Law on Social Welfare (Law No. 11 of 2009)

[196] Section 2 of Law on Social Welfare (Law No. 11 of 2009)

disaster victims, and victims of exploitation and discrimination.[197] The law stipulates 4 types of social welfare activities as follows:[198]

(1.1) Social rehabilitation is intended to recover and develop the ability of a person who social dysfunction in order to carry out social function naturally given in the following forms: psychosocial diagnosis; education and training vocational and development entrepreneurship; physical and mental guidance; accessibility of services.[199]

(1.2) Social security is intended to care for the poor, orphans, abandoned, elderly, persons with mental health problems, physical and mental disabilities, chronic disease patients who experience the inability of the economic problems by appreciate fighter and family institution. Social security can be given in forms of insurance welfare social or monthly allowance.[200] Those who cannot afford to pay a premium is exempted thereof.[201]

(1.3) Social empowerment is intended to empower individuals, families, groups, and people who have problems in order to meet needs independently; increase the participation of institutions and individuals in giving social welfare. Social empowerment is executed in various forms such as motivation; skills training; accompaniment; giving stimulant capital, business equipment, and place of business; strengthening social harmony.

(1.4) Social protection is intended to prevent and handle risk from social vulnerability of a person, family, groups, and communities to survival in accordance with the necessities minimal. Social protection is implemented through social assistance, social advocacy, and legal assistance.

In addition, thereto, the Law is aimed to reduce poverty by making policy, plans and activities to reduce poverty[202]; social counselling and guidance; providing access to job and business opportunities, basic health services, basic education services, service housing and settlement, and vocational training.[203]

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[197] Section 5 of Law on Social Welfare (Law No. 11 of 2009)

[198] Section 6 of Law on Social Welfare (Law No. 11 of 2009)

[199] Section 7 of Law on Social Welfare (Law No. 11 of 2009)

[200] Section 9 of Law on Social Welfare (Law No. 11 of 2009)

[201] Section 10 of Law on Social Welfare (Law No. 11 of 2009)

[202] Section 20 of Law on Social Welfare (Law No. 11 of 2009)

[203] Section 21 of Law on Social Welfare (Law No. 11 of 2009)

(2) Essences of the Laws

In studying laws on social welfares of Indonesia, the researcher team will present laws related thereto divided by group of persons into: children, women, elderly, people with disabilities and laws relate to social protection in other areas as follows:

2.1 Laws on Child Welfares

In the past decades Indonesia give importance and efforts to build immunity and child rights protection, or for those whose age is under 18 years old (including foetus), who are the future of the nation. Indonesia government has determined measures to protect child rights and freedom, including tasking relating agencies with authority and duty to carry out work in caring and helping children to receive protection according to international standards. In B.E 2545 Indonesia has enacted Law on Child Protection (Law No. 23 of 2002) which is the law concerning child welfare protection (in effect since 22th October B.E. 2545), which has been amended twice (by Law No. 35 of 2014 and Law No. 1 of 2016 respectively). This law aims to protect child welfare in health and well-being, development, proper living conditions according to child's need and socio-economic situation. Further, the law assorts children who need special care in accordance with their physical and social problems such as abandonment, disability, genius, adopted, labored, abducted, victims of drugs and alcohol, mental health, so that the children receive help accurately and properly.

2.1.1 Laws on Child Protection (Law No. 23 of 2002)[204]

Laws on Child Protection (Law No. 23 of 2002) prescribed legal measures governing child protection in Indonesia. Child protection aims that children live, grow, develop and participate in the society with human dignity, including receive protect children from violence and discrimination as well as right to have a name as personal and citizen status identity. This is to ensure that Indonesian children will be quality citizen who has mannered and is wealthy in the future. The law prescribes exhaustive child rights, freedom and duties. Indonesian children obtain protection of following rights and freedom:[205]

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[204] Law on Child Protection (Law No. 23 of 2002)

[205] Section 5 of Law on Child Protection (Law No. 23 of 2002)

1) Freedom of religion: children have right to pray according to his/her religion and attain religious ceremony and rituals according to his/her intellect and age under the supervisor of the parents.[206]

2) Right to care: children have right to know their genetic parent, as well as get nurtured. In the case where a child cannot live with his/her parents, he/she is entitled to be cared for or get adopted.[207] Court has power to order measure for the guardian or revoke the guardianship.[208] A mother or a father, of sibling of the same father or the same mother, or relatives to the third degree, or in an absence of such persons, a competent officer can request the court to revoke the guardianship or order the guardian to do the proper thing.[209]

In the case where there is no parent, or the parents can not look after the child, a court can order a qualified person or a qualified juristic person to look after the child. That natural person must have the same religion as the child. The guardian also has power to manage the child's property.[210] In the case where the guardian passed away or turns out later not to be able to look after the child or abuse the power, the court has the power to withdraw and guardianship and appoint a new person to be a guardian.[211]

The law stipulates that child adaptation can only be done for the well being of the child, according to the tradition and condition of the laws. The adopted parent must have the same religion as the child, in the case where the child's record is not present; it shall be deemed that the child has the local religion. Foreigner can adopt a child as a last resource.[212]

3) Right to health care and social welfare according to his/her physical and mental states, beliefs and social norms.[213]

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[206] Section 6 of Law on Child Protection (Law No. 23 of 2002)

[207] Section 7 of Law on Child Protection (Law No. 23 of 2002)

[208] Section 30 of Law on Child Protection (Law No. 23 of 2002)

[209] Section 31 of Law on Child Protection (Law No. 23 of 2002)

[210] Section 33 of Law on Child Protection (Law No. 23 of 2002)

[211] Section 36 of Law on Child Protection (Law No. 23 of 2002)

[212] Section 39 of Law on Child Protection (Law No. 23 of 2002)

[213] Section 8 of Law on Child Protection (Law No. 23 of 2002)

4) Right of education for every child is also guaranteed, depending on his/her level of intellect, interests and ability. Children with disability or genius child are entitled to special education.[214]

5) Social rights: Children have various rights such as right to be heard, right to information according to level of intellect and age for the proper self-development, right to rest and recreation are also embedded.

6) Right to other protection as prescribed by laws: in addition to the general protection of rights and freedom, Indonesia law has stipulated protection in specific cases such as where father, mother, parent or the guardian hurt, discriminate, exploit a child sexually or economically, abandon, cause injustice or other improper behaviour toward a child; the wrongdoer will be penalized.[215] Children are protected from exploitation in politics and violent situation and armed conflict[216] A child has a right to freedoms under the laws, as well as the right to be protected in the justice procedure, protected from suffering and harsh punishment. Arrest, detention or imprisonment can only be done where a law permits as a last method. Moreover, a child has a right to legal assistance, representation before the court. A process of a sexual abuse case where victim is a child must be done incognito.

7) Right to legal status: Every child has a right to get birth certificate at birth. In the case where there is unknown of birth time and no parents, the birth certificate will be issued according to the person who found the child. Birth certificate issuance is the duty of the government. The village has a duty to issue birth certificate free of charge within 30 days after receiving the request. In the case where a child parents are an Indonesian and a foreigner, a child is entitled to have the same nationality as his/her father or mother according to the law. In the case of divorce and the child cannot choose his/her nationality; when the mother is an Indonesian, under the principle of the best benefit of the child, or when the mother requests, the government has a duty to give the child Indonesia citizenship.

At the same time, Indonesian children also have duties under the law, namely: children must respect their father, mother, parents and teachers, love their family, community, friends and the nations, be of noble ethics and pray according to their belief.[217]

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[214] Section 9 of Law on Child Protection (Law No. 23 of 2002)

[215] Section 13 of Law on Child Protection (Law No. 23 of 2002)

[216] Section 15 of Law on Child Protection (Law No. 23 of 2002)

[217] Section 19 of Law on Child Protection (Law No. 23 of 2002)

2.1.2 Penalties for Wrong Doers in Child Protection

Laws on Child Protection (Law No. 23 of 2002) stipulates penalties to the person who give consent to, give, let the child be involved or persuade a child to involve with drugs usage, production or sell.[218] Further, it also prohibits to act; to give consent to; to order; or to be involved with child abduction and child selling and buying.[219] For the child well-being, violence whether physical or mental or sexual misbehavior towards a child is prohibited.[220] Stigmatization or discrimination toward children with physical or mental disability is as well prohibited.[221] Penalties in this law are severe. In the case where a child discrimination cause damages to the child materially or mentally and effect the integration of the child, or in the case of child abandonment, or cause a child to suffer physically, mentally or socially or a person who intends to put a child in peril[222]; the wrongdoer will be punished to imprisonment not exceeding 5 years or to a fine not exceeding 100,000,000 IDRs (approximately 258,250 baht)[223], or to both[224].

When the violence toward a child cause the child's death, the person will be punished to imprisonment not exceeding 10 years or to a fine not exceeding 200,000,000 IDRs (approximately 516,500 baht), or to both[225]. The more severe punishment is for the case of sexual abuse, whether to self or other, the penalty is imprisonment between 3-15 years and a fine between 60,000,000-300,000,000 IDR (approximately 156,100 - 780,700 baht)[226]. Child abduction and buying or selling child organs have the same penalty[227]. Whoever lures, lies or induces a child to change his/her religion knowingly that the child does not fully understand his/her action will be punished to imprisonment not exceeding 5 years or to a fine not exceeding

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[218] Section 67 of Law on Child Protection (Law No. 23 of 2002)

[219] Section 68 of Law on Child Protection (Law No. 23 of 2002)

[220] Section 69 of Law on Child Protection (Law No. 23 of 2002)

[221] Section 70 of Law on Child Protection (Law No. 23 of 2002)

[222] Section 78 of Law on Child Protection (Law No. 23 of 2002)

[223] Exchange rate of the Bank of Thailand as of 10th December 2015 from https://www.bot.or.th.

[224] Section 77 of Law on Child Protection (Law No. 23 of 2002)

[225] Section 80 of Law on Child Protection (Law No. 23 of 2002)

[226] Section 83 of Law on Child Protection (Law No. 23 of 2002)

[227] Section 85 of Law on Child Protection (Law No. 23 of 2002)

100,000,000 IDRs (approximately 258,250 baht)[228]. The most severe act is to make, or to give consent to a child to be involved with drugs, which has a penalty of execution, or life-time imprisonment, or imprisonment between 5-20 years and fine between 50,000,000-500,000,000 IDR (approximately 129,000 - 1,290,000 baht). In the case where the wrongdoer is a company, the company and/or the board will be liable and the fine will be 1/3 times more severe.[229]

2.2 Laws on Women Welfare

Indonesia has a slightly more male than female population. At present there are approximately 125 million female citizens from 264 million citizens in total[230]. Nonetheless, most of the citizen are Muslims, culture and traditions are strict according to the religion such as Family Law allows a man to have more than one wife, but a woman is prohibited to have more than one husband. Male is also destined to be head of the family. Social tradition also governs that women is house labour. Women therefore do not possess equal rights and freedom as men and are lack of education, social and self-development opportunities such as access to education, freedom to choose career. Even though the Constitution of 1945 guarantees the equality and prohibition of discrimination by way of stipulating that laws in contrary to these principles are null and void. Indonesia does not yet have any provisions affirm the principle of equality status of men and women. A study of World Bank showed that it has been an attempt to raise the status of women in Indonesia. The crucial one is a law enactment in B.E. 2517, allowing married women to open a bank account under their own names.

One obvious phenomenal of acceptance of women ability is the holding of presidency of Megawati *Setiawati* Sukarnoputri, the first female president of Indonesia between 2001 – 2004 (B.E. 2544 - 2547), which given the opportunity for women to be leader of the nation. Parallelly, Indonesian give women a chance to play a political role by stipulates in election law the 30 percentages of women quotation in the party lists at the level of central and local governments.

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[228] Section 86 of Law on Child Protection (Law No. 23 of 2002)

[229] Section 90 of Law on Child Protection (Law No. 23 of 2002)

[230] Worldbank, "Data and Research," Retrieved on 10 November 2018 from https://data.worldbank.org/country

Even though Indonesia has ratified Convention on the Elimination All Forms of Discrimination Against Women[231] (Law No. 7 of 1984) but Indonesia has not enacted any law to specifically implement, support or promote women rights. Now, women protection and welfare scarcely appears in various laws such as law on human rights and laws on elimination of domestic violence.

2.2.1 Law on Human Rights (Law No. 39 of 1999)[232]

Section 28A of the 1945 Constitution stipulates on human rights as "Every person shall have the right to live and to defend his/her life and existence." Law on Human Rights (Law No. 39 of 1999) also stipulates that under this Act, women's rights are human rights[233] and that women have 6 rights to protection under the law as follows:

1) Right to hold positions in general election system, political party system, system of electing members of people's representative organizations, and the system of appointing executives, judges and civil servants must specify women quota to ensure that women have right to be elected and right to apply for a candidate, run campaign, and other activities relating to election that are proper and adequate[234].

2) Right to citizenship: The nationality of a woman married to a foreign citizen shall not automatically change to that of her husband; rather, she has the right to maintain, change, or re-gain her nationality.[235]

3) Right to education: Women and men have equal rights to adequate access to and conditions of schooling and education.[236]

4) Freedom of occupation: Women have the right to select, be selected and appointed to an adequate job, position or a profession, in line with prevailing law. Women have the right to special protection in the undertaking of work or a profession that could put her safety or her reproductive health. The special rights to which

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[231] Convention on the Elimination All Forms of Discrimination Against Women (CEDAW).

[232] Law on Human Rights (Law No. 39 of 1999).

[233] Section 45 of Law on Human Rights (Law No. 39 of 1999)

[234] Section 46 of Law on Human Rights (Law No. 39 of 1999)

[235] Section 47 of Law on Human Rights (Law No. 39 of 1999)

[236] Section 48 of Law on Human Rights (Law No. 39 of 1999)

women are entitled arising from their reproductive function are guaranteed and protected by law.[237]

5) Procedural rights: Women of full age or who are married have the authority to take both criminal and civil legal action as individuals, unless determined otherwise under religious law [238]

6) Equal rights between husband and wife: During marriage, a wife and husband have equal rights and responsibilities about all aspects of marriage, contact with their children, and rights to joint control of assets. Following dissolution of marriage, a wife and her former husband have equal rights and responsibilities regarding all matters concerning their children, taking into account the best interests of the child and equal rights with regard to all matters concerning joint assets while not undermining children's rights, in accordance with prevailing laws.[239]

2.2.2 Law on Elimination of Violence in Household (Law No. 23 of 2004)[240]

Whereas the Indonesia has Islam as the national religion, as stipulates in Article 29 (1) of the Constitution, hence, rights and duties within the household are based on religion principles as well as to uphold the family institution, so that everyone can live happily together by way of self-constraint. When the family institution is harmed, or a person is not able to constrain oneself, causing violence family such as any act that harm family members, especially children and women physically or mentally, which may lead to suffering or harm their freedom. This is a source of injustice and insecurity in the society, the state and citizen hence have duties to solve such problem and as such there is a need of law to protect and defend victim, who mostly are children and women. Hence, Indonesia government has enacted Law regarding elimination of violence in household (Law No. 23 of 2004) aiming to promote human rights on gender equality, elimination of discrimination, protect victim of violence, stipulates penalties for the perpetrator and as well as measures to keep family intact. This law focuses on government and community roles in victims' protection and recovery by regulates the duties of law implementation agency, health care provider, social security service provider, volunteer as well as a victim counsel so that such persons are sensitive to the need of family and can

[237] Section 49 of Law on Human Rights (Law No. 39 of 1999)

[238] Section 50 of Law on Human Rights (Law No. 39 of 1999)

[239] Section 51 of Law on Human Rights (Law No. 39 of 1999)

[240] Law on the Elimination of Domestic Violence (Law No. 23 of 2004).

response more properly to the need of the family institution. Victim or those are suffered from household violence have right to be protect by relevant agencies such as police, state attorney and court in procedural process. They are entitled to health check-up as a consequence from being hurt from violence in household, secret keeping or confidential act and mental recovery from social aid workers.

Further, the law stipulates duties and responsibilities to empowers women, i.e. by way of education and communication about how to prevent violence in the family to increase opportunity to create understanding in self and family protection in order to ensure that women and children live safely and happily.

2.2.3 Other Measures in Women Protection

Apart from women protection according to Law on Human Rights (Law No. 39 of 1999) and Law regarding elimination of violence in household (Law No. 23 of 2004), Indonesia also attempts to protect and guarantee women rights in other various ways by the power of laws and state measures such as issuance of Presidential Instruction on gender mainstreaming (Presidential Instruction No. 9 of 2000), which essentials require all government agencies at national and local levels to reduce gender gap and eliminate women discrimination into planning, implementation, monitoring and evaluation of all policies and programs; such as act of state as follows:

1) Education and vocational training: Gender equality promotion in education system has developed greatly. This is evident from the increased ratio of literacy between women and men, women participation in agencies and organization in other sectors than agriculture, increased women participation in political activities and legal process including gender equality in receiving basic education. At present, girls in Indonesia begin to significantly increase importance of education at lower-secondary education level, however, Indonesian women lack higher education such as at university level because of many problems such as remoteness, value of marry early, limited education institutions and gender discrimination in admission.

2) Women Health: This Presidential Instruction on gender mainstreaming (Presidential Instruction No. 9 of 2000) governs that governmental agencies at central and communal levels are aware of gender aspect in planning, monitoring and assessing outcome by aiming at women's/mother's and child access to health services and reducing high maternal mortality rate, which is the big problem for Indonesia.

3) Life Safety: Indonesia has various religions and races, thus there are always conflicts. In some area the conflicts have escalated to armed conflicted, which caused Indonesia citizen including women to be in such situation. Some areas are affected from Separation Movement (Aceh), which made women and children to

evacuated therefrom. Such people are forced to leave or are then refugees. To solve this problem, the government together with private sector and local community have sought measures in supporting and helping these unfortunate people by re-patriate or relocation (for those who agree with relocation). In addition, Indonesia also suffers constantly from natural disaster such as earth quake and tsunami, explosion of volcanoes, flash flood, mudslides and forest fire. Indonesian hence suffer and harmed bodily, living conditions and life. Therefore, Indonesian government important tasks in safety includes safety from natural disasters. The government has national focal point and international development projects at central and regional levels to handle The above- mentioned problems such as giving housing, expenses and other facilitations as needed.

2.3 Law on Welfare for the Elderly

Indonesia has entered aging society between1997-1999 (B.E. 2540–2542) when Indonesia economic is recovered from Tom Yum Kung crisis[241]. A study of Asian Development Bank finds out that within 2020 (B.E. 2563) population which age over 60 years old will be 11 percent of population in total[242]. And a study of the International Labour Organization finds that in year 2050 (B.E. 2593) one third of the population will age over 55 years old[243]. Indonesian Laws at present determine rental age at 55 years old. Hence, in the future the ratio of aged population is increased. There are 2 causes: 1. population mean lifespan which increase from 45 years old in 1970 (B.E. 2513) to 66 years old in 204 (B.E. 2547) [244]and 2. reduced birthrate, due to policy on birthrate control. Now, Indonesia has about 2 million aged population (with 10 million living in countryside and 8 million living in the cities)[245]. More than half of these elderly are still working in general wage jobs or in agriculture sector[246]. Nonetheless, income is not sufficient to live a life. They therefore still depend on their children. In these days, however, those youths have move into the cities, so the elderly

[241] Alex Arifianto, Public Policy to the Early in Indonesia Current Policy and Future Directions," (Jakarta: SMERU Research Institute, 2006), p. 4.

[242] ADB 2004; p. 47.

[243] ILO, 2003.

[244] UNDP, 2003.

[245] ADB 2004; p. 47.

[246] Koesobjono and Sarwono; 2003.

have not been taken care for like in the past[247]. Indonesia at present has entered the aged society, which has problem in making a living, and there is a lot of expenses in healthcare which burdens Indonesian government in taking care of elderly. This causes national problem that Indonesian government is trying to solve by giving welfare to elderly so that they can have quality of living and do not become burden of the family.

Indonesian government has begun to give welfare to the elderly since the presidency of Sukarno in 1965 (B.E. 2508) by enacting Law on social help to the elderly (Law No. 4 of 1965). This law is very modern because at that time elderly in Indonesian population was little. This law defines "Elderly is a person who cannot work due to advance in years and does not have sufficient mean of living". Under this law elderly will receive aid in form of health care service fee and long-term care. However, this law has never been fully implemented. In the following year in 1966 (B.E. 2509) when General Suharto committed coup d'état and became president, this law has never been implemented again. At present there is Law on Elderly Welfare (Law No.13 of 1998) in 1998 (B.E. 2541), which makes elderly welfare more concrete. There are 3 laws concerning elderly welfare: The Law of the Republic of Indonesia Number 3 of 1992 Concerning Manpower Social Security (Law No. 3 of 1992), Law on Elderly Welfare (Law No.13 of 1998) and Law on Social Welfare (Law No. 40 of 2004) as follows:

2.3.1 Law Concerning Manpower Social Security (Law No. 3 of 1992)[248]

In protecting labour benefits, provident fund and social security system under the Law Concerning Manpower Social Security (Law No. 3 of 1992) governs that employees of establishments with 10 or more employees or a monthly payroll of at least 1 million IDRs (approximately USD 115) (Except employees with contracts of less than 3 months are covered for social insurance death benefits only.) Coverage is being extended to employees of smaller establishments and to organized informal-sector workers, including family labor, fishermen, and employees of rural cooperatives. Voluntary coverage is available for self-employed persons. Public-sector employees and military personnel are covered by special systems[249]

1) Benefits and Coverage

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[247] Hugo 1996; p. 17.

[248] The Law of the Republic of Indonesia Number 3 of 1992 on Manpower Social Security.

[249] Pension & Developmemt network, "Social Security Programs Throughout the World: Asia and the Pacific," Retrieved on 26 June 2018 from http://www.pensiondevelopment.org/

Under this law, laborers or employers are entitled to benefits from provident fund and social security system, which are 1) Medical benefits and compensation in case of injury or sickness from work 2) Death grant and funeral grant 3) Medical benefits for spout and children and 4) retirement benefits (provident fund). Old-age benefits (55 years old and up) are a lump sum or a periodic pension paid from provident fund according to conditions. When the beneficiary dies this money will be paid to the spout and children.

2) Conditions of Contribution

The law governs that funds are contributed to the provident fund by both the insured person and its employer in the following proportions: (1) Insured person: 2% of gross monthly earnings; and (2) Employer: 3.7% of monthly payroll. Further, the employer contributes 0.3% of monthly payroll for the social insurance. In the case of self-employed persons, the contributions are of 2% of gross monthly declared earnings for the provident fund and 1% of gross monthly declared earnings for the social insurance.

3) Old-age Benefit

The provident fund old-age benefit is available for both men and women at age 55. (Retirement from employment is not required.) The benefit may be deferred. There is no maximum age for deferral. Drawdown payments are available at any age. The old-age benefit consists of a lump sum of the total employee and employer provident fund contributions plus accrued interest. Optionally, the insured person can choose to be paid in a lump sum or a periodic pension.

2.3.2 Law on the Welfare of the Older Persons (Law No.13 of 1998)

When President Habibie entered his position after the end of dictator government of President Suharto from the Tom Yum Kung crisis in 1998 (B.E. 2541), Indonesia government has improved many laws. One among those is law on welfare of the elderly or Law on the Welfare of the Older Persons (Law No. 13 of 1998). This law guarantee that the older persons (anyone whose age is 60 years old or more)[250] have equal rights as other persons in other age ranges in receiving essential public services, especially in 6 forms[251]: (1) religion and believes services (2) Healthcare services (3) Employment services (4) Education and training services (5) Privileges to use public facilities and receiving legal aid and (6) Right to be protected for elderly who cannot work and right to get social assistance for elder who can still work.

[250] Section 1 of Law on the Welfare of the Older Persons (Law No. 13 of 1998)

[251] Section 5 of Law on the Welfare of the Older Persons (Law No. 13 of 1998)

This law divided elderly into 2 groups namely those who can still work and those who cannot work. These 2 groups get different welfare from government according to their need. However, the secondary law which shall govern in detail has not yet been enacted.

Further, this law has also determined duty of care for elderly to be the duty of the government, community and family and that the National Strategy to improve welfare for older persons shall be reviewed every 5 years.[252] The agency responsible for specifying such strategy is the Ministry of Social Welfare. The present strategy prescribes that different institutions of government, community, private institutions and social sector cooperate and that National Development Strategy shall take into consideration of development and assisting family and society as well as improve promotion of welfare for older persons.

2.3.3 Law Concerning National Social Security System (Law No. 40 of 2004)

Law concerning National Social Security System (Law No. 40 of 2004) governs various measures on social security system of Indonesia to protect rights to welfare of labourers.[253] The scope of the law covers social security fund for older persons, saving for older persons for health, sickness insurance and pension. The goal is that within 10 years from entered into force of the law, social security system in Indonesia shall cover benefits for all workers, including those outside labour system, unemployed and poor people. Here the researcher will illustrate implementation form of this law concerning welfare for the older persons, which are 2 projects namely, Pension scheme and Savings Pension Scheme.

1) Pension scheme: Indonesian government has chosen defined-profits of old age pension social security system for social security in pension scheme. The benefits will depend on years of work, age and wage. Government and employer have duty to contribute to the benefit of the employers. The law stipulates that when employer contribute to the fund 15 years or more, he or she will get pension, if not he or she will receive only a lump sum.[254] Monthly pension is equal 70 percent of minimum wage. Problem of this scheme is that before the scheme turn into 15 years,

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[252] Section 8 of Law on the Welfare of the Older Persons (Law No. 13 of 1998)

[253] Section 18 of Law concerning National Social Security System (Law No. 40 of 2004).

[254] Section 41 of Law concerning National Social Security System (Law No. 40 of 2004).

there is no sufficient money to pay to retired persons at present. And the workers will not be able to contribute to the fund for 15 years or more as well, hence, they will receive only a lump sum. A lump sum is calculated by the sum of contribution plus return from investment. Further, many of Indonesia workers are not in the system, and earn less than minimum wage, thus at present the problem of elder having insufficient income cannot be fully solved.

2) Savings Pension Scheme (*Jamsostek*) is a project that the government oblige every older person to save in the same way that the Law Concerning Manpower Social Security (Law No. 3 of 1992) prescribes that all workers shall save. This scheme governs that heir of saver is beneficiary person in the case where saver die or become disabled. The money received equals the sum of the saving plus return from investment. The saver can withdraw the money 5 years before retirement and can use part of the saving to apply for loan.[255]

In these two schemes, participants must contribute to receive right as prescribed by law. In the case of employers, the employee will deduct contribution from wage and send to the state. In the case of freelance or self-employed wishing to join the scheme, he or she shall contribute in a constant sum. In the case of employers, the employee also has to contribute to the fund of the same amount that the employer, and the government will also contribute thereto. However, up to now the Indonesian government set very low budget for the programs and hence they are not successful and cannot give welfare to all older persons.[256]

In addition, in 2003 (B.E. 2546) Indonesian government has improved National Strategy in Welfare for the Elderly by making policy that give more variety of welfare such as pension for older person, savings of older persons, health insurance, injury at work insurance and death. There are 5 considerations in making such policy:

1) Aging policy should be dynamic, meaning easily adaptable to new conditions, such as changing demographics, improvements in medical care, the availability of resources to fund old age security provisions, as well as learning more from other countries that have already encountered a changing age demographic.

2) Family is the closest care taker unit for the elderly, elderly should therefore receive care from their own family. Thus, there should be incentives to

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[255] Section 37 of Law concerning National Social Security System (Law No. 40 of 2004).

[256] Alex Arifianto, Public Policy to the Early in Indonesia Current Policy and Future Directions," (Jakarta: SMERU Research Institute, 2006),p. 12-13.

ensure the long-term sustainability such as new employment creation in community, introducing tax incentives to induce families to care for their aged relatives and lessen some of the financial burden of these families. Finally, training should be provided for families of sick and infirm elderly.

3) In regard to the creation of a national social security because a system run by the government normally cannot solve the problem sustainably. Some types of services provision are unsuccessful. Instead, social security program design and implementation should be a partnership between the government, the private sector, NGOs and civil society.

4) In health care system, the government should create incentive to induce more citizens to purchase private health insurance. This could include a tax credit to help pay health insurance premiums or a medical and health care savings account plan.

5) Encourage private sector to build capacity and take part in financial activities to elderly such as increase financial support, help in kind and training the staff of these institutions about the elderly. The government could support this endeavor by granting tax exemptions to agencies and organizations which support elderly persons who are unable to care for themselves.

2.4 Law on Welfare for Persons with Disabilities

Indonesia is the most populous country in Southeast Asia but according to a report by the World Health Organization (WHO), it is found in the total population of Indonesia consists of about 15 percent of disabled people.[257] In general, these people are often poor compared to normal people who are not disabled. Due to the physical and mental problems of the disabled, most people with disabilities have limited access to education. In addition, these individuals also must pay for medical expenses related to disability, which is why they have more expenses. In improve the income gap, the Indonesian government needs to take effective measures to improve the situation of people with disabilities so that they can have a better life.

In 2011 (B.E. 2554) Indonesia ratified the Convention on the Rights of Persons with Disabilities (CRPD) aims to protect the rights and freedoms of persons with disabilities by respecting human dignity. Countries who sign the CRPD must perform their conditions by using legal measures, administration and other means to help and protect the disabled according to the goals set in the CRPD such as improving access

[257] WHO, World Report on Disability (2011).

to education, employment and health services for people with disabilities, as well as promoting access to public transport and buildings, to reduce social inequality.

2.4.1 Law on Persons with Disabilities (Law No. 4 of 1997)

Section 1 of the Law on Persons with Disabilities (Law No. 4 of 1997) has defines "Person with disability means a person with physical, mental or both physical and mental disabilities".

And according to Article 1 of the Ministerial Regulation No. 104 of 1999 (B.E. 2542) on provisions for medical rehabilitation[258]. It defines the characteristics of people with disabilities as persons with physical and mental disabilities, or a person restricted to movement or daily activities. In addition, in Article 7 of this Ministerial Regulation, it also divides the level of disability according to the limitations and the way in which the disabled can control their own behavior in everyday life into 6 levels as follows:

Level 1: People with disabilities who can control their basic behaviors in daily life according to their own needs despite a few difficulties.

Level 2: People with disabilities who can control their own behavior or carry daily life with support devices.

Level 3: People with disabilities who rely on others to control their behavior or to help in daily life, with or without support devices

Level 4: People with disabilities who need help from a helper (Specialist) to control specific defective behavior.

Level 5: People with disabilities who cannot control their behavior, if not taken care of well and completely.

Level 6: People with disabilities who cannot control their own behavior, despite being well cared for and fully.

The Indonesian government have to conduct a systematic survey and record of defects of the disabled by 4 physical examinations: (1) Visual impairment (2) Hearing impairment (3) Speech impairment or dumbness (4) Disability in the body, arm or leg movement or bone defects and 2 types of mental health examination: (1) mental disorders and (2) difficulty or inability to control their own behavior in daily life; as to classify people with disabilities into 6 groups above.

This Law prescribes measures to assist and develop the disabled to perform their duties or to live everyday life in society as normal such as protection of

[258] Provisions for Medical Rehabilitation, Ministerial Ordinance of Health No. 104 in 1999.

the rights of all citizens to access a variety of social assistance and protection, provision of are of the government and state agencies with access to services and social welfare, public relations and dissemination of social welfare guidelines for the disabled, proofing and certifying the status of persons with disabilities so that they are entitled to legal protection, including encourages agencies and organizations to see the importance and get involved in helping the disabled, by rewarding the organization, community, enterprise, or persons who participate in social assistance to the disabled.

Moreover, there are also laws relating to the protection of the rights of persons with disabilities, such as the Law on Social Security (Law No. 40 of 2004), which provides social protection covering persons with disabilities. It determines benefits for workers who have been injured or sick and disabled due to work to have the right to receive medical treatment and compensation for loss of organ, degradation of the body as well as the right to social welfare protection in the same way as the poor or other victims under the Law concerning Social Welfare (Law No. 11 of 2009).

2.5 Other Relevant Important Social Laws

Aside from laws relating to welfare of the above mentioned 4 groups: children, women, older persons and persons with disability, Indonesian government also give importance to other rights protection, such significant ones are consumer rights and victim's rights. The essentials of the masses are as follows.

2.5.1 Law on Consumer Protection

Law on Consumer Protection (Law No. 8 of 1999) of Indonesia emerged from economic development[259] and continuously open free-market, there is a need for a guarantee the safety of goods and services for the consumer including consumer education, which enable the consumer to think and choose truly freely and be self-responsible for their own choice in accession to goods and services. Moreover, it is the also development of the business sector responsibility toward the consumer and the society.[260] Hence, in line with the principles of this law: the economic development of the country is to support and promote the business sector to produce goods and

[259] One of the Pancasila principles, which is enshrined in the Constitution of the Republic of Indonesia Year 1945 (B.E. 2488). Economic deviant is to create a fair and wealthy society with well-distributed income and good social welfare.

[260] This is a principle derived from Section 5 paragraph 1, Section 21 paragraph 1, Section 27 and Section 33 of the Indonesian Constitution 1945 and Section 3 of the Law No. 8 of 1999.

services with modern technology, promote social welfare, and to keep Indonesia's products and services safe, not harming the consumers.

This law has 65 Sections, governs many facets and is divided into 15 chapters. The law defines many definitions as follows.

- Consumer means each individual user goods and/or services available in society, for the benefit of themselves, family members, other people, and other living creatures[261] and which are not for trading.

- Consumers' protection means legal measures which guarantee safety and protect the consumers.

- Entrepreneur means an individual person or a company, in the form of a legal or non-legal entity established and domiciled or engaged in activities within the legal territory of the Republic of Indonesia, conducting various kinds of business activities through contracts.

- Goods means any object tangible or insufficiently tangible, movable or immovable, consumable or inconsumable, which can be traded, used, consumed, or utilized by the consumers.

- Service means any service in the form of work or performance traded in the society to be used by the consumers. Marketing means any activity of introducing or spreading the information on certain goods or services to attract the consumers to buy the goods or services being traded.[262] The law stipulates that consumer protection is based on the principles of benefit, justice, balance, security, safety and legal security of the consumers.[263]

1) Essentials of the Law

Law on Consumer Protection (Law No. 8 of 1999) guarantees the rights of the consumers as widely as following: right to obtain comfort, security and safety in using or consuming the goods and/or service; right to freely choose the goods and/or services and obtain the goods and/ or services in accordance with the promised conditions, value and condition and warranty; right to obtain correct, clear end honest information on the condition and warranty of the goods and/or services; right to obtain proper advocacy, protection and settlement in the consumer's protection dispute; right to obtain consumer's training and education; right to be heard in expressing opinion; right to receive proper and honest and non- discriminatory treatment or

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[261] such as Consumers'pets.

[262] Section 1 of Law on Consumer Protection (Law No. 8 of 1999).

[263] Section 2 of Law on Consumer Protection (Law No. 8 of 1999).

service; right to obtain compensation, redress and/or substitution, if the goods and/or services received are not in accord with the agreement or not received as requested.[264]

On the other hand, the law also stipulates duties for consumers. The consumers have obligations: to read or follow the information, instructions and application or usage procedures of the goods and/or services for security of safety; to act in good faith in conducting the transaction of purchasing the goods and/or services; to pay for the price in accordance with the agreed conversing on value; and in the case of dispute, to follow the proper legal settlement of consumer's protection dispute.[265]

On the entrepreneur side, apart from the right to receive the payment in accordance with the sales agreement on the agreed conditions; the entrepreneur also has a right to obtain legal protection from the consumer's acts of bad faith, to rehabilitate its good reputation if legally proven that the consumer's damage is not caused by the goods and/or services purchase.[266]

The Law also governs the duties and obligations of the entrepreneur as such: to act in good faith in conducting the business; to provide correct, clear and honest information with regard to the condition and warranty of the goods and/or services and provide explanation on the use, repair and maintenance to the consumers; to treat and serve the consumers properly and honestly and non-discriminatively; to guarantee the goods and/or services produced and/or traded based on the prevailing quality standard provisions of the goods and/or services; to provide the opportunity to the consumers to test and or/try on certain goods and/or services and provide warranty and/or guarantee on the produced and/or traded goods; to provide compensation, redress and/or substitution for the damages caused by the use, consumption and application of the goods and/ or services; including where the goods and/or services received or used do not accord with the agreement.[267]

The Law prohibits the entrepreneurs to produce and/or trade goods and/or services which have one or more of the following characteristics: do not meet or accord with the required standard and provisions of the law; do not accord with the net weight, net volume, size, and the total amount as stated on the label of or information of the said goods and/or services. Further, the Law also prohibits

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[264] Section 4 of Law on Consumer Protection (Law No. 8 of 1999).

[265] Section 5 of Law on Consumer Protection (Law No. 8 of 1999).

[266] Section 6 of Law on Consumer Protection (Law No. 8 of 1999).

[267] Section 7 of Law on Consumer Protection (Law No. 8 of 1999).

entrepreneurs from trading damaged, defective or used and tainted goods without providing complete and correct information to the consumers. Entrepreneurs who violate such prohibition will be disqualified from trading the said products and/or services and must pull the products from the circulation.[268]

2) Protection on Right to Marketing

This law limits how entrepreneurs do marketing to protect consumers widely. Entrepreneurs are prohibited from; misleadingly offering, promoting advertising goods and/or services; stating that the goods and/or services do not have hidden defect, or not intending to sell the offered goods, but with the intention to sell other goods; or not supplying the goods in certain and/or sufficient numbers or amount with the intention to sell other goods.[269] Entrepreneurs are prohibited from offering, promoting or advertising the goods and/or services on special prices or rates within a certain period of time and in a certain number, if the entrepreneurs do not intend to implement during that designated period of lime or according to the amount or numbers to be offered, promoted or advertised.[270]

Further, the Law prohibits entrepreneurs from offering, promoting or advertising certain goods and/or services by promising to give prizes in the form of other goods and/or services free of charge with the intention of not giving them or to give them but not in accordance with the promised plan. In the case of medicines, traditional medicines, food supplements, health equipment and health services, entrepreneurs are prohibited from offering promoting or advertising the by promising to give prizes in the form of other goods and/or services.[271]

In offering the goods and/or services for trading by giving prizes through draw, the entrepreneurs are not allowed to trade the goods without drawing the lottery on the date the lottery is due to be drawn, or to announce the result of the lottery without using mass media; or to give the prizes not in accordance with the promised prizes; or to substitute the prizes with goods not equal in value with the promised prizes.[272] The Laws also forbids entrepreneurs from offering goods and/or

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[268] Section 8 of Law on Consumer Protection (Law No. 8 of 1999).

[269] Section 11 of Law on Consumer Protection (Law No. 8 of 1999).

[270] Section 12 of Law on Consumer Protection (Law No. 8 of 1999).

[271] Section 13 of Law on Consumer Protection (Law No. 8 of 1999).

[272] Section 14 of Law on Consumer Protection (Law No. 8 of 1999).

services by using force or any other methods, which can cause either physical or psychological annoyance to the consumers.[273]

In the case where entrepreneurs produce marketing which deceive the consumers, the guarantee; or provide incorrect, wrong or inaccurate information on the goods and/or cervices: or do not provide information on the risks of using the goods and/ or services, or exploit the incident and/ or someone without the permission from the authorized officials or the approval of the person concerned; or violate the ethics and/ or legal provisions on advertising, such advertisement is banned from the circulation [274] and the entrepreneurs will be punished by imprisonment not exceeding 5 years or fined not exceeding 2 Billion IDR [275] (approximately 5,118,660 Baht).[276]

3) Protection Rights under Standard Contract

For standard contracts that entrepreneurs have prepared by itself to use in conducting business. This law determines principles to protect consume in the contract. In offering the goods and/or services for trading, the entrepreneurs are prohibited from making or including following standard clauses on any document or agreement: transfer of the entrepreneurs' responsibility; the entrepreneurs reserve the right to refuse to receive back the goods already purchased by the consumer or to refuse to refund for the goods and/or services already purchased by the consumer; the entrepreneur is solely entitling to carry out directly or indirectly all unilateral actions with regards to the goods purchased on installer the consumers; regulates concerning the authentication to forfeit the use of the goods or the benefits of the services purchased by the consumers; reserve rights to the entrepreneurs to reduce the benefits of the services or reduce the properties of the consumers as the object of services trading, the consumers are subject to the new regulation, additional regulation, continued regulation and/ or continuous change of regulation made unilaterally by entrepreneurs during the period the consumers are using the services they purchased; the consumers give authority to the entrepreneurs to impose mortgage, pledge or guarantee against the goods purchased on instalment by the

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[273] Section 15 of Law on Consumer Protection (Law No. 8 of 1999).

[274] Section 17 of Law on Consumer Protection (Law No. 8 of 1999).

[275] Section 62 of Law on Consumer Protection (Law No. 8 of 1999).

[276] Exchange rate of the Bank of Thailand as of 20th December 2015 from https://www.bot.or.th.

consumer. Besides, the entrepreneurs are prohibited from including a standard clause at the place or in the form which is difficult to see or cannot be read clearly, or under the statement which is difficult to understand. Such standard clauses stipulated unilaterally by the entrepreneur are invalid by operation of law and the entrepreneurs are obligated to adjust them.[277]

4) Liability in Case of Damages Resulting from Consuming Goods or Services

In the case where damages occurred, entrepreneurs are obligated to give compensation for the damage or losses the consumers suffer as a result of using or consuming the goods and/or services produced or traded by the entrepreneurs. The law accelerates that compensation shall be given within the period of seven days after the date of transaction. Entrepreneurs in the advertising business are responsible for the advertisement they produce and all the consequences caused by the advertisement.[278] Such compensation does not exclude the possibility of a criminal charge against the entrepreneurs.[279] Proof of any faults in the criminal case is the burden and responsibility of the entrepreneurs, without excluding the possibility for the Public Prosecutor to prove it.[280] In case of imported goods, the importer bears responsibility similar to that of a producer of the imported goods if the goods are not imported by an agent or representative of the foreign producer.[281]

Where entrepreneurs refuse, or do not respond, or do not provide compensation to the consumers' claim, consumer can sue them through the Consumer Disputes Settlement Agency or bring the case to court at the domicile of the consumers.[282] Entrepreneurs who sell goods or services to other entrepreneurs are responsible for the compensation claims or consumer's suit if: the other entrepreneurs sell to the consumers without making any changes to the said goods and/or services; or the other entrepreneurs, in the trading transaction do not know that changes have been made to the goods or services by the entrepreneurs or the goods and/or services are not in compliance with the sample, quality and compositions. But when the other entrepreneurs alter the goods or services, the entrepreneurs is exempted from any

[277] Section 18 of Law on Consumer Protection (Law No. 8 of 1999).

[278] Section 20 of Law on Consumer Protection (Law No. 8 of 1999).

[279] Section 19 of Law on Consumer Protection (Law No. 8 of 1999).

[280] Section 22 of Law on Consumer Protection (Law No. 8 of 1999).

[281] Section 21 of Law on Consumer Protection (Law No. 8 of 1999).

[282] Section 23 of Law on Consumer Protection (Law No. 8 of 1999).

responsibilities or compensation claims and/or consumer's suit.[283] Entrepreneurs who produce goods which can be used for at least one year or more are obligated to provide spare parts and/ or after sales facilities and are obligated to honour the guarantee or warranty based on the agreed contract. [284] Notwithstanding, entrepreneurs who produce the goods are exempted from being responsible for the damages suffered by the consumers in these scenarios: it is proven that the said goods should not be circulated or are not intended to be circulated such as in the case where a consumer asked to by decoration of a coffee shop; the defect occurs afterwards; the defect occurs due to lack of adherence to the rules on the goods qualifications or negligence caused by the consumers; or the consumer brings the claim after 4 years since the purchase of the goods or has exceeded the claim period as agreed. [285] However, the law stipulates that burden of proof in the compensation rests with the entrepreneurs.[286]

2.5.2 The Law on the Prevention and Suppression of Human Trafficking

Trafficking Crime is a crime that has an impact on the social changes associated with rights, human freedom, which needs both domestic and international correction. Protecting victims of trafficking is part of the solution to human rights violations, which Indonesia give importance to and is enshrined in the Constitution of the Republic of Indonesia, and the Law on the of Eradication of the Criminal Perpetration to the Human Trafficking (Law No. 21 of 2007).

Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007) is a law that Indonesia has enacted to protect the rights of increasing people who are victims of human trafficking, mostly are often poor children and women. They are tempted by the opportunity to work along with motivation by paying high wages whether as domestic workers, waiters or workers. It often finds that these women and children are cheated and forced to work as a prostitute, labour for fishing, or illegal drug trafficking. In addition, Indonesia has ratified United Nations Convention against Transnational Organized Crime with Law No. 5 of 2009 on 1st

[283] Section 24 of Law on Consumer Protection (Law No. 8 of 1999).

[284] Section 25 of Law on Consumer Protection (Law No. 8 of 1999).

[285] Section 27 of Law on Consumer Protection (Law No. 8 of 1999).

[286] Section 28 of Law on Consumer Protection (Law No. 8 of 1999).

January, 2009 (B.E. 2552). By its ratification, means Indonesia became part of the effort to eradicate the human trafficking globally.[287]

1) Essentials of the Law

Section 1 of the Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007) stipulates definitions related to human trafficking that "Trafficking in Persons shall mean the recruitment, transportation, harbouring, sending, transfer, or receipt of a person by means of threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross border, for the purpose of exploitation or which causes the exploitation of a person" and "Victim shall mean a person suffering from psychological, mental, physical, sexual, economic, and/or social trauma caused by the criminal act of trafficking in persons". This Law determines the essence of human trafficking, including criminal offences of human trafficking, examination, investigations of witnesses, facts finding in court investigations, other criminal offenses related to criminal offence of human trafficking, victims and witness guard, victim protection and recovery, as well as international cooperation and community participation.

2) Penalties

Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007) stipulates following as criminal acts of trafficking in persons: (1) anyone who recruits, transports, harbors, sends, transfers, or receives a person through the threat of force, use of force, abduction, incarceration, fraud, deception, abuse of authority or position of vulnerability, debt bondage or the giving of payment or benefit despite the giving of consent by another individual having charge over the person, for the purpose of exploiting the person within the territory of the Republic of Indonesia[288]; (2) anyone who brings another person into the territory of the Republic of Indonesia with the intention to exploit such person within the said territory or in another country[289]; (3) anyone who takes an Indonesian citizen outside

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[287] Lin Karita Sakharina, Victim Protection of Human Trafficking in Indonesia According to the International law, Quest Journals (Journal of Research in Humanities and Social Science) Volume 4 - Issue 12 (2016), p. 32-37.

[288] Section 2 of Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007).

[289] Section 3 of Law on the eradication of the criminal perpetration to the

the territory of the Republic of Indonesia with the intention to exploit such person outside the said territory [290]; (4) anyone who adopts a child by promising or giving something with the intention of exploiting from such child[291] or sends a child within the country or to another country using any means, thus causing such child to be exploited[292], shall be punishable by a prison sentence of a minimum period of 3 years and a maximum of 15 years and a fine amounting to a minimum of 120 million IDRs and a maximum of 600 million IDRs.

3) Victim Protection and Treatment

In prevention and elimination human trafficking, Law on the eradication of the criminal perpetration to the human trafficking governs that the Government, Regional Governments, the community, and families, have the obligation to prevent the criminal act of trafficking in persons. The Government and Regional Governments also have the obligation to formulate policies, programs, actions and to allocate budgets to prevent and address trafficking in persons.[293]

Prevention of the criminal act of trafficking in persons shall be aimed at preventing the criminal act of trafficking in persons at the earliest moment possible.[294] Government and relevant agencies has following duties;[295]

3. 1) For the purpose of the eradication of the criminal act of trafficking in persons, the Government and Regional Governments have the obligation to take measures to prevent and address the criminal act of trafficking in persons.

3. 2) To achieve effectiveness and ensure the implementation of the measures to prevent and address the criminal act of trafficking in persons,

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human trafficking (Law No. 21 of 2007).

[290] Section 4 of Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007).

[291] Section 5 of Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007).

[292] Section 6 of Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007).

[293] Section 57 of Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007).

[294] Section 56 of Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007).

[295] Section 58 of Law on the eradication of the criminal perpetration to the human trafficking (Law No. 21 of 2007).

the Government shall form a task force comprised of representatives from the government, law enforcement agencies, civic organizations, non- government organizations, professional associations, and researchers/scholars.

3. 3) Regional Government shall form a task force comprised of representatives from the government, law enforcement agencies, civic organizations, non-government organizations, professional associations, and researchers/scholars.

3.4) The before mentioned task forces constitute a coordinating body with the duty to: (1) coordinate efforts to prevent and address the criminal act of trafficking in persons; (2) provide advocacy, socialization, training, and cooperation; (3) monitor developments in the provision of victim protection including rehabilitation, return, and social reintegration; (4) monitor law enforcement; and (5) conduct reports and evaluations.

3.5) The national task force at a level of a ministry shall be appointed by virtue of a Presidential Regulation.

3. 6) To achieve effectiveness and ensure the implementation of the measures, the Government and Regional Governments have the obligation to allocate budgets as necessary.

3.7) Further provisions on the establishment, organization, membership, budget, and operating procedures of the national and regional task forces shall be stipulated in a Presidential Decree.

At present, the Indonesia Government by the Ministry of Women's Empowerment and Child Protection[296] has made efforts to prevent human trafficking at the district and provincial levels. There are various fund raising and activities in each region, such as group formation to monitor communities in 25 villages within 5 administrative divisions throughout Indonesia and conclusion of international MOUs by 7 ministries to cooperate in the prevention of human trafficking in Indonesia. In August, 2017 (B.E. 2560), the Indonesian government has issued a new policy on the prevention of trafficking in the fisheries sector. Human rights certification is required for the fishing company entrepreneurs. Fisheries training is provided by fisheries training institute, which provides specific training in human trafficking. In addition, the Government also play a role in income raising, creating consciousness, and empowering communities with high risk of trafficking in both rural and border areas.[297]

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[296] Ministry of Women's Empowerment and Child Protection (MoWECP).

[297]U.S.Department of State, "Office to Monitor and combat Trafficking in Persons, 2017 Trafficking in Persons Report: Indonesia," Retrieved on 3 July 2018

(3) Roles of Relevant Agencies

3.1 Agencies concerning children protection

Legal mechanism to protect children according to children protection stipulates that various agencies and sectors have duties to protect children such as the government, society, family and parents as follows:[298]

1) Government has duties to respect and guarantee rights of every child regardless of their race, religion, ethnic, social status, sex, culture, language, legal status, birth ranking[299], physical or mental characteristics,[300] including providing infrastructure which is crucial to child protection.[301] The State and the government assure the exercise of child rights in self-expression according to their age and level of intellect [302] by enacting laws and strategies relevant to children protection such as National Long Term Development Plan (RPJPN 2005-2025) and National Medium Term Development Plan (RPJMN 2010-2014). Further, there are governmental agencies which have duties to protect children protection such as The Ministry of Women Empowerment and Child Protection, whose duty is to implement children protection measures according to the guildline laid out by the Ministry of National Development Planning.[303]

2) Society: This law governs that society or the social sub-unit of private sector including individuals, institutions, social institution, NGOs, education institution, religion institution, business entities and media[304] can take part in children protection by holding activities, helping on education, religion or health according to their roles, duties or tasks in the society. The act of the private sector, however, must be in

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from https://www.state.gov.htm

[298] Section 20 of Law on Child Protection (Law No. 23 of 2002)

[299] Indonesia has tradition to name and give right to a person according to his/her rank of birth in the family.

[300] Section 21 of Law on Child Protection (Law No. 23 of 2002)

[301] Section 22 of Law on Child Protection (Law No. 23 of 2002)

[302] Section 24 of Law on Child Protection (Law No. 23 of 2002)

[303] UNICEF Indonesia. Child Protection System Governance Indicators Framework (GIF): Assessment for Indonesia, 2015.

[304] Section 72 of Law on Child Protection (Law No. 23 of 2002)

accordance with laws provisions.[305] One example, in B. E. 2540, Indonesia has established National Child Protection Institutions - LPA at the national and provicial levels. Children protection instiution is to registered as private develoment organization that main roles and duties are to protect children rights and freedom by participating in government policy making relating to child rights, promote children participation in various activities and raise awareness in child rights including nurturing children to rightly and effectively solve the problem of rights violation[306].

3) Family, father and mother, which are the closest institution to a child, have duties to care and protect a child in life safety, health, mental health, living condition as well as help a child to use his/her lawful rights.

To ensure the effective and efficient implementation, the law creates independent agency to protect child rights in Indonesia, which is the Committee of Child Protection of Indonesia (*Komisi Perlindungan Anak Indonesia* - KPAI).[307] This committee composed of 9 members: a chairman, two vice-chairmen, a secretary and 5 members from the government officers, religion leader, community leader, social institution, private institution, professional institute, NGOs, business enterprise with purpose to protect children. The Indonesian parliament appoints and demotes the committee. The Committee serves a term of 3 years and can be re-appointed for another term. The committee duties are enactment of regulations, gathering information, receive petition or claim, review, control, regulate, evaluate the child protection performance as well as report, give opinion and advice to the president of Indonesia. [308]

3.2 Agencies concerning women rights protection

State welfare provision and women rights protection in Indonesia which aims at giving help related to violence toward women and family. Indonesia government has set up specific agencies to guard and protect rights as follows:

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[305] Section 73 of Law on Child Protection (Law No. 23 of 2002)

[306] Andrea HITZEMANN, "External Evaluation Institution Building & Mainstreaming Child Protection in Indonesia UNICEF supported Child Protection Bodies" Retrieved on 3 July 2018 from https://www.unicef.org/evaluationreport

[307] Tim Lindesey, Indonesia: Law and Society, 2nd Edition, (The Federation Press: NSW, 2008.) p. 478.

[308] The Commission for the Protection of Indonesia Children (Presidential Decree 77 of 2003).

1) Ministry of Law and Human Rights

Ministry of Law and Human Rights is a Ministry which roles and duties are to furnish quality laws, monitor legal services and legal implementation in Indonesia, as well as monitor government and governmental agencies performance to be in accordance with human rights principals. Its main tasks are: legal draft furnishing, determination of legal system of the country, corrections management, legal aid provision to the citizen such as legal knowledge dissemination, counsel on cases along with lawful rights protection to the citizen and human rights protection for women.

2) Ministry of for Women's Empowerment and Child Protection

Ministry of for Women's Empowerment and Child Protection has direct power and duties relating to roles of women in Indonesia. It is the agency which roles and missions are to promote women ability and child protection. Its main tasks are president assistance in executive works relating to women ability and child protection promotion.

Ministry of Women' s Empowerment and Child Protection main power and duties are policy, strategy plans and rules making, coordinate on issues relating to improve the quality of women's lives. To increase the participation of women in the political process and public policy. To eliminate all forms of discrimination and violence against women and children. To promote the welfare and protection of children. To improve and strengthen gender mainstreaming, including the availability of disaggregated data. To improve the participation of society.[309]

3) National Commission on Violence Against Women[310]

National Commission on Violence Against Women or *Komnas Perempuan* is an independent organization established by Presidential Decree No.181 of 1998) and is extended by Presidential Decree No.65 of 2005. Its aim is to protect human rights of women from violence. It is also one of the National Human Rights Institutions: NHRI. It has specific power and duties to create conditions which are supportive for human rights of women and eliminate all kinds of violence as well as determines measures to prevent violence from women in Indonesia such as monitoring and reporting sexual violence and human rights violation, and act as centre of human rights and violence to women in Indonesia.

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[309] EC/UN Partnership on Gender Equality for Development and Peace, "Gender Equality Policy," Retrieved on 4 July 2018 form http://www.gendermatterseu..

[310] Komnas Perempuan, Retrieved on 27 June 2018 form https://www.komnasperempuan.go.id.

4) Women's Help Desks[311]

Women's Help Desks (*Ruang Pelayanan Khusus*, or RPK) are under Indonesian National Police. It will receive report from women who claim to have been sexually or physically abused. Woman claiming to have been physically abused must first report the case to the police. The police will then give the victim a letter to request physical or medical examination at a hospital. The hospital may only send the exam results to the police, who will then use it as evidence to follow up on the victim's report. A victim, however, must have the examination as soon as possible, because injuries more than three days old are not legally considered evidence. If victim or injured person has to go to medical examination by herself, this procedure could be obstacle for women from low-income families or do not have sufficient mean to health check-up. Thus, the government support free medical examination for victim of household violence.

5) Women's Crisis Centre[312]

Women's Crisis Centre (*Mitra Perempuan* or MP) which provides a telephone hotline is helping and counselling on how to deal with the problem temporarily on violence in household for women.

3.3 Agencies concerning welfare to the elderly

Agencies which have roles and duties in providing welfare to the elderly are as follows:

Ministry of Social Affairs

Ministry of Social Affairs[313] of Indonesia is the agency responsible for assisting vulnerable members in the society, or those depend on welfare from the government; to help all people have a good quality of life; and reduce social disparity. Its roles and responsibilities are: policy makers, rules and regulation determination, lay guidance, carry out social rehabilitation, caring for people in need, such as poor people, people who suffered from natural disasters, create a peaceful and supportive society. The major activities in such areas as the development of the people's potential to reach their basic needs, increase income of the people, helping

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[311] UN Development Fund for Women 2003, "Indonesia Country Profile', A Life Free of Violence It's Our Right! ," Retrieved on 27 June 2018 from http://www.refworld.org/

[312] *ibid*.

[313] President Regulation No. 46 of 2015, Regulations on the Ministry of Social Affairs.

the underprivileged, including people with disabilities and minorities, to access basic rights and participate in society, including activities to educate about state aid for living, provide assistance to people suffering from difficulties, strengthening family institutions, do research in areas such as poverty reduction, opportunity to access state services, and increase opportunities in society for the disadvantaged.

As for the duty to provide care for the elderly, the Ministry of Social Welfare has obligations in relation to policy making covering such matters as social work, protection and health insurance, including retirement scheme and retirement savings account scheme as mentioned above.

3.4 Agencies concerning the protection of persons with disabilities

For the roles and agencies involved in the protection of the welfare of persons with disabilities in Indonesia. There are important agencies involved as follows.

1) Ministry of Social Affairs

Ministry of Social Affairs is the main agency with authority and responsibility for the welfare of the people in Indonesia: welfare of children, women, the elderly and the disabled. The Ministry of Social Welfare has the authority to deal with people with disabilities, i.e. the development of policies related to people with disabilities[314], improvement or enforcement of measures related to the disabled[315], and coordination among the agencies involved in the development or implementation of projects related to the disabled[316].

2) The Department of Rehabilitation of Persons with Disabilities

The Department of Rehabilitation of Persons with Disabilities is a division under the Ministry of Social Welfare which has duties and is responsible directly to the problem of people with disabilities. The Director General of the Department of Rehabilitation of Persons with Disabilities is the head. It is responsible for disabled and is a coordinating agency for various agencies established to protect the rights and assist of the disabled at the national, provincial and district level.

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[314] Article 10 (1) Regulations on the Ministry of Social Affairs. and President Regulation No. 46 of 2015

[315] Article 10 (2) Regulations on the Ministry of Social Affairs, President Regulation No. 46 of 2015, and the Government Regulation Article No. 43 of 1998, Regulations on the Revision of Social Protection for Persons with Disabilities.

[316] Article 10 (34) Regulations on the Ministry of Social Affairs, and President Regulation No. 46 of 2015.

Further, Indonesia also has a National Coordinating Committee, with the Minister of the Ministry of Social Affairs as a chairman. There are members from different ministries that have the authority and mission to care about health (Ministry of Health) Education (Ministry of Education) and Manpower (Ministry of Labor). There are also members who are representatives of experts and people with disabilities. Its duties are to follow the development and enforcement of laws as well as programs for the rehabilitation of the disabled.

3.5 Agencies concerning the Consumer protection

The Law stipulated that government and related ministers have duties to create the business climate and develop a healthy relationship between the entrepreneurs and consumers, develop non- governmental consumer protection foundations, improve the quality of the human resources and increase the research and development activities in the consumer protection sector together.[317] Government, public, and non- government consumer protection foundations are supervisor for the implementation of the consumers' protection and application of the legal provisions. Result of supervision by the public and non- governmental consumer protection foundations can be publish and submitted to related ministries.[318] To develop consumer protection efforts, the Law sets up a national consumer protection agency,[319] whose functions are; to provide suggestions and recommendation to the president in the framework of preparing the policies for consumer protection; conduct surveys and studies of the prevailing legal provisions in the consumers' protection sector; to conduct surveys of the goods and/or service; to do research on trend of consumer rights protection; and to educate people. In implementing its duties above, the national consumer protection agency can be a country's representative to cooperate with international consumer organizations.[320]

Organizations having important roles and duties relating to consumer protection are as follows.

1) National Consumer Protection Agency

National Consumer Protection Agency ("BPKN") was established by Section 31 of Law No. 8 of 1999. Government Regulation No. 57 of 2001 and

[317] Section 29 of Law on Consumer Protection (Law No.8 of 1999).

[318] Section 30 of Law on Consumer Protection (Law No.8 of 1999).

[319] Section 31 of Law on Consumer Protection (Law No.8 of 1999).

[320] Section 34 of Law on Consumer Protection (Law No.8 of 1999).

Government Regulation No. 58 of 2001 govern in detail on power and duties of the BPKN that it is situated at the Capital. It has following duties: provide suggestions and recommendations to the President to enable a consumer protection policy to be formed, undertake research and study on consumer protection laws and other relevant safety measures including need of the people regarding consumer protection, bolster the development of relevant NGO's, disseminate information and receive complaints on consumer protection.

2) Consumer Dispute Settlement Agency

Consumer Dispute settlement Agency was established by Section 49 of Law No. 8 of 1999. The BPSK holds duties of: handle and settle consumer disputes through mediation, conciliation or arbitration, provide consultancy services on consumer protection, oversee standard clauses, receive complaints from consumers, summon suspects and witnesses, conduct investigations, hire investigators, obtain evidence, determine consumer losses, arrive at and notify parties of decisions/verdicts on consumer protection violations and impose administrative sanctions. This agency is one established by the central government which has special characteristic, namely, it has regional offices.

3) Non-Governmental Organizations (NGOs)

Apart from the two above mentioned agencies with duties to protect consumer in Indonesia, the Indonesian government has also recognized the role and function of NGOs in consumer protection, as can be seen from the Government Regulation No. 59 of 2001 on non- governmental institution in giving consumer protection. The law is enacted to entitle non- governmental organizations which aim to protect consumers and have registered with the Indonesian government to some legal rights. The Government Regulation No. 59 of 2001 outlines the general principles that the Indonesian government will certify the status of non-profit organizations with consumer protection objectives, which has registered with a city or district. Once registered, it can operate nationwide. The Government Regulation also identifies the cause of cease of legal endorsement when the organization does not carry out consumer protection activities or commits an offense against the law. Such NGO's have duties to disseminate information to enhance awareness of consumer issues, provide advice to consumers and cooperate with government agencies, and assist consumers on cases.

4) Ministry of Trade

Although consumer protection in Indonesia is the direct responsibility of the National Consumer Protection Agency but an important agency on trade, namely

the Ministry of Trade, also play a key role in supporting consumer protection. Government Regulation No. 58 of 2001 on the Nurturing and Supervision of the Implementation of Consumer Protection is incumbent on the government and the Minister of Trade to foster consumer protection by creating a good climate between consumers and entrepreneurs, developing the quality of personnel responsible for consumer protection and defines consumer protection policies, such as set penalty for misinformation to consumer and set research guidelines. It also serves as a central agency for coordination on consumer protection issues. It also requires the Ministry of Trade to regulate and control the registration as a consumer protection organization of non-profit organizations (NGOs). Further, the Ministerial Notification No. 302/ MPP/ KEP/ 10/ 2001 has essentials that any non- governmental consumer protection organizations must register with the local government where the consumer protection organization is located, to obtain a government certification. Otherwise, it will be punished by law. And if any organization has already registered act unlawful, its registry may be withdrawn.

3.6 Agencies concerning the prevention and suppression of trafficking in persons

For solving problems related to the prevention and suppression of trafficking in persons in Indonesia, which is a major problem for the country because most citizen still have poor status and lack of education, especially women and children. The Indonesian government has taken great care in solving such problems. It requires that all agencies work together to tackle serious and urgent human trafficking issues. Organizations that are responsible for addressing the problem are as follows.

1) Ministry of Social Affairs

For solving human trafficking problems, Ministry of Social Affairs is authorized by the Presidential Regulation No. 69 of 2008 [321] to set up the Task Force for the Prevention and Control of Human Trafficking as the chairman of the social rehabilitation sub-cluster, particularly to: strengthening for the prevention and control of human trafficking, in terms of revamping and updating data, synergy in action and regulations, as well as strategic partnerships with stakeholders in the country and abroad; improving the achievements of the Task Force for the Prevention and Control of Human Trafficking through the expansion of outreach partnerships and optimization

[321] Presidential Regulation No. 69 of 2008 on the Task Force for the Prevention and Control of Human Trafficking.

of the potential of the media (written or visual, social media, and other information and communication technology), as well as the optimization of regional government's involvement in tackling human trafficking crime; increase cooperation in regulatory and activity strategies in the context of territorial, regional, and international levels.[322]

2) Ministry of Women's Empowerment and Child Protection

Apart from its main duties to develop policies, formulate strategic plans and rules, and coordinate with relevant agencies to achieve gender equality, child protection and family, society and Nation welfare, the Ministry of Women' s Empowerment and Child Protection also cooperate with Ministry of Foreign Affairs, Ministry of Law and Human Rights and Ministry of Labour to resolve the problem of migrant workers, which is closely related to the problem of trafficking. It is responsible for coordinating issues related to the protection of migrant women and children. The goal of the government is to increase the quality of protection for people and legal entities both domestic and abroad by integration of duties of agencies with the same objective. Examples: to strengthen bilateral, regional and international cooperation to protect migrant workers, improvement of migrant workers management system, empowering migrant workers to have knowledge and skills, not only for labour, dissemination of legal knowledge on the rights and obligations of migrant workers in destination countries, provides more convenient access to financial services. There is also repatriating coverage for Indonesian migrant workers to return home in emergency situations such as conflicts in Syria and Yemen.[323]

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[322] The NEXUS Institute, "Directory of Services for Indonesian Trafficking Victims and Exploited Migrant Workers," Retrieved on 4 July 2018 from https://nexushumantrafficking.files.wordpress.com/

[323] Kementerian Luar Negeri Republik Indonesia, "International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," Retrieved on 4 July 2018 from https://www.kemlu.go.id.

Chapter 7

Laws on Promotion of Science Technology and Communication

In Chapter, the researcher will present laws on promotion of science, technology and communication. The study is divided into 3 parts: preliminary, essence of the laws and role of related agencies.

(1) Preliminary information

1.1 Science and Technology

Indonesia has focused on research and development of science and technology increasingly from the past to the present. This is evidence in stipulation of country strategy on science and technology in Vision and Mission 2025, by stating that science and technology is the cornerstone of developing and improving the quality of life, including economic development. The development plan has been defined in 7 key areas: food security renewable energy technology and transportation management communication technology defence and security health and medicine; and material science[324]. In addition, since 2014, the Indonesian president (Mr. Joko Widodo) has declared vision which changes Indonesia to a Marine Nation, conducting policy to protect the marine benefit of nation, on his inauguration day. Indonesia has accelerated research and development on marine resources, such as the development of medicines from biologicalmarine resources[325] as a result of Indonesia is an island country.

[324] UNESCO Publishing, "The Current Status of Science Around the World," Retrieved on 10 February 2018 from http://unesdoc.unesco.org/.

[325] Current Status on Science and Technology in ASEAN Countries Center for Research and Development Strategy, Japan Science and Technology Agency: 2014,

By examining Indonesia laws related to the promotion of science and technology, there are two relevant laws:

(1) Law No. 18 of 2002 concerning National System of Research, Development, and Application of Science and Technology, is the law directly related to the promotion of science and technology in Indonesia. It was enacted because Indonesia is aware of its importance of science and technology as a part of national development because it allows people to make use of natural resources. This will bring the welfare and well-being of the people. In the context of globalization; communication and travel can be done quickly and easily. There are more and more liberalization of trade, services and investment. There are also economy groups of countries. Scientific and technological advances will help strengthen the competitiveness of Indonesia in the global market. It is also based on the Indonesian government's analysis of the success and advancement of science and technology in developed countries come from 3 factors, which are: 1) Ability to link network between agencies related to science and technology, to exchange knowledge and technology transfer[326], especially in terms of trade and services of economic value. 2) Ability to create a eonomic competitive environment because in such environment, the competitiveness of the entrepreneurs does not depend on the market power or the natural resources. Rather, it depends on the innovation and the quality of products and services that are beneficial to consumers. This makes the entrepreneurs accelerate the development of science and technology; and 3) Ability, knowledge and potential must be supported from the person concerned, in particular, the development of professionalism and the distribution of resources under the rule of law, and use the same standard. The promotion of science and technology can be done in a variety of ways, such as education, information exchange, education promotion, exchange of experts with developed countries, and technology transfer through investment and foreign trade channels.[327]

(2) Law No. 12 of 2012 on Higher Education[328], although not a law that directly relates to the promotion of science and technology of Indonesia, however, this law contains certain principles regarding the promotion of science and technology,

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p. 107.

[326] Transfer of knowledge to be able to utilize and master the science or technology of the individual or institutions, domestic and international (Section 1)

[327] Explanation of the Law.

[328] Globalregulation, “Indonesia Education laws,” Retrieved on 10 February 2018 from https://www.global-regulation.com

similar to Law No. 18 of 2002 concerning National System of Research, Development, and Application of Science and Technology. This is due to the recognition that higher education is a part of an educational system that plays a strategic role in the development of national wisdom, and science and technology promotion. With regard to sustainable humanitarianism and promotion and cultivation of capacity of Indonesian citizen and awareness raising of the country's competitiveness in the face of globalization in all sectors, higher education must develop science and technology, and shape intellectuals, scientist and professional, who possess culture, creativity, generous, democratic, strong and have the courage to defend the truth for the sake of the nation (b) and c) of Preamble of the Law)

1.2 Communication

Telecommunication for Indonesia is a major facilitator in accessing transparent and convenient public services. An important time of communication business in Indonesia was in the year 1989 when the government enacted the Law on Telecommunications (Law No. 3 of 1989) after the ratification of International Telecommunication Convention of 1982. The law is the first one that directly related to telecommunications. Its essence is to liberalize the telecommunication business in Indonesia to include more entrepreneurs, reduce the role of state-owned enterprises from being sole-operators to compete with other private companies. Since then, telecommunication has developed rapidly and plays an important role in supporting economic activity. At the same time, it is a contribution to security in the development of protection and security of the country. It also plays an important role in education of an island country like Indonesia by using information technology to broadcast the education to various groups of islands widely and all over including the Indonesian Government can administrate comfortably because of having Telecommunication which can communicate between rural local regions more conveniently. Then, the society has change. Technology is rapidly evolving. There is infusion of technology of transmission and broadcasting. Broadcasting is very progressive. The concept of international economic leads to trade liberalization in many business sectors. In response to such changes, and to reform and re- organize Indonesian telecommunication business, as well as to comply with the law implementing the obligations under the General Agreement on Trade and Services -GATS[329], a new law

[329] Indonesia promulgation by enactment of Law on Ratification of GATS (Law No. 7 of 1994)

is replaced the Law No. 36 of 1999 regarding Telecommunications,[330] and has been in force since. And Indonesia has made a change in its telecommunications policy to the liberalization of private sector to compete in business. The state has a duty to simply set policies, legislate and regulate the market. Also, the said Law No. 36 of 1999 has a scope on the Telecommunication Operation, containing the operation of telecommunications network, the operation telecommunications services and the operation of special telecommunications (Section 7) including the operation of broadcasting and television[331].

Since the enactment of the Telecommunication law in 1999, foreign investors have invested in the telecommunications sector, about 1.7 billion US dollars. In 2000, there were 5 million Internet users. By 2014, there are more than 70 million Internet users. The public use mobile phone to access the Internet. This is more convenient and economical than installing the cable. In 2003, the role of the government changed to become a policy-maker when enacted the Ministry of Communications Decree No. KM. 31 of 2003 Regarding Establishment of Indonesian Telecommunications Regulatory Body, Ministry of Communications[332]. An independent agency to oversee national telecommunications is set up. Its abbreviation name is BRTI. Later, technology development led to enactment of Law No. 11 of 2008 concerning Electronic Information and Transactions[333], to control the entrepreneurs and electronics transactions to be more certain.

From the above explanation, there are 2 important laws relating to communication, namely:

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[330] Direktorat Jenderl Sumber Daya Dar Perangkat Pos Dan Informatika, "Legal Complanits and Consultation," Retrieved on 10 February 2018 http://www.postel.go.id/.

[331] From note of reference of Law No. 36 of 1999 the term " the operation of special telecommunications" means " Special telecommunications operations is among other things for the purpose of meteorology geophysics, television broadcast, radio broadcast, navigation, aviation, search and rescue, amateur radio, inter-population radio communications and operation of certain government special communications agency/private parties."

[332] Direktorat Jenderl Sumber Daya Dar Perangkat Pos Dan Informatika, "Legal Complanits and Consultation," Retrieved on 10 February 2018 http://www.postel.go.id/.

[333] FLEVIN, "Law No. 11 of 2008 on electronic information and transactions ," Retrieved on 10 February 2018 http://www.flevin.com/id/

(1) Law No. 36 of 1999 regarding Telecommunications

(2) Law No. 11 of 2008 concerning Electronic Information and Transactions

(2) Essence of the Law

2.1 Essence of the Law concerning Science and Technology

(1) Law No. 18 of 2002 about National System of Research, Development, and Application of Science and Technology

Law on National System of Research, Development, and Application of Science and Technology (Law No. 18 of 2002) is the law enacted under the concept that science and technology development are a tool leading to the welfare and well-being of the people through the economy, in terms of trade liberalization, investment and product quality development to international standards. The law has 32 sections and is divided into 8 chapter which can be summarized as follows.

(1.1) The main concept of this law is: research and development system, and application of technology are developed on the basis of faith and respect to God by the state. The state must respect the freedom of thought, academic freedom and the responsibilities of both the state and the academic institutions (Section 3), with the aim to accelerate the achievement of the goals of development, including to improve competitiveness, and maintain the interests of the country in foreign relations (Section 4).

(1.2) National System of Research, Development, and Application of Science and Technology in this law intend to connect various factors concerning to development of science and technology knowledge and using that knowledge for the said propose. The said factors consist of institutional factor, resource factor and science and technology knowledge network factor and these factors are also connected by supporting of the Government therefore, the content of this law is about the role of each factor including the Government's role (Section 5 and Section 13).

(1.3) Institute this law has prescribed various institutes have the role in development of resource, person, research and development, design, innovation and reproduce of technology pattern including the role to create atmosphere for carrying on the said role and providing necessary support for organizing in development and utilization from science and technology (Section 6). These institutions are

Universities: are responsible for the development of human resources in science and technology by developing curriculum. The instructor must have the ability to prepare and develop the research (Section 7);

R&D institutions: have duty to enhance scientific and technological capabilities. To accomplish this, it is necessary to recruit new innovations in science and technology and to utilize the resources for the most benefits (Section 8);

Businesses: are responsible for developing innovative engineering and enabling people to access technology in order to create products and services that are economically valuable. To achieve this, business organizations must strive to utilize human resources from the university and the knowledge gained from research and development institutions to maximize the benefits (Section 9);

Other supporting institutions: have the duty to support by creating environments and factors conducive to the development, as well as promoting and working together to solve problems (Section 10). Also, the term "other supporting institution" this law didn't prescribe the definition but in the note of reference has given the examples there are; other supporting institution includes organizations related to science and technology policy creation such as National Research Council or Regional Research Council, institutions related to standardization, institutions related to Patent or Intellectual Property, or institutions related to science or technology such as the Nuclear Energy Agency, Science or Technology Advisory Institutions, Consumer Protection Institutions or Financial Institution.

(1.4) In resource, this law has prescribed resource for science and technology development, namely expert and ability of person, Intellectual Property, Information including facilities and infrastructure however, institutes must provide the expert and ability development system, career progress system, reward system and justice punishment system for create atmosphere to develop science and technology. This law has prescribed University and Research and Development Institutions need to manage Intellectual Property and Information received from searching and development supported by the Government effectively and use it wisely (Section 13). Besides, this law has also prescribed the Government or business organizations may establish Centre or build the building including facilities and infrastructure good for raising to science and technology development including for create culture of science and technology study to public (Section 14).

(1.5) In network, this law has prescribe the relation of the above institutes by creating principal that is to say, institutes should collaborate to create network for linked work and communication with each other, for increasing efficient work and the said network also create benefit much more than separate operation besides, this law has also prescribed each institute work together for creating the said network and decreasing complicated work (Section 15) at the same time, this law has

prescribed the role of each institute to operate the said collaboration, prescribing university and Research and Development Institute must try to transfer all or some parts of intellectual property created by research and development supported by the Government or local Government to business organization, Government, community as much as not violate public order and law and at the same time, university and Research and Development Institute have right to receive compensation from transferring science and technology developed by them (Section 16).

(1.6) The law establishes the authority of the government in science and research that the government has a duty to create a stimulus, facilitate and create an atmosphere suitable for research and development, including the application of science and technology. The government must formulate a strategic plan for its operations. Such plan must specify policy, supporting funding, incentive, capital, formulation of science and guarantees that the development of science and technology must be for the people and the nation. It must also give equally important to human life and sustainable environmental development (Section 18). The example of supporting and facilitating of the Government such as to collaborate with foreigner state for organizing the international seminar concerning science and technology or creating national research policy plan 2016-2019.

(1.7) In finance, the law requires the government to set a budget for science and technology development which is sufficient for various institutes needs and this law also prescribes the Government duty to provide supportive policy and funding to the university, institutes for research and development, business entity and supporting Institutions (Section 26 and Section 27) such as creating national research policy plan 2016- 2019 for the same direction of the institute performance and development and funding for research and development to various projects presented by university or Research and Development Institute.

(1.8) The responsible minister[334] (in now a day means the Minister of Research Technology and Education) is tasked to develop an integrated strategic plan and monitor the implementation of policies. To determine strategic plan and implement the policy smoothly, the law establishs the National Research Council to

[334] In Indonesian Administrative Organization establishment, dissolution or prescribing competence of any Ministry is the president power which is followed by period of each president so, in Indonesian law will not prescribe the minister of any Ministry but use general word like the responsible minister.

provide advice. The element of the said committee comes from the representative of various institutes related to science and technology which are said in (1.3) (Section 19).

(1.9) Except the role of the central Government the law also has prescribed the role of the local Government which is responsible for supporting, facilitating and creating an atmosphere for the development of cooperation among research- related sectors. Local governments can set priorities, including policy frameworks on science and technology. And to make it effective, the law requires local governments to set up research regional committees (Section 20).

(1.10) the law prescribing the role of community, group of people related to science and technology research and development, committed to support and promote a friendly environment for the development of research systems, development and application of science and technology. Besides, the law also requires all professional organizations to set up committees to determine their code of ethics including supervising for action in keeping with the code of ethics also, to guarantee that the organization operating related to science and technology research and development will operate along with their professional standards and not violate the morality for the acceptation of society and the trust in result of research also, it can protect for misusing which causes damage to society (Section 25)

(1.11) This law also recognizes the public's right to participate in science and technology promotion including doing activity concerning research and development, to utilize from the said research and development also, the public has right to use Intellectual Property under Intellectual Property law, has right to be praised concerning research and development by the Government and has right to access to information related to science and technology development easily and cheap (Section 24).

(1.12) This law authorizes the Government to prescribe research and development or applying science and technology which has a high risk or which is dangerous must be allowed by the officer (Section 22). The person who violates the said rule shall be punished according punishment prescribed by law which has Administrative Penalties such as warning, be suspended from research, canceling the license and Criminal penalty, namely a fine of not more than 50,000,000 IDR (Fifty million) (Section 29 and Section 30).

(2) Law No. 12 of 2012 on Higher Education

As mentioned above, the law on higher education is a law that contributes to the promotion of science and technology in Indonesia. It encompasses the recognition of the importance of higher education to the development of national

wisdom and the promotion of science and technology as well as enhancing the competitiveness of the country to face globalization in all sectors. Higher education requires the development of science and technology and scientists to support such work. It is the higher education system that can produce intellectuals scientist and the professionals who are creative, have patience with democracy. Have the courage to defend the truth for the sake of the nation and humanity. In addition, the higher education system that can produce research in science and technology that would benefit the nation state and the public under the academic freedom and freedom of opinion. The goal of such systems is necessary to make higher education management organization independently (autonomy). This law requires measures to insure that the mechanism of education administration such as the Independence of education, the quality assurance of education and participation of citizens. This law has 100 sections and is divided into 12 chapters. The essence of the matter relating to the promotion of science and technology can be summarized as follows.

(2.1) The law specifies definition of "science" as knowledge explored, prepared and developed systematically using a specific approach, based on a scientific methodology to explain certain natural and/or social phenomena; "technology" means application and use of various branches of science to produce value for satisfaction of needs and survival and improvement of human life; and "research" means an activity carried out systematically according to scientific principles and methods to obtain information and data on understanding and/or testing of a branch of science and technology (Section 1).

(2.2) The law determines the basic principles of higher education, one is scientific truth which means search, observation, invention, dissemination and development of science and technology, the truth of which is verified scientifically (Section 3) and determines that the development of science and technology is a mission and one of the main objectives of higher education, which must be taken into account the value of humanity and benefits to national development, as well as to elevate to progress living standard (Section 4 and Section 5).

(2.3) The law guarantees academic freedom of the education and development of science and technology which means be able to express a scientific and technological expression openly and need to have responsibility for the result of that expression. It also requires higher education institutions to be free to conduct research and development in science and technology, taking into account of religious values, national integrity, welfare development, and the progress of human. This may include invention, development, discovery or maintaining scientific truths according to

norms, methods and academic cultures in science and when there is an academic freedom a higher education institutes need to have responsibility for the result caused by that freedom (Section 8 and Section 9). In this regard, the law requires that science and technology development is one of the main roles of higher education institutions (Section 58).

(2.4) The research of higher education institutions must focus on the development of science and technology for the development of public welfare and to enhance country's competitiveness (Section 45). The results of the research should be useful in terms of intelligence and make science and technology works. It must be publicly disclosed if it is not confidential or harmful to public interest (Section 46).

2.2 Essence of the laws on communication

(1) Law No. 36 of 1999 regarding Telecommunications

This law is enacted in accordance with the fundamental principles of the 1945 Constitution. Section 33, paragraph three, provides that the territory and natural resources[335] of Indonesia are subject to control of the state, and to maximum utilization for public welfare. In addition, radio frequency and satellite orbits are limited natural resources, it thus needs to be controlled by the state. Management must take into account the direction and policies of national development.[336] This is a very important law for the telecommunications business in Indonesia because it has changed the way the telecommunications business operates from the monopoly to the free market.

This law has 64 sections and is divided into 9 chapters which coverage to determine the achievement of telecommunications, the operations of telecommunication management, the rules of telecommunications business such as prohibition of monopoly ventures, license issuing, rights and obligations of service providers and the public, using of numbers, rates, telecommunications equipment radio satellite, telecommunication security and also investigate crime and penalty. The law essence can be summarized as follows.

(1.1) The state's duty, this law provides a freedom to carry out the telecommunications business the state is limited the role by being a regulator, having

[335] Section 33 (3) of The Constitution of Indonesia of 1945 the term "Natural Resources" means natural resources within land or water.

[336] Explanation of the Law on Telecommunication (Law No. 3 of 1989)

duty to provide subordinate legislation concerning on details to carry out the Telecommunications business (Section 4) and provide a public participation, specified by subordinate legislation, for giving opinion about Telecommunications business such as determining the direction of telecommunications development to be consistent with social needs (Section 5).

As a regulator the state has duty to legislate subordinate legislation in following cases:

- In case of providers cause the damage to users the state must legislate subordinate legislation determining payment method of damages and calculated method of said damages (Section 15).

- Determining compensation, paid to the state by network providers and telecommunications providers for expenses of infrastructure and telecommunications network in order that telecommunications primary service is reached by all of country (Section 16).

- Determining the obligation of telecommunications provider to record the record of use of users in order to check how much or when users use (Section 18).

-Determining the right and obligation of telecommunications provider to connect the network (Section 25).

- Determining fees of the permission to operate telecommunications business (Section 26).

- Determining a structure and calculated method of tariff rate charged by the provider (Section 27 and Section 28).

- Determining the technical condition and requirements of the telecommunications equipment (Section 32).

- Determining the rule of licensing, controlling (Section 33) and tariff charging of the use of radio frequency and satellite (Section 34).

- Determining the use of the radio frequency of foreign aircrafts and foreign flag vessels in the territory of Indonesia (Section 35 and Section 36).

(1. 2) The operation of telecommunications networks and/ or the operation of telecommunications services may be carried out by a legal entity established for such purpose based on prevailing statutory regulations, i. e. : state-owned enterprises; regional- owned enterprises; private business enterprises; and cooperatives by the way, the rule in detail concerning qualification and procedure to submit applications operating business is prescribe in subordinate registration (Section 8). (Section 8). Monopoly is prohibited (Section 10). The telecommunications operation

is divided into 3 types (Section 7 paragraph (1) in connection with Section 11 and Section 33), namely

- The operation of telecommunications networks means to connect to network for Interpersonal Communication such as signal connection service.

- The operation of telecommunications services means providing service for Interpersonal Communication such as mobile signal service.

- The operation of special telecommunications means it is particular by its nature for example the telecommunications service for personal benefit such as community amateur radio or the telecommunications service for national benefit such as meteorology navigation or aviation.

(1.3) The law stipulates that telecommunications operations must be carried out by observing these 4 matters: protecttion of the interests and security of the state; anticipation technology development to be at the same level of other countries; to be carried out professionally and in an accountable manner; and participation of the public, for example, to listen to the opinions and suggestions of the people in order to set policies, laws and regulations (Section 7 paragraph two). The law also requires the establishment of an organization to hear the proposals of the people. The said organization consist of associations engaged in the business of telecommunications, telecommunications professionalassociations, telecommunications equipment producers associations, association of telecommunications networks users and telecommunications services and the intellectual community in the sector of telecommunications. The rule and method for participation of the public is prescribed in subordinate legislation (Section 4 Section 5 Section 6).

(1.4) The law regulates the control of the telecommunications business by using the licensing system as the authority of the Minister of Communications and Information. There are 3 types of license, namely

1. The license of Basic Telephony Service

2. The license of Added-value Telephony Service divided into 3 types, namely Special Phone Number Service, Phone Card Service and Call Centre Service

3. The license of Multimedia Telecommunications Service divided into 5 types, namely the license of internet service provider, the license of network access service provider, the license of voice over IP service provider, the license of Data Communication System service provider and the license of content service provider.

Once the operator has obtained the license, the entrepreneur can use the right to undertake the development of the telecommunications infrastructure; use land or buildings that the government owns or controls to develop a telecommunications infrastructure; private land can also be used when mutually agreed (Section 12).

(1.5) The law regulates the functions of the service providers, such as: equal treatment and the best service for all users; increase of efficiency in telecommunications operations; facilitating, and providing thorough basic telecommunication and social services (Uiversal Service Obligation (USO)), which is an undertaking so that every citizens, including the disadvantaged people in the society and people in remote areas can easily access basic telecommunication services at reasonable rates. This also includes equal access to information across the country, to reduce gaps or inequalities in access to information and communication technologies. The service provider is required to pay USO funds at 1.25% of net income. The service provider must also keep a record of usage information and disclose it to the user upon request. (Section 16, Section 17 and Section 19)

(1.6) In terms of protecting the rights of users; the law protects the rights of users to freely choose service provider and can sue for compensation from the telecommunications operator causing damage (Section 15), as well as the right not to be intercepted (Section 40).

(1.7) In the field of telecommunications and state security; the law stipulates that telecommunication service providers must prioritize the transmission and transmission of information concerning serious incidents such as national security incidents, safety of life and property, natural disasters, dangers and epidemics. (Section 20)

(1.8) In term of telecommunications security and safety of using wave, the law prohibits any person from interfering with the use of the waves, resulting in systemic imbalances that is to say, causing telecommunication system not be available which is technical action (Section 38) and requires telecommunication network service providers to have a system of protection of public utilities and networks used to provide services. (Section 39) In addition, data fishing is illegal, unless it is a general use or legally required collection, or is legally allowed. The information transmitted through service provider must be confidential and cannot be disclosed, unless authorized by the Attorney General or the Commissioner of the National Police. (Section 42)

(1.9) In technical terms, the law requires the Minister to issue a policy to set telephone numbers system, and the right in case of connection between the

network that the operators must allow the connection between the networks when there is a request of the operator who want to connect to system. In addition, the imported telecommunications equipment must have the required qualification for service licensing. In the event of the use of radio waves or satellites in orbit, they must be licensed by the government and subject to a fee for use of waves or orbits. (Section 23, Section 24, Section 32, Section 33, Section 34, Section 35 and Section 37)

(1.10) In case of violating the provisions of law, there are two types of sanctions: administrative sanctions and criminal penalties. Administrative penalties are used for petty offenses, such as discrimination by not serving all user groups. The nature of such sanction is a warning. Failure to comply with the warning will result in penalties for revocation of the license. (Section 45 and Section 46) In the case of a criminal offense, most of this will apply to unauthorized violators, or do not cooperate with the government when an emergency occurs. There are both imprisonment and fines, and in the case of Eavesdropping is punishable by up to 15 years in prison. By the way, the penalty regulations and punishments in conclusion are

- The operator who have no license of this law shall be punished by imprisonment for 6 years or by a fine of 600,000,000,000 IDR (six hundred billion) and equipment using for operation shall be seized.

- The telecommunications operator restricting people to have right and freedom to choose telecommunications services shall be punished by imprisonment for 1 year or by a fine of not more than 100,000,000,000 IDR (one hundred billion) and equipment using for operation shall be seized.

- The telecommunications operator not giving priority to message or signal sending or important information forwarding concerning to (1) national security (2) the safety of life and property (3) natural disasters (4) dangers (5) epidemic diseases shall be punished by imprisonment for 2 years or by a fine of not more than 20,000,000,000,000 IDR (twenty trillion).

- Any person who has intentionally accessed to telecommunications network by using telecommunications service for any actions, illegal or disturbed telecommunications service or telecommunications network or special telecommunications network shall be punished by imprisonment for 6 years and by a fine of not more than 600,000,000 IDR (six hundred million).

- Any person who manufacture, trade, assemble, import or use telecommunications equipment which is not in accordance with the technical condition of the Republic of Indonesia shall be punished by imprisonment for 1 year and by a fine of not more than 100,000,000.00 IDR (one hundred million) and

equipment using for said illegal action shall be seized except in case of importing from foreign state for short-term using.

- Any person who has intentionally acted for causing physical damage or created electromagnetic wave disturbing telecommunications signal of provider shall be punished by imprisonment for 6 years or by a fine of not more than 600,000,000 IDR (six hundred million) and equipment using for said illegal action shall be seized.

- Any person who has intentionally eavesdropped or any action in accordance with said eavesdropping in any communication between telecommunications networks shall be punished by imprisonment for not more than 15 years.

- The telecommunications operator shall keep information received and send by telecommunications equipment secret and shall be punished by imprisonment for 2 years or by a fine of not more than 20,000,000,000,000 IDR (twenty trillion) in case of violation.

In short, Law No. 36 of 1999 regarding Telecommunications is a very important law. This is the fundamental law of the entire Indonesian telecommunications industry. If there is a need to use radio frequency or number system, it must mainly consider this law. In addition, the law recognizes important rights in the digital age, namely: right not to be intercepted; and right to utilize technology.

(2) Law No. 11 of 2008 concerning Electronic Information and Transactions

Law No. 11 of 2008 concerning Electronic Information and Transactions is emerged from changes in the way people live and the advancement of technology that store personal data, including details of legal action on the Internet. Unauthorized use of such information may result in damages to the owner of the information and to the person concerned. Therefore, it is necessary to standardize the service provider and control the data. This law has five main principles: the legal certainty, bona fide, interests, prudence and freedom of choice in technology. This law has 54 Section and is divided into 13 chapters.

The protection of personal information on the Internet is not new in Indonesia. Before this law, there are some privacy protections on the Internet in other laws, such as: Law No. 7 of 1992 concerning Banking and Law No. 8 of 1995 on Capital Markets. Both laws set the authority of the Indonesian financial authorities to regulate the protection of personal data. While the law on electronic data and transactions is mandated by the Ministry of Communications and Information

Essence of Law No. 11 of 2008 concerning Electronic Information and Transactions can be summarized as follows.

(2.1) In scope of application of this law, this law has prescribed the definition of Electronic Information means "electronic data in form of text, sounds, images, maps, drafts, photographs, electronic data interchange (EDI), electronic mails, telegrams, telex, telecopy or the like, letters, signs, figures, Access Codes, symbols or perforations that have been processed for meaning or understandable to persons qualified to understand them" and the term "Electronic Transaction" means a legal act that is committed by the use of Computers, Computer networks, and/or other electronic media (Section 1). Besides, this law has prescribed the scope in application of this law to the action of a person both within jurisdiction of Indonesia and outside jurisdiction of Indonesia, having legal effect within jurisdiction of Indonesia and/or outside jurisdiction of Indonesia and detrimental to the interest of Indonesia. (Section 2)

(2.2) In terms of principles and objectives, the law stipulates that implementation shall be under the principles of legal certainty, benefit, prudence, good faith, and freedom to choose technology or technology neutrality in order to develop the people to be intelligent in the information age and to promote trade and the economy. (Section 3)

(2.3) On Electronic Information, Records, and Signatures; the laws stipulates that electronic actions are recorded by the service provider. This law aims to protect the process from initial input to electronic systems. Electronic data and electronic records are acknowledged as lawful means of proof. Such electronic information can be printed out as legal evidence, except where otherwise provided by law that the evidence used must be in writing (Section 5). Besides, since the data on the Internet is intangible, this law defines the criteria for electronic data transmission and electronic data recording such as the duration of time, which not prescribed the certain period of time by this law, that can be deemed as an electronic system has received the data. (Section 8)

In addition, the law provides that electronic service providers, which means the collector of electronic transaction information, must display contract of use of service that specifies the identity of the service provider, as well as the status of legal subject and its competency, whether as producer, supplier, provider of intermediary. Online service providers must also be certified by regulatory authorities (Section 9).

The law has established identity identification conditions for online transactions that electronic signatures have lawful legal force and legal effect (Section 11). Thus, the law also stipulates that any person involving with electronic signature process must have security system that up-to-date according to the instructions of the

service provider (Section 12). By the way, the Government Regulation No. 82 of 2012 has prescribed service provider shall register, shall use hardware software and electronic system having qualification prescribed by law, shall have the professionals to be a system administrator and shall conduct system as provided by law such as risk management system cybersecurity system and personal information record system.

(2.4) In terms of electronic certification and electronic systems the law stipulates that there must be a service provider which means the electronic transactional information collector to verify the electronic signature, which can be either an Indonesian or foreign juristic person. However, there is a need to demonstrate how to validate an electronic signature. The service provider must have a standard. As well, electronic system providers need to be stable.

(2.5) In doing electronic transactions, the law requires the parties to have electronic data interchange and make electronic contract agreement on electronic system. Besides, the parties can choose which law to govern the contract (Section 18). Unless the parties agree otherwise, electronic transactions is occurred at the transaction offers sent by sender have been received and accepted by recipient (Section 20). The parties can also conduct electronic transaction by their proxy or electronic agent (Section 21).

(2.6) On domain name, intellectual property rights and privacy protection, the law takes into account the principle of holding property and identities possession such as domain names on the Internet. This is important for the user to have space. The law requires first come first serve which is a universal, meaning any person who use the domain first have exclusive right to use the said domain and other person has no right to use it (Section 23). When a dispute arises, the government can take over temporarily the domain name administration in dispute (Section 24). Electronic data and electronic records created into and registered as intellectual works, they will be protected as intellectual property rights properties (Section 25). In case of stored personal data, use thereof requires prior consent of the person concerned (Section 26).

(2.7) The law determined prohibited acts that are considered as wrong-doing and face criminal penalties. For example, it is not allowed to the proprietary information of others without permission; to publish gambling channels; to publish messages that are defamatory; to publish messages that are intimidating; to deceive others to conduct electronic transactions. It also includes prohibition to display content aimed at inflicting hatred or dissension based on colour, race or religion; to

access and intercept information; to make unauthorized changes to computer or electronic systems of others (Section 27 to Section 32).

The above acts are criminal offenses where the offender is liable to both imprisonment and fine. The highest penalty is punishable for acts of eavesdropping and interception. It is punishable by imprisonment for up to 10 years and / or fine not exceeding eight billion IDRs. The crime with the maximum fine is deliberately causing the electronic system to crash.

(2.8) In the dispute settlement: when the offense has occurred, the law stipulates the right to sue electronic service providers if they cause damage, including group litigation with electronic service providers (Section 38).

(2.9) The role of government and the people: the law requires government to have a duty to protect the public interest in the use of technology by preventing threat of electronic data and electronic transactions. Institutions or agencies should be set up to protect important information and provide backup which is prescribed in general rule not having detail on it and now a day the Government still not establishes the said institute (Section 40).

In the public sector: the law requires that public can participate as prescribed such as: not to do prohibited act prescribed by law; set up institutions from the public sector with the purpose is to develop technology and electronic transactions (Section 41). The law opens that such institutions may be intermediaries in the coordination between the government and the public sector. Also, public participated institute can participate in such as giving the opinion concerning the bill published by ministry of communication and information on website.

(2.10) Investigation: The law requires investigations to be conducted in accordance with the criminal procedure. The police officer's investigation can also employ technology expert (Section 42). The search and seizure of electronic evidence need permission from the local chief justice of the district court (Section 43).

(3) Roles of Relevant Agencies

3.1 Agencies involved in the promotion of science and technology

Development of science and technology in Indonesia is the task of Ministry of Research, Technology, and Higher Education, which former name was Ministry of Research and Technology. It is established by the Presidential Decree of 13th April 2015. It has the power to set the direction, basis and carry out the policy relating to educational system of the institute of higher education, human resource,

management of advanced studies foundation and access to advanced education. In the field of research, the ministry has the authority to define and lay down policies that are relevant to the quality of research institutes, human resource management, infrastructure and technology research, promotion of research on invention, development of technology, technology learning and transfer, technology verification capacity building, protection of intellectual property rights; and be a central agency for coordinating research and development, invention and technology.

In addition, the Ministry of Research, Technology and Higher Education also has the authority to: authorize research by foreign universities and foreign research Institute; collaboration with foreign agencies and foreigners who do research in Indonesia; and permit the conduct of high-risk or hazardous scientific and technological research as prescribed in the rules and regulations concerned (Section 3).

Ministry of Research, Technology and Higher Education led by the Minister and has structure[337] as follows.

(1) Secretariat General: has duties to coordinate with the agencies under the ministry to accomplish well the ministry's task, such as coordinating projects, plans, budgets, and legislation.

(2) Directorate General of Learning and Student Affairs: has the power to set a policy, education quality and the advanced education system.

(3) Directorate General of Institutional Sciences, Technology and Higher Education: has power in policy-making related to higher education institutions and technology sciences, such as the development of local institutions and the development of vocational schools, research quality control, research institute development, evaluate and report on institutes related to science, technology and advanced education.

(4) Directorate General of Resources of Science, Technology and Higher Education: has authority to set policy, coordinate policy implementation related to science, technology resources and advanced education, including the creation of a database of intellectual property of the work.

(5) Directorate General of Research and Development Reinforcement: has the power to set policies to strengthen research and development, including intellectual property management. The key is the power to allow foreign universities or research institutes to conduct research in Indonesia. It also has the power to

[337] Ministry of Research, "Technology and Higher Education of the Republic of Indonesi," Retrieved on 10 February 2018 from http://international.ristekdikti.go.id.

cooperate in research with foreigners or with foreigners who undertake research in Indonesia.

(6) Directorate General of Innovation Strengthening: has the power to determine the relevant policies with innovations such as lay out structure to facilitate innovation, create networks to link innovations together.

(7) Inspectorate General: has duties to control the internal affairs of the ministry, such as controlling the use of funds and audit.

(8) Expert Staff for Academic Affairs: has duties to give comments and recommendations on strategic issues to the Minister in relation to academic development.

(9) Expert Staff for Infrastructure: has duties to provide strategic opinion and advice to ministers on matters related to infrastructure science.

(10) Expert Staff Field Relevance and Productivity: has duties to provide strategic advice and views to the minister on issues related to science and research development.

3.2 The agency involved in the promotion of communication

The promotion of communication in Indonesia is divided into two agencies. Ministry of Communication and Informatics is the main agency of the Law on Telecommunication (Law No. 36 of 1999), which governs that Ministry of Communication and Informatics has duties to determine policy, rules and regulation; regulate and supervise telecommunication business. Later, the Indonesian Telecommunication Regulatory Body (BRTI)) is established to determine policy, rules and regulation; control and supervise as well.

(1) Ministry of Communication and Information

The present government has announced the Presidential Decree No. 54 of 2015, setting the authority of the Ministry of Communications and Information in policy formulation and communication promotion, including the administrative division in the Ministry. Every directorates are responsible directly to the Minister and there are various committees and support agencies to prepare and implement policies, to create norms in practice, to evaluate the achievement of the policy. In addition, specialists are assigned to their specialization. Organization structure of Ministry of communication and Informatics is as follows.

(1.1) Office of the Permanent Secretary of the Ministry of Communication and Information: has duties to coordinate project activities and budgets of the ministry, promote and support the work of various departments within the ministry, human resource management, finance, public relations, advise and plan management and

organization, coordinate and prepare laws and litigation, manage property of the Ministry; including other acts as required by law and under the order of the Minister.

(1.2) Department of Telecommunications and Information Technology has duties to set standards of telecommunications equipment and radio frequency, licensing, control the use of radio waves and satellite orbits.

(1.3) Department of Telecommunications and Information Technology has duties to establish service standards, licensing and develop access to network, including the telecommunications security of the country.

(1.4) Department of Information Technology has duties to develop information system in the public administration so that more technology is used, promote the use of technology in the private sector, and create data security.

(1.5) Department of Information and Public Affairs has duties to take care of public relations and information, and elevate the role of the media for public interest.

(2) Telecommunication Regulatory Authority (BRTI)

The establishment of the Telecommunication Regulatory Authority (BRTI) was due to the need for the telecoms regulator to be free to operate without interference as stipulates as a principle in the Law on Telecommunications (Law No. 36 of 1999). The Ministry of Communication Regulation No. 31 of 2003 has set up the Indonesia Telecommunication Regulatory Authority (BRTI). At the inception most of the executives were former personnel of the Ministry of Communications and Information. Hence, an effort to have an independent regulatory body had received criticism from the public.[338]

Ministry of Communication Decree No. 31 of 2003 essence is to prescribed principles and purpose of the establishment of independent agencies, there are

(2.1) Indonesian Telecommunication Regulatory Committee

The said decree has prescribed elements including competence of committee. The main propose of establishment of committee is to guarantee the existence of transparency, independency and fairness in telecommunications operations including to enhance the service performance of service provider (Section 2 and Section 3). And the decree has prescribed the committee has obligation to legislate rules, to supervise and to control telecommunications system and service provider (Section 4 and Section 5). For details are as follows:

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[338] Thomson Reuters Practical Law, Retrieved on 10 February 2018 https/:uk.practicallaw.thomsonreuters.com.

(1) The element of committee

The Committee consist of 5 members whereas the Director General of Directorate General of Ministry of Communication and Information also act as the Committee Chairman and the Qualified Committee of 4 is elected by the Minister of Communication and Information from person has to be eligible to these following terms: Indonesian citizenship, Max. 65 years old at the first election, In good health condition, Professional experts in Information Technology, Economic, Law or other Social major, A none direct or indirect stockholder of any telecommunication network or services operators, Not served concurrently either as Director, Commissioner or staff in any telecommunication network or services operators, A none active member of any political party or Indonesian Army. The Qualified Committee Members period of duty is 2 years and can be elected again for 1 period of duty.

(2) Competence of committee

The committee received responsibility of Ministry of Communication and Information especially responsibility of regulation supervising and controlling telecommunication network and telecommunication service. For summary are as follows:

- Regulation in various matters, namely network and service telecommunications operations licensing, standard operations performance, standard quality of service, interconnection tariff and standard telecommunications tools and equipment (Section 6 and Section 8).
- Supervising in various matters, namely network system operation and telecommunication service, supervising on competition for creating network and telecommunication service and supervising on using telecommunications tools and equipment for maximum efficiency.
- controlling in various matters, namely dispute settlement between network provider and telecommunication provider, using telecommunications tools and equipment for maximum efficiency and controlling on provider's operation according to the standard of service.

(2.2) Indonesian Communication Regulation Body

An independent agency, having the same status as Directorate General, is under Ministry of Communication and Information transferred some part of competence from Ministry of Communication and Information to carry out and perform as operational agency and administrative agency of the committee. The Indonesian Communication Regulation Body is independent from the influence of others party's power or interests (Section 7) the regulation for administration is issued

in the form ministerial regulations (Section 8) and The Indonesian Communication Regulation Body shall report its tasks performance to the Ministry every 3 months or if necessarily needed (Section 9).

Chapter 8

Laws on the Promotion and Preservation of the Quality of Environment

In Chapter 8, the researcher will present the laws of Indonesia relating to the promotion and preservation of the quality of environment, the issues of which will be divided into 3 parts: Preliminary information, Essence of the Laws, and roles of the relevant agencies.

(1) Preliminary information

Although Indonesia is an island country consisting of more than 18,000 islands, surveys have found that since B.E. 2548, more than 60 per cent of the country's population lives in the cities, which account for less than 7 per cent of its land. This population density leads to overcrowded condition, causing of pollution and waste, as well as environmental damage.

The survey of the Ministry of Environment in B.E. 2550 found that Indonesia is facing the issues of both pollution and environmental damage. It was found that 25 of

its important rivers had been contaminated and unsuitable for consumption, air quality was poor due to industrial activities and transportation, and the amount of waste had increased by 20 per cent between B.E. 2548 and B.E. 2549, indicating the need for systematic waste management.

In terms of forest and natural resources, it was shown that deforestation, forest mowing, wildfire, conversion of land use and mining had resulted in a rapid decline of forest area of the country since B.E. 2543, especially mangrove forest of *Rhizophora*, which had reduced to 40 per cent. Corals had been destroyed by more than 90 percent as a result of improper fishing methods, water pollution, coral mining, and greenhouse effect.[339]

There are several prominent environmental laws of Indonesia, for instances: the Law of the Republic Indonesia on Environmental Protection and Management (Law No. 32 of 2009), which covers the protection and management of the environment in all dimensions; the Law of the Republic Indonesia on Forestry (Law No. 41 of 1999); the Law of the Republic Indonesia on Waste Management (Law No. 18 of 2008); and the Law of the Republic Indonesia on Conservation of Natural Resources and Ecosystems (Law No. 5 of 1990).

(2) Essence of the Laws

2.1 The Law of the Republic Indonesia on Environmental Protection and Management (Law No. 32 of 2009)

The Law of the Republic Indonesia on Environmental Protection and Management (Law No. 32 of 2009) comprises 17 chapters and 127 Sections, which can be summarized as follows;

2.1.1 Plans on Environmental Protection and Management

The Law of the Republic Indonesia on Environmental Protection and Management prescribes that both the government and local governments have the duty to lay down policies, standards and operation procedures for environmental conservation and protection (Section 63), as well as the duty to formulate environmental protection and management plans (Section 1), which are classified into 3 different levels, being:

[339]The Indonesian Center for Environmental Law, Environmental Compliance and Enforcement in Indonesia Rapid Assessment, (Jakarta: the Indonesian Center for Environmental Law , 2008), p. 6-7.

1) National plans under the responsibility of the Minister;

2) Provincial plans under the responsibility of provincial governors; and

3) Regional plans under the responsibility of municipal governors, which must be formulated within the framework of the national plans, archipelago studies, and ecoregion studies (Section 9).

In formulating the environmental protection and management plans, biodiversity, characteristics of the ecosystem, population distribution, allocation of natural resources, local knowledge, demands of the people, and climate changes must be taken into account.

An environmental protection and management plan consists of the core contents in relation to the utilization and conservation of natural resources, environmental preservation and maintenance, regulation of and control over natural resources utilization, and adaptation to the global warming.

An environmental protection and management plan has the following significances:

1) to found the basis of the formulation of long-term and short-term national development plans (Section 10);

2) to determine the guidance on the utilization of natural resources and their origins, taking into account environmental sustainability, quality of life of the people, safety, and public benefits (Section 12).

2.1.2 Strategic Environmental Assessment (SEA)

The Law of the Republic Indonesia on Environmental Protection and Management also prescribes that the government and local governments have the duty to conduct strategic environmental assessment at their levels (Section 15), which is a systematic assessment and analysis of the capacity and limitation of the environment, in order to integrate and use the principle of sustainable development as a basis for environmental policies, plans, working plans, as well as national development (Section 1). This strategic environmental assessment is also a tool for the prevention of pollution and environmental damage (Section 14).

2.1.3 Environmental Impact Assessment[340]

[340] *Analisis Mengenai Dampak Lingkungan (AMDAL),* in Indonesian language.

The law also requires environmental impact assessment (Section 22). An environmental impact assessment means a study on the positive and negative impact which an implementation of business project or activity may have on the environment, including in terms of natural resources, economic, as well as social aspects (Section 1), so as to minimize the potential negative impact (Section 14).

Report on the environmental impact assessment will also be used as a guideline in deciding whether a business project or activity should be allowed to be carried out (Section 24). The law prescribes that the Minister, provincial governors, municipal governors and mayors must use the result of the environmental impact assessment as a factor to decide (Section 31).

In considering whether a business project or activity requires an environmental impact assessment, the following criterion shall be used:

1) The number of the people who will be affected by such business plan or activity;

2) The size and geographical features of the area which will be affected;

3) The severity and length of the impact (Section 23).

The law prescribes that it is the duty of both the government and local governments to assist businesses or a group of entrepreneurs who lack financial ability to conduct environmental impact analysis and assessment (Section 32).

The law requires that a person who will be an environmental impact assessor must receive a certificate of competence and must have the following qualifications:

1) The knowledge and ability to access environmental impact;

2) The ability to analyze and assess the impact of advance decision-making; and

3) The ability to formulate environmental management and monitoring plan (Section 28).

Where a business or an activity is not under any rules which require an environmental impact assessment, the law also requires that the entrepreneur conducts environmental management and monitoring (UKL-UPL)[341], whereby each municipality shall stipulate the kinds of business which require environmental

[341] UKL-UPL stands for Upaya Pengelolaan Lingkungan Hidup dan Upaya Pemantanuan Lingkungan Hidup, which can be translated into English as Environmental Management Efforts and Environmental Monitoring Efforts.

management and environment control attempt in its subordinate law (Section 34), including small and medium sized business (Section 35).

Once AMDAL or UKL- UPL has been carried out, an application for environmental license shall be submitted, the decision of which will be made according to the result of AMDAL or UKL-UPL (Section 36). In the case where the result of AMDAL or UKL-UPL does not comply with the environmental protection principle, such application shall be rejected. In the case where the entrepreneur or activity holder fails to comply with the rules on environmental protection or the conditions specified in the environmental license, the license shall be revoked, which will result in the business or activity losing its legality to operate (Section 37 and Section 40). In addition, a license holder shall also contribute money to the guarantee funds for the restoration of nature and environment (Section 55).

2.1.4 Pollution and Environmental Damage Control

Pollution and environmental damage control is to be carried out by using preventative, corrective and environmental restorative measures, which is the duty of both the government and local governments, business organizations and relevant agencies (Section 13). Pollution and environmental damage control can be achieved by reviewing existing environmental policies, setting the standards for measuring damage on the environment and quality of the environment, studying environmental conditions, assessing environmental impact, monitoring and result assessment, requiring a license for a business operation which impacts the environment, providing economic measures so as to create an incentive for economic preservation, and assessing environmental risks (Section 14).

2.1.5 Toxic and Hazardous Waste Management

Any person who operates on toxic or hazardous waste, be it, for instances, importing, selling, storing, utilizing, or transporting thereof, has the duty under the law to manage toxic or hazardous waste. In the case where the person who produces waste is unable to manage toxic or hazardous waste, such person may entrust another person with the task. In addition, the management of this type of waste requires permission from relevant agency, which will specify the conditions with which the person managing such waste must comply (Section 59).

In case of dumping, the law prohibits any person from toxic or hazardous waste dumping into the environment, unless permission is granted (Section 60). Such dumping must be carried out with permission from relevant agency and shall be done only in the specified areas (Section 61). Dumping, in this case, means to dump, place, or allow entrance into the environment (Section 1 paragraph 24).

2.1.6 Measures Promoting Environmental Conservation

In order to provide an incentive to promote and conserve the environment, the law prescribes that the government and local governments have the duty to introduce economic measures for supporting and promoting environmental conservation. These measures will consist of economic actions, environmental budget allocation, and incentives (Section 42).

Measures for supporting and promoting environmental conservation are, for instances, requesting the government sector to procure from environmentally friendly businesses or services where there is a need for procurement, enabling the development of environmental insurance commercial business in pollution or waste disposal, providing tax advantages or administrative fee advantages, as well as providing subsidy for environmental promotion and conservation (Section 43).

2.1.7 Polluter Pay Principle

This law is based on the principle that the polluter must be the payer, thus it requires that a polluter or environmental damager pays for the damage caused and takes preventative measures for pollution emission or environment damage, for instances, by providing information to the people, isolating the source of pollution from other environment, and other actions such as advancing of science and technology to be used for pollution management (Section 53). Moreover, such person also has the duty to restore the environment by environment cleaning, disposing of the source of pollution, or paying of compensation as well as costs of evacuation, for examples (Section 54).

2.1.8 Recognition of the Right to the Environment and Local Communities' Right

The law recognizes the right to live in a good environmental condition as a human right where everyone is entitled to receive environmental information and knowledge, to participate in environmental management, and to oppose a project which will create environmental impact (Section 65). The law also prohibits a claim against environmentalists' activities (Section 66) in order to prevent harassment of environmentalists by influential individuals.

At the same time, the law prohibits certain conducts so that people refrain from violating, for instances, causing of environmental damage, littering, waste importation, open waste burning, giving of false information or refusing to give necessary information regarding the environment (Section 69).

Moreover, local communities may play a part in environmental monitoring. Participation by local communities has the objective of promoting and supporting the

strength of local communities, creating environmental cooperation and community development both in terms of culture and local knowledge in conserving the environment (Section 70).

2. 1. 9 Measures against Violation of or Non- compliance with the Provisions of the Law

A person who violates or fails to comply with the law may be subject to administrative measures which can be an issuance of warning letter, a notice requiring the person to act or ceases to act in a way which causes environmental damage or pollution, temporary suspension of environmental license, or revocation thereof (Section 76) . Nonetheless, such administrative measures do not release the entrepreneur or project holder from his or her criminal or civil liability (Section 78). Parties can seek mediation in an environmental case, but where they fail to reach an agreement, the case will be proceeded further to the court (Section 84).

2.1.10 Class Action

In the case where there is more than one claimant, all claimants may collectively appoint a representative to bring a legal action on behalf of them (Section 91), or assign an environmental organization to so do. Nonetheless, the power of legal action of an environmental organization is limited to the power to request a notice requiring the defendant to act or cease to act. It cannot make a compensation claim (Section 92).

2.2 The Law of the Republic Indonesia on Forestry (Law No. 41 of 1999)

The core contents of the Law of the Republic Indonesia on Forestry (Law No. 41 of 1999) comprise forest management provisions, replacing the old law which had been in force since B.E. 2503. The old law lacked clarity on who has the authority over forest management, as well as on the forest management procedures. With the Law of the Republic Indonesia on Agriculture, B.E. 2503 which gave the authority over forest management to the government alone, local communities and indigenous tribes were unable to help and participate in the management of the forest.

The Law of the Republic Indonesia on Forestry (Law No. 41 of 1999) prescribes that the State has the authority over forestry resources (Section 4) and recognizes the right of traditional local communities to inhibit in and benefit from the forest in accordance with their traditions. It also prescribes that business which affects the environment must conduct environmental impact assessment for the decision whether to grant a license.

Nonetheless, this law does not solve the problem of proving the right of those who live in the forest areas. It also prescribes too many procedures, and does not

provide sufficient clarity which makes it difficult to comply with. As a result, Indonesia continues to be faced with illegal logging. Additionally, in practice Indonesia still has the problems relating to the lack of knowledge and understanding of government officials, the lack of technology and budgetary resources, the lack of certainty of the government's policies, and the overlaps of authorities between regulatory agencies.[342]

2.3 The Law of the Republic Indonesia on Prevention and Eradication of Deforestation (Law No. 18 of 2013)

Deforestation is a significant in Indonesia which still continues to aggravate. Indonesian government has been trying to end this problem. Hence, in B.E. 2556 Indonesian government passed the Law of the Republic Indonesia on Prevention and Eradication of Deforestation (Law No. 18 of 2013). This law comprises 114 Sections, which are divided into 12 chapters, the core contents of which are the prevention and eradication of deforestation based on the principles of the rule of law, sustainable development, state's responsibility, public participation, transparency and checks, and cooperation (Section 2).

2.3.1 Objectives of the Law

Apart from bringing those who break the law to face legal punishment, the Law of the Republic Indonesia on Prevention and Eradication of Deforestation also has the objective of preserving natural resources, ecosystem and environment, and enabling the management as well as the maximization of forest products utility for the benefits of the broader society (Section 3).

2.3.2 Prevention of Deforestation

The law prescribes that the government and local governments have the duty to prevent deforestation (Section 5). The government must lay down policies for the prevention and eradication of deforestation, and provide incentives for forest conservation and sustainable use of the forest (Section 8).

The law also prescribes certain prohibitions in order to prevent and eradicate deforestation, for instances, prohibition on deforestation in the forest area without permission or against the rules or conditions prescribed by law, prohibition on transportation of instruments used for logging or wood processing, as well as other

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[342] Vince Deschamps and Paul Hartma, Trends in forest ownership, forest resources tenure and institutional arrangements: are they contributing to better forest management and poverty reduction ?: Case studies from Indonesia, (Rome: FAO, 2006), p. 230.

instruments which can be suspected of being used for logging, prohibition on transportation of illegal logs, prohibition on trade exchange or holding of wooden products as a deposit which are known to come from illegal logging (Section 12). The law also prohibits any person from ordering, providing for, or assisting in illegal logging activities or illegal utilization of the forest, as well as providing subsidy for illegal logging activities (Section 19).

For efficient arrest of perpetrators of illegal logging, the law also illegalizes any obstruction or concealment by any person with a view to stop an arrest (Section 20), prohibits destruction of tools or instruments used for deforestation (Section 25), and prohibits any person from destroying, relocating, or taking away any sign which indicates the forest area (Section 26).

2.3.3 Local Communities' Participation

The law prescribes that local communities have the duty to protect and conserve the forest, and to manage the forest in accordance with the rules and conditions prescribed by law (Section 59). Local communities also have the duty to inform officials when they are aware of deforestation (Section 60).

The law also recognized the right of the people and local communities to have good quality of life in a good quality environment, as well as the right to utilize the forest. In this case, the law recognizes the right of the people to ask for information regarding deforestation (Section 58). Participation by the local communities may be done in many different ways, for examples, by creating a deforestation prevention and eradication network, raising awareness of forest conservation, providing knowledge and information regarding the impact of deforestation, or participating in the law enforcement, as well as other activities which are held for the purposes of preventing and eradicating deforestation (Section 61).

2.3.4 Witness Protection

As deforestation is often carried out by big organizations, the law provides protection for witness, petitioner and information provider. This protection comes in the forms of physical as well as property protection for the person and his or her family (Section 76). In addition to such protection, witness, petitioner and information provider will also receive protection by the information regarding the trial being given to them, or the information of when the suspect is released (Section 77). The level of protection will depend on the risks such witness, petitioner or information provider may face, which will be assessed by a medical team or a psychologist, taking into account the criminal record of the perpetrator (Section 80).

2.4 The Law of the Republic Indonesia on Waste Management (Law No. 18 of 2008)

Due to the increase in population, the amount of waste, especially containers and hazardous waste, has grown. It is also caused by waste which is difficult to decompose naturally, and by incorrect waste disposal. Consequently, the increasing amount of waste leads to pollution and public health problems, which are national issues.

As a result, Indonesia passed the Law of the Republic Indonesia on Waste Management (Law No. 18 of 2008) in order to enforce waste management. In the past, the country did not have a special law on waste management. The law operates on the principles of environmental management prescribed in the Law of the Republic Indonesia on Environmental Protection and Management (Law No. 32 of 2009). It has the objectives of building new attitudes towards waste management, viewing waste as a type of resources which can be reused and bring about economic benefits as a source of energy, fertilizer, or materials used in an industry, for examples. These objectives provide tools for a change of people's attitudes towards waste, and serve to change the norms of people's behaviors in the society.

The law defines waste management as a systematic process of waste reduction and disposal, which constitutes comprehensive and continuous waste reduction and management, as it can be seen that the definition also includes waste reduction (Section 1 and Section 19). This law applies to normal solid waste, waste from non-residential places, and special waste. In this case, normal solid waste means household waste except feces and special waste, while waste from non-residential places means place from the industrial areas, official places, hotels or other non-residential places. Special waste includes toxic and hazardous waste, waste produced by building demolition, and waste which cannot be decomposed by the existing technology (Section 2).

2.4.1 Principles and Objectives

Waste management under this law is set to be in accordance with the principles of responsibility, sustainability, maximization of economic benefits, participation, fairness, and safety (Section 3). The objectives of waste management are to improve the quality of life and environment, and to make use of waste (Section 4). Environmentally friendly waste management system must also be used in waste management, and waste management must also be in accordance with the provisions of this law (Section 5).

2.4.2 Powers and Duties of the Government

The government has the duty to manage waste and allocate budgetary resources for waste management as a public service under the Constitution (Section 24). The duty of the government to manage waste is to raise awareness within local communities in relation to hygienic waste management, to conduct research and technological development for waste reduction, to support waste utilization, as well as to promote technological development by local communities, agencies and business sector (Section 6).

The government has the power to lay down policies, strategies, standards, procedures and conditions for waste management, and to promote and develop cooperation between regions, shareholders and network for waste management, as well as to regulate and advise local governments on waste management (Section 7). Such policies must specify the amount of waste to be reduced in a specific period of time, promote and support development of environmentally friendly technological, require labeling of products and containers which are environmentally friendly, and raise awareness on waste reuse and recycling (Section 20).

In practice, the agencies which play the biggest role in waste management are municipalities, since they are both the policy makers and policy implementers of such regions. The municipalities have the power and duty to manage waste and determine the area to be used for waste disposal and landfill. The municipalities must also review the landfill every 6 months for the period of 20 years to prevent negative impact on the environment (Section 9).

2.4.3 Rights, Duties and Responsibilities

As for the people, apart from recognizing the right to receive services of correct and environmentally friendly waste management, the law also recognizes the right of the people to participate in decision-making and waste management, especially in the determination of the area to be used as a permanent landfill. The government must provide accurate and complete information to the people, give advice on waste management and waste sorting, and must provide compensation to those living in the neighborhood who are affected by the landfill (Section 11).

The law also prescribes that the people has the duty to correctly manage waste and in an environmentally friendly manner, and to reduce the cause of waste (Section 12). The law also requires residential places, business locations, industrial areas, official places, and other places of public service providers, such as hospitals, to adopt waste sorting (Section 13). Producers must display a label related to waste

reduction and waste management on their products or containers (Section 14), which will be used to store products which are difficult to decompose naturally (Section 15).

2.4.4 Waste Management

Indonesian waste management system can be divided into:

1) waste reduction, including reduction of the cause of waste, waste reuse, and waste recycling (Section 20), whereby the government has the duty to lay down measures to promote waste reduction and discourage activities which will increase the amount of waste (Section 21);

2) waste management, including waste sorting according to its types such as wet waste and dry waste, collection, transportation, temporary storage, transformation of processing of waste such as by melting and improving the quality of scrap iron for reusing purposes or by transforming wet waste into fertilizer (Section 22).

2.4.5 Remedies

Remedies available for the people living in the neighborhood of and who are affected by the landfill are resettlement, restoration of the previous environmental condition, provision of medical costs, or provision of compensation (Section 25). In addition, the law also gives those who are affected the right to bring a class action (Section 36).

2.4.6 Cooperation

For efficient and integrative waste management, the law allows local governments to cooperate among themselves and with the municipalities in the form of partnership, and may also cooperate with business sector in waste management (Section 26 and Section 27). In addition, local communities may also play a part in waste management by participating in the stipulation of waste management policies or by giving advice to the government (Section 28).

2.4.7 Prohibitions

In order to reduce the burden of the country in waste management, the law prohibits importation of waste into the country, non-segregation between normal, toxic and hazardous waste, littering, and incorrect waste burning (Section 29). In case of violation or non-compliance, the municipality has the power to impose administrative sanction on those with the duty of waste management by demanding correction on waste management, imposing monetary fines, or revoking their licenses (Section 32).

2.5 The Law of the Republic Indonesia on the Sea (Law No. 32 of 2014)

The Law of the Republic Indonesia on the Sea (Law No. 32 of 2014) is an important piece of legislation in relation to water resources conservation in Indonesia. It comprises 74 sections, which are divided into 13 chapters. The reason for the promulgation of such law is that, as Indonesia is an island country, its seas territory is vital in terms of strategy, national security, political connection, culture and society of its people, as well as in terms of resources (Preamble of the Law).

2.5.1 Objectives and Scope

This law has the objective of sea management in terms of determination of the sea territory, sea management and development, protection of maritime national security, and maritime safety (Section 4). Its scope of application extends over Indonesia's territorial sea (Section 6), which includes inland waters, archipelagic waters, territorial sea, and Indonesian Exclusive Economic Zone (EEZ) (Section 7). In determining its sovereign territory, Indonesia will comply with the conditions and rules of the United Nations Convention on the Law of the Sea, B.E. 2525 and other relevant international laws (Section 5).

2.5.2 Utilization of Maritime Resources

The law prescribes that the government has the duty to develop maritime resources as well as maritime human resources. The law also requires maritime business activities to be carried out based on the principle of sustainable development. These activities are, for instances, fishery (Section 17), maritime tourism (Section 28), maritime shipping (Section 29), and construction of infrastructure offshore (Section 32).

2.5.3 Maritime Shipping

Since Indonesia is an island country, water transportation is vital. Thus, the law especially focuses on port system, thereby requiring that all ports must meet the international standards, with no sign of monopoly, and must be equipped with public utilities to prevent pollution emission (Section 29).

2.5.4 Sea Management

The law requires that sea management is carried out in a manner which conserves maritime environment and respects local wisdom. Sea management, in this case, means that where local people in a sea area already have their own local wisdom or practice regarding maritime resources management, when the government steps in for sea management in such area, their ways of life regarding sea management must be taken into account (Section 42).

2.5.5 Private Sector's Participation

The law also recognizes the right of private sector to participate, and allows groups of people, professional organizations, business organizations, and local communities to participate in sea management, whether at the policy-making level, policy-implementing level, performance assessment level, or regulatory and monitoring level (Section 70). In the management of the sea, a nautical chart shall be prepared and the sea area shall be divided into different zones for the sake of management (Section 44).

2.5.6 Duties of the Government

Indonesian government has the duty to conserve, protect and manage pollution and damages caused by maritime pollution and maritime disaster relief (Section 5). In this case, the government must lay down policies for maritime conservation as well as prevention of maritime environmental impact. Such policies shall cover all relevant agencies and all areas of the country interactively (Section 51). Indonesia uses the precautionary principle and the polluter pays principle, which means that the polluters must take responsibility for the damages to the environment as a result of their actions (Section 52).

The government has the duty to manage possible maritime disaster caused by (1) natural phenomenon, such as earthquake, privacy, hurricane, attack by sea animals, tsunami; (2) maritime pollution such as contamination by fuels or heavy metals; or (3) greenhouse effect, which includes the rise of sea level and temperature, El Nino, or La Nina (Section 53).

The government must lay down policies for the control of maritime pollution impact and maritime disaster by providing protection system, early warning system, crisis management plan in cases of oil spills at sea, maritime ecosystem management, and control of the impact of construction offshore (Section 54). Both the government and local governments have the duty to cooperate in the management of protection system and the control of maritime environmental pollution and damages, and to protect and conserve the maritime environment (Section 55 and Section 56).

2.6 The Law of the Republic Indonesia on Conservation of Natural Resources and Ecosystems (Law No. 5 of 1990)

Natural resources cannot be reproduced in place of those destroyed in a short period but takes quite a lot of time. Natural resources play essential roles

in human lives. For these reasons, the conservation of natural resources is necessary, especially for the benefits of the next generations.

Therefore, the Law of the Republic Indonesia on Conservation of Natural Resources and Ecosystems (Law No. 5 of 1990) imposes severe punishment for violation of the law or destruction of natural resources, believing that the measure may be the most effective way to prevent destruction of natural resources (Preamble of the Law). The law not only prescribes the powers and duties of the government and local governments, but also allows participation by the people but under the oversight of the government (Section 37). Such provisions reflect the political idea at the time where the government is the main authority of the country when it comes to its administration.

2.6.1 Objectives

The principles of this law cover the conservation of plant and animal species which are natural resources, and the protection of the ecosystem. Its objectives are to support scientific and technological development and to control the utilization of natural resources' origins for the sake of sustainability, whereby the conservation of natural resources and ecosystem shall be based upon the balance between preservation and utilization in order to maximize the benefits of the people and local areas (Section 2 and Section 3). It is prescribed that the duty to conserve natural resources and ecosystem belongs to both the government and local governments (Section 4).

2.6.2 Conservation of Natural Resources and Ecosystem

Conservation of natural resources and ecosystem may be done through various activities, for instances, through the protection of life- support system, the conservation of plant and animal species and the ecosystem, sustainable utilization of biological resources and the ecosystem. The law restricts the exercise of ownership of a land owner. Even where the owner has the right over the land or groundwater beneath its surface, the government still has the right to control the utilization and management of that land and its groundwater (Section 9) for the purpose of natural resources conservation.

The conservation of plant and animal species can be done both within and outside the reserve areas. Conservation within the reserve areas must strike the balance between the number of plant and animal species living naturally in such habitats, while conservation outside the reserve areas means to preserve and reproduce plants and animal species in order to avoid extinction (Section 13).

The law also categorizes reserve areas into 2 different types, being nature conservation areas and wildlife sanctuary areas (Section 14), the area within which are divided into 3 zones: conservation and preservation zone, utilization zone, and other zone (Section 32). The law requires that any natural resources conservation and preservation activities in such areas shall be carried out in accordance with the details set out in Ministerial Regulation.

In order to conserve plant and animal species, the law prohibits any person from collecting, possessing, destroying, moving, trading, or exchanging any protected plants or animals, whether dead or alive, including exporting of such plants or animals. Nonetheless, there can be exception to such prohibitions in order to save such plants or animals, or for research or scientific purposes. In case of cooperation with foreign agency, such exception must have the characteristics of mutual benefits, being that Indonesian organization or agency must also be allowed to conduct research in the country or there must be an exchange of plant or animal species (Section 22 and Section 23).

The law also lays down an important principle that in utilizing natural resources, the characteristics of the conservation areas must be preserved (Section 27), and regard must be had to sustainability and the ability to reproduce and preserve those species as well as its biodiversity (Section 28).

2.7 Government Regulation of the Republic Indonesia on Management of Natural Areas and Natural Conservation Areas (Government Regulation No. 28 of 2011)

This law is a subordinate law issued by virtue of the Law of the Republic Indonesia on Conservation of Natural Resources and Ecosystems (Law No. 5 of 1990) to determine the details in relation to the procedures for the conservation and preservation of natural resources and the environment. The law comprises 53 Sections, which are divided into 10 chapters, the main contents of which are the management of natural areas.

2.7.1 Types of Natural Areas

The law categorizes natural areas into 2 types, being reserve areas and conservation areas (Section 1). A reserve area consists of lands and waters which are reserved for the sake of biodiversity, including plants, animals, and the ecosystem within such area. Reserve areas are also categorized into 2 types: (1) areas reserved

due to the unique plant or animal species or biodiversity within the areas, or in which the ecosystem requires protection and conservation in order to avoid destruction or extinction; or (2) wildlife sanctuary areas, which are areas for the conservation of species and biodiversity of rare and endangered animal species which require protection both in terms of population and habitats.

A conservation area is an area, be it lands or waters, in which animals and plants which should be protected, biological resources and the ecosystem should be sustainably utilized, and which is a nursery ground for aquatic animals. Conservation areas are categorized into 3 types: forest reserves, national parks, and nature tourist parks (Section 4). The Minister has the power to determine such areas (Section 5).

2.7.2 Powers and Duties of the Government

The law prescribes that it is the power and duty of the government and local governments to protect and conserve reserve and conservation areas (Section 12) by planning, implementing, preserving, utilizing, and performance assessing in accordance with such plan (Section 13). In planning the conservation, information regarding the environment, society, culture and economy shall be gathered and collected for this purpose (Section 15). Then, the territory of both reserve and conservation areas shall be determined, as well as buffer zones. In determining such areas, private sector and local communities in those areas must be consulted (Section 17). The plans for the management of reserve and conservation areas must consist of both long-term and short-term plans. A long-term plan is a 10-year plan with a performance assessment being conducted at least every 5 years. A short-term plan is an operation plan under the long-term plan and covers a period of only 1 year (Section 22). A long-term management plan must consist of visions, missions, strategies, current conditions and desired conditions of the area to be proceeded with, determination of areas, determination of sources of budget, determination of the agencies to be responsible, control and assess the results (Section 23).

2.7.3 Protection of Reserve and Conservation Areas

Protection of reserve and conservation areas means to protect, suppress, and deal with natural damages and decrease of animal population caused by human beings, animals, natural phenomenon, infections, weeds, and diseases (Section 24). The reservation of reserve and conservation areas shall include plants and animals management in such areas, wildlife corridor management, so as to allow wild animals to migrate according to their nature through the wildlife corridor (Section 27), restoration of the ecosystem, as well as temporary closure of such areas (Section 25). In this case, the law also allows private corporations to take responsibility in restoring

the ecosystem and the nursery grounds for aquatic animals by applying for a license from the Minister (Section 30).

2.7.4 Utilizations of Reserve and Conservation Areas

In addition to the protection of areas and organisms within the reserve and conservation areas, the law also allows utilizations of both types of areas, without changing the landscapes or the objectives in determining the reserve and conservation areas (Section 32). For reserve areas, the law allows the following utilizations:

1) Scientific research and development;

2) Environmental study and awareness raising;

3) Capture of CO2; and

4) Collection of seeds for reproduction.

Further, the law also allows additional utilizations of these areas apart from the 4 aforementioned activities, depending on the types and characteristics of such lands, being:

1) In wildlife sanctuary areas, the law allows utilization of water, heat energy, wind energy, and nature tourism within such areas (Section 34);

2) In national parks, the law allows utilization of resources similar to that within the wildlife sanctuary areas, and also allow 2 additional utilizations, being utilization of plants and animals, and traditional utilization, which includes collection of forest produces or forest products which are non-wood, traditional cultivation and traditional hunting which does not involve reserved or conserved animals (Section 35);

3) in forest parks, in addition to the 6 types of utilization similar to those within national parks, utilization of the areas for the collection of genetics of biodiversity and artificial insemination of animals and plants are also allowed (Section 36);

4) in nature tourist parks, due to their special characteristics, utilization for the purposes of agriculture, ecotourism, scientific research and development, utilization of seeds for artificial insemination, cultivation of seedlings obtained through natural processes, as well as traditional utilization are allowed (Section 37).

In any case, utilization of reserve and conservation area requires a license from government official (Section 38). A license is valid for 1 year and administrative fee must be paid for such utilization (Section 39).

2.7.5 Local Communities' Participation

In managing natural areas, the law recognizes the right of the surrounding local communities to participate in the management and the State must inform these local communities of their management plans for such areas. Local communities have the right to give advice and offer their opinions on such plans. They also have the right

to monitor the implementation of the plans (Section 50). The law requires that the government, including local governments and municipalities, promote the local communities' participation and their roles in the management of natural areas, for instances, by issuing licenses for the utilization of reserve or conservation areas or by cooperating in their work with the local communities (Section 49).

2.8 Law on Energy (Law No. 30 of 2007)

Indonesia has realized that energy is limited, therefore, it should be used to the maximized benefits. Indonesia has stipulated principles on energy in the Law on Energy (Law No. 30 of 2007). This law is enacted to save energy resources and to find renewable energy.

2.8.1 Forms of Energy

Energy can be in the form of heat, light, mechanics, chemical actions and magnetic field. The law has categorized energy into 3 types: (1) non-renewable energy, which is from non-renewable source such as coal and oil; (2) new energy, which use technology to produce energy; and (3) renewable energy, which is produced from sustainable energy sources, such as heat, wind, solar biomass, water (Section 1).

2.8.2 Concept in Energy Management

Energy management must be based on utility, rationality, fair efficiency, value added improvement, sustainability, people welfare, environment preservation, and energy security. The goal of energy management is to render the country energy independence, to secure domestic energy and to ensure that there are enough energy sources to meet the needs of the country. So that all people to have access to energy, and to provide employment (Section 3).

2.8.3 Energy and Source of Energy Management

The law requires the government to have the power to govern the sources of energy, i.e. the state controls fossil energy sources, geothermal, large dam and nuclear power. These energy sources will be used to maximize the welfare of the people. New energy sources and renewable energy sources will be arranged by the state and used to maximize the welfare of the people (Section 4).

To ensure energy security. The law stipulates the government to have the following functions.

1) Energy Reserve (Section 5)

2) Correct energy crisis and energy emergency situations (Section 6)

3) Promote service providers and sell products supporting the country's energy industry (Section 9).

4) Publish National Energy Policy: it must cover the country's energy needs, priority of energy development, utilization of domestic energy sources and the level of reserved energy need of the country (Section 11). The government must also prepare National Energy Plan, which must be in line with the National Energy Policy (Section 17). Local governments will employ this plan to guide the development of its energy plan (Section 18).

The law also stipulates that the management of energy-related activities requires environmentally-friendly technology and complies with the safety standards required by laws (Section 8).

International cooperation in energy must be in maintaining energy security, to maintain energy in the country, and to develop the economy of the country. If the Indonesian government is going to enter into any international energy agreement that will have a greater financial burden or a broader public impact, the government must get the approval from the Indonesian Parliament first (Section 10).

2.8.4 Energy Pricing

For the pricing of energy. Must be based on fairness. In addition, governments and local governments must provide a subsidy fund for energy-poor populations. The determination of energy prices and the establishment of such subsidies shall be in accordance with the regulations (Section 7).

2.8.5 National Energy Council Committee

National Energy Council Committee has following duties: make National Energy Policy and National Energy Plan, set steps in managing energy crises and emergency situations, and monitor the implementation of energy policy (Section 12). President is the chairman of National Energy Council Committee and Vice President is the vice-chairman. The Minister of Energy is a member *ex officio* (Section 12 (4)). The President, with the advice of the House of Representatives, has the power to appoint another 15 members (Section 13 (2)), of which 7 are from the governmental sector and 8 from others relevant sectors such as academics, NGOs and consumers (Section 12 (5)).

2.8.6 Rights and participation of citizens

The law recognizes the rights and the participation of the people by governing that:

1) Everyone has the right to energy;

2) People, whether individuals or groups, can play a role in the development of energy plans and regional energy plans;

3) People can play a role in energy development for the public (Section 19).

2.8.7 Supply and use of energy

Energy supply can be achieved by increasing the level of energy reserves, increasing of power balance of the country, and the provision of energy conservation and energy resources (Section 20 (1)). The law is focused on the underdeveloped regions, remote areas and the villages. The government or local governments must supply energy to underdeveloped regions, remote areas, and villages, especially renewable energy (Section 20 (1)) from local energy sources (Section 20 (3)).

In using energy, the law requires that energy utilization shall be based on optimizing all energy resources potential, consideration of technological, social, economic, environmental and conservation aspects, and to focus on the energy needs of the people. The law also stipulates that the government must increase the ratio of utilization of renewable energy and new energy in the future (Section 21).

2.8.8 Energy Business Operation by business entities

Energy business entities have a duty to give priority to the needs and opinions of the people in the area, environmental preservation, support and facilitate the research and development of energy, and promotion of education and training in energy sector (Section 24).

2.8.9 Energy Conservation

National energy conservation is a duty of the government, local governments, businesses, and individuals. The government or local governments must provide incentives to and support energy consumers or energy-saving electronics manufacturers who are energy conservationists. Such incentive and support motivation must be in accordance with local government regulations or government rules (Section 25).

2.8.10 Government and local government authority

The authority of the government and local government are as follows.

1) The government has the power to issue statutes regulations, determine policy, energy standards, and procedures;

2) Local governments have the power to regulate local laws, nurturing and supervise the use and exploitation of cross-border or urban energy, and establish a cross-border or city management policy;

3) The district and municipal governments have the power to regulate energy used in the special administrative or municipal area, nurturing and supervise the use and exploitation of energy in the district or city, and define the management policy in the district or city (Section 26).

2.8.11 Research and Development

The law also has provisions on research and development. It governs that governments and local governments must promote research and development in science and energy technology. Thus, the research and development have to be to develop new energy and renewable energy to support the country's energy independence (Section 29). The government and local governments must fund research and development by revenues or budgets of government or local governments and from private sector.

2.9 Government Regulation No. 70 of 2009

To comply with the Energy Act (No. 30 of 2007), the Government Regulation No. 70 of 2009 was issued as a secondary law for implementation.

2.9.1 Duties of government, local governments, entrepreneurs and communities

Government regulations on energy conservation governs that government, local governments, entrepreneurs and communities are responsible for energy conservation. Energy conservation actions must be in line with the National Master Plan for Energy Conservation (RIKEN) (Section 2). The master plan is valid for 5 years and may be reviewed every year (Section 3)

This government regulation stipulates several duties of the government such as formulation of policy, strategy, and energy conservation programs, personnel development in energy conservation, applying technology to energy conservation, support and encourage energy conservation, implementation of energy conservation project, providing technical consultancy to business operators and energy consumers (Section 4). Local government has the same responsibilities as the central government but is responsible for local level (Section 5). There are legal obligations for business operators as well, such as energy conservation to use in doing business, using energy efficient technology, creating a product that will save energy (Section 7). In addition, the government regulation requires community to have a duty to conserve energy, i.e., to cooperate and support the implementation of energy conservation activities (Section 8).

2.9.2 Energy Conservation

Energy Conservation requires the encompassing of all aspects of energy management, including energy supply, energy exploration, energy utilization, and energy resource conservation (Section 9). The essentials are as follows.

1) Conservation in the supply of energy.

In supplying energy to individuals, businesses and enterprises, there is a duty to conserve energy. Implementation of energy conservation encompasses the development of energy conservation plans that require the use of energy-efficient technologies in the operation, selection of structure, facilities, materials and processes that conserve energy either directly or indirectly, and the use of energy efficient systems (Section 10).

2) Energy Exploitation

In exploitation of energy, which includes energy sources, individuals, businesses, and enterprises there is a duty to conduct to conserve energy using energy efficient technologies that meet the standards set by law (Section 11).

3) Power consumption

Users of energy sources and energy users must use energy efficiently and cost-effectively. Energy users or users of energy who use energy in an amount equivalent to energy gained from 6,000 tons or more than 6,000 tons of oil, must conserve energy as follows.

(1) Must have a licensed energy manager;

(2) Develop an energy conservation program which has details, plan, form and how to use energy, deployment of energy conservation equipment, energy conservation measures, number of manufactured goods and services provided;

(3) Regularly in-house monitor the energy conservation by licensed Internal inspector;

(4) Preparation of energy conservation recommendations from internal audits;

(5) Preparation a report on the operation of energy conservation to the Minister, Governor or the local authority (Section 12 and Section 13)

4) Energy Conservation

Minister must determine energy resources conservation policy, which included primary energy resource which has been managed or provided, amount of energy resources that can be used in production and limitation of energy resources which cannot be managed within the given time frame (Section 14).

2.9.3 Standards and label

The law governs that energy-efficient technology must be used with equipment, which use energy and it must also be labeled to present the efficiency of energy used (Section 15 and Section 16).

2.9.4 Support and incentives

Government and local governments must support and give incentive to energy uses and energy-saving equipment manufacturers such as tax privilege for energy-saving equipment, local tax reduction for energy-saving products, import excise privilege in importation of energy-saving equipment, funding with special interest rate for investment to save energy which is in accordance with the determined policy guideline (Section 18 to Section 21).

In the case where energy resource users or energy users do not conserve energy, he or she may be warned in written, publish announcement, fine or reduction of amount of energy to use (Section 22).

2.9.5 Support and monitoring

The law governs that government and local government support and supervise the implementation of energy conservation. Promoting energy conservation consists of providing education and training, technical training, consultation service, dissemination of knowledge through various media and support of research and development in energy conservation technologies.

Supervision of the operation of energy conservation is done by appointment of the energy manager, make plan for energy conservation, compliance is based on a scheduled energy audit and compliance with recommendations on the results of energy audits (Section 28).

To comply with the Government Regulation on energy conservation (Government Regulation No. 70 of 2009) a secondary law has been enacted, namely the Ministry of Energy and Mineral Regulation No. 14 of 2012). This ministerial regulation is the law relating to energy management, which contains provisions related to energy managers.

This ministerial regulation Article 6 that energy user who use more than 6,000 Tons of Oil Equivalent energy per year must establish an energy management team and appoint an energy manager to chair the team. The energy manager must be licensed by law. According to the ministerial regulation, the energy manager has duties as follows:

1) Plan energy conservation covering goals, energy conservation projects and energy audit;

2) Implement the energy conservation plan, prepare energy conservation project, carry out the recommendations from the results of the energy audit, encourage employees to be aware of and motivated to save energy;

3) Monitoring and evaluating the implementation of energy conservation projects.

(3) Roles of relevant agencies

3.1 Ministry of Environment and Forestry

The Ministry of Environment and Forests was established in 2015 by Presidential Decree No. 16 of 2015 on the structure of the Ministry of Environment and Forestry. It was established by the merger of the Ministry of Environment and the Ministry of Forestry. Clause 3 of the Presidential Decree No. 16 of 2015 has not divided the new Ministry into departments, but into committees. This is to retain the old structure of the division of the merged Ministry of Environment, because the Ministry of Environment did not have a structure with division at the department level.[343] The merger has made the Ministry of Environment and Forestry no division at department level.

The Ministry of Environment and Forests is set up by the Presidential Decree No. 16 of 2015. It has the authority to develop policies, coordinating, provide technical guidance, support research, enforce the law in matters relating to forest areas, forest nurture and development, sustainable environment development, preservation of natural resources, natural water resources protection, wood industry control, quality control and limited impact on the environment, control of pollution, the impact of climate change and wildfire, as well as to partner with organizations to instill in the public to reduce violations of environmental laws.

Under the Presidential Decree No. 16 of 2015, the Ministry of Environment and Forestry is administrated so that all positions are responsible directly to the Minister. There are also establishment of various committees and support agencies to implement importance policies. In principle, each of these committees has duties to make and implement policy, as well as set norms in practice and evaluate the outcome of the policy. In addition, expert positions are divided by specialization as well. The Ministry of Environment and Forestry has set up following committees and support agencies.

1) Secretariat General of the Ministry of Environment and Forestry: The duties of the Secretary-General are to coordinate with agencies under the ministry to ensure

[343] Michael Faure and Nicole Niessen, Environmental Law in Development: Lessons from the Indonesian Experience (Cheltenham: Edward Elgar Public Limited, 2006), p. 132.

that ministry's mission is well coordinated. Such coordination are coordination of projects, programs and budget and law enactment.

2) The Directorate General of Forestry and Environmental Planning has the power to formulate policy on the use of natural resources and forests, such as the allocation of benefits to use forest and control the forest use.

3) Directorate General of Natural Resources and Ecosystem Conservation is responsible for the management of national parks and natural parks, control the number of wildlife reserves and hunting grounds, maintaining endangered wildlife and preserving genetic diversity.

4) Directorate General of Watershed Management and Protection Forest Conservation is responsible for preservation of water resources, forest replanting and preservation of soil and water for agriculture.

5) Directorate General of Sustainable Production Forest Management Conservation is responsible for development of sustainable use of forests, such as controlling the number of trees used for production, produce different kind of wood products and marketing.

6) Directorate General of Pollution Control and Environmental Degradation Conservation is responsible for management of disasters caused by environmental degradation, formulate way to prevent and restore the environment.

7) Directorate General of Waste Management, Waste, and Hazardous Toxic Materia Conservation is responsible for waste and hazardous materials management, as well as restoration of areas that have been contaminated.

8) Directorate General of Climate Change Control Conservation is responsible for reducing the impact of global climate change, such as formulation of policy to reduce the use of ozone-depleting substances and forest fire management.

9) Directorate General of Social Forestry and Environmental Partnership Conservation is responsible for dispute on use of forest areas management, encourage community participation in forest management and environmental protection.

10) Directorate General of Law Enforcement for Environment and Forestry Conservation is responsible for formulation of policy on protection and monitoring of environmental law violations, includes receiving complaints and investigating acts that violate environmental law.

11) Inspectorate of Ministry of Environment and Forestry has duty to control implementation within the Ministry, formulate inner rules and regulations such as rules on finance.

12) Extension Agency and Human Resource Development has duty to support on human resource on environment and forest care management.

13) Research Agency, Development and Innovation has duty to research, develop and innovate new innovations relating to environment and forest.

14) Expert Staff of Inter-Institutional Relations at the Central and Regional Governments has duty to.

15) International Expert Staff on Industry and Trade

16) Expert Staff for Energy

17) Expert Staff for Natural Resources Economy, and

18) Expert Staff of Food Field

3.2 Ministry of Energy and Mineral Resources

Energy and minerals are an important part of the Indonesian economy because Indonesia is a country that relies on coal exports for country income. Thus, the policy on energy and minerals is important. The government has issued the President Decree No. 68 of 2015 to empower the Ministry of Energy and Mineral Resources to oversee the energy and mineral, which are plenty.

The Ministry of Energy and Mineral Resources is responsible for supporting the President in the implementation of energy and mineral policies, with the authority to advise on the control of natural resources and minerals, including natural gas, electricity, minerals, coal, new energy, alternative energy. Energy conservation and geology.

According to the administration of the Ministry of Energy and Mineral Resources all positions are responsible directly to the Minister. There are also establishment of various committees and support agencies to implement importance policies. In principle, each of these committees has duties to make and implement policy, as well as set norms in practice and evaluate the outcome of the policy. In addition, expert positions are divided by specialization as well. The Ministry of Energy and Mineral Resources does not set up division at department level but set up following committees and support agencies.

1) Secretariat General of the Ministry of Energy and Mineral Resources. The Secretariat General is responsible for coordination with agencies under the ministry to ensure that ministry's mission is well coordinated. Such coordination are coordination of projects, programs and budget and law enactment.

2) Directorate General of Oil and Gas has duty to control the use, control on engineering, work safety, environment and some types of building construction including tax revenue as prescribed by laws.

3) Directorate General of Electricity has duty to control the use, engineering, work safety and environment.

4) Directorate General of Minerals and Coal has a duty to control engineering use, work safety, environment, including tax revenue as prescribed by laws.

5) Directorate General of New, Renewable Energy, and Energy Conservation has duty to control the use, control on engineering, work safety, environment and some types of building construction such as construction which harvest energy from geothermal energy, biofuel and other new energy, and formulate policy on energy preservation.

6) General Inspect of the Ministry of Energy and Mineral Resources has duty to control the work within the Ministry, prescribes rules within the Ministry such as rules on budget.

7) Geological Agency has duty to do research and geological survey such as volcanoes, level of underground water and nature risk reduction.

8) Research and Development Agency of Energy and Mineral Resources is responsible for research and development on oil, natural gas, electricity, minerals, coal, new and replaced energy, energy conservation and marine geology.

9) Human Resources Development Agency of Energy and Mineral Resources is responsible for organizing human resources development on the knowledge of energy and minerals.

10) Strategic Planning Specialist

11) Expert on Investment and Infrastructure Development

12) Natural Resources Specialist

13) Environmental Specialist and Area Planner Specialist[344]

Chapter 9

Laws on Promoting and Preserving Culture and Way of Life

[344] Kementerian Energi Dan Sumber Daya Mineral Republik Indonesia, "Organizational Structure," Retrieved on 21 June 2018 form https://www.esdmgo.id/en/profile/organizational-structure.

In Chapter 9, the research will present the Indonesian laws on promoting and preserving culture and way of life. The study is divided into three parts: preliminary information; Essence of the laws; and role of the relevant agencies.

(1) Preliminary information

1.1 Overview of the Law on Promotion and Preservation of Culture in Indonesia[345]

The promotion and preservation of culture or protection of Indonesian cultural heritage began in the early 18th century with the initiation of the private collection of antique collectors. Then it got more developed by scientists interested in identifying and examining the discovered antique. This led to establishment of several cultural heritage organizations to facilitate the exploration activities, bookkeeping and documenting of antiquities in the islands. It can be said that the movement to preserve cultural heritage in Indonesia has been greatly influenced by global situation, especially in Europe. In 1882 when the United Kingdom enacted a law governing the protection heritage called "British Ancient Monument Act". Indonesia, which was also the time governed by the Dutch East Indies Government, had established the Archeology Board, named, *"Comisie tot het Opsporen Verzamelen en Bewaen van Oudheidkundige Voorwerpen"*, to govern that cultural heritage preservation also includes buildings and sites. However, the board was not successful because of Mr. J. L. A. Brandes, chairman of the board, a keen researcher who passed away[346] in 1905 caused the board lacked a strong leader to carry out and lacked an enthusiasm and continuity to Succeed. Therefore, in 1910 it had been replaced by Government Archeology agency, called, *"Oudheidkundige Dienst in Netherlandsch - Indie"*

[345] Isnen Fitri, Yahaya Ahmad, and Faizah Ahmad, " Conservation of Tangible Cultural Heritage in Indonesia: A Review Current National Criteria for Assessing Heritage Value," Retrieved on 10 February 2018 from https://www.sciencedirect.com, and Isnen Fitri, Yahaya Ahmad, and Ratna, " Cultural Heritage and Its Legal and Protection in Indonesia since the Dutch East Indies Government Period", Advances in Social Science, Educationa and Humanities Research, 2016: 48-56.

[346] R. Soekmono, "Archaeological Research in Indonesia," Retrieved on 10 February 2018 from https://scholarspace.manoa.hawaii.edu/.

Nonetheless, the protection of cultural heritage at that time was insufficient, due to the need to monitor and issuance of certification. Legal basis is also needed. As a result, in 1931 the Dutch government has promulgated the first law on cultural heritage protection, called *Monumenten Ordonantie Stbl 238/1931 (MO 1931)* [347] for specification to protect the cultural properties. The law defined that there are three types of monuments: 1) movable or immovable property created by human beings, parts of or group of property or remnants of the property, which are you older than 50 or has been in one period of at least 50 years, and which also has been considered significant for the prehistoric and historical period, as well as art; 2) objects which are considered to be of great importance in an anthropological perspective (Subjects studied human evolution); and 3) areas with objects according to 1) and 2). (Article 1 of MO 1931) [348]. Besides, the law also stipulated registration, determination of damages, access to control and violation of the provisions of the law. The protection of cultural heritage at the beginning was only government duty. The community had not been involved.

Later on, when Indonesia gained independence from the Netherlands in 1945, protection of cultural heritage was expressly provided for in the Constitution of the Republic of Indonesia: "State shall advance the national culture of Indonesia". Despite the declaration of independence and provision of the Constitution, the law of the Dutch government concerning the protection of cultural heritage, MO 1931, was still in force. However, the political situation in the post-independence period was uncertain. Cultural heritage protection activities had thus not been developed any further.

Law MO 1931 had been applied for a long time, but there were restrictions on the protection of cultural heritage. Although the government had been trying to issue regulations or resolutions to help support the protection or management of cultural heritage, it was not yet possible to address more complex issues. Thus, problems such as theft, destroy or damage to cultural heritage had continued.

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[347] The term "*Monumenten*" is the same as "Monument" in English which means buildings and sites, reflecting the Gloria of history of nation.

[348] Can be summarized as follow: "first, immovable or movable made by human hand; parts or group of properties or their remains, which are mainly older than 50 years of age, or belong to a period of style of at least 50 years old, and which are considered of significant importance for the prehistory, history or art; second, objects considered of great importance from the point of view of paleoanthropology; the last, sites contained both of objects under point of 1 and 2."

For this reason, the Indonesian government had revoked the law MO 1931 and enacted a new law in 1992, which is the Law on Items of Cultural Property (the Law No. 5 of 1992 on *Benda Cagar Budaya* (Called in short as Law No. 5 of 1992)), which most of its content still resembles those of Law MO 1931. In the following year, the government issued a government regulation on compliance with the law on cultural property: Government Regulation No. 10 of 1993 concerning implementation of Law No. 5 of 1992.

The Law No. 5 of 1992 on Items of Cultural Property[349]

The purpose of the protection of items of cultural property and sites is to conserve and utilize them for the advancement of the national culture of Indonesia (Article 2). The term "Items of Cultural Property" means 1) Artifacts made by man, movable or immovable, individually or in groups or parts thereof or remains thereof, which are at least 50 (fifty) years of age, or represent a specific stylistic period of at least 50 (fifty) years of age, and are considered to possess value of Importance to history, science, and culture. 2) Natural objects which are considered to possess important value for history, science, and culture. The term "site" means a location which contains or is presumed to contain items of cultural property together with the surroundings which require safeguarding (Article 1). The scope of this law covers items of cultural property, items which are presumed to be items of cultural property, valuable items of which the owner is unknown, and sites (Article 3).

The paths for protection in this law are; All items of cultural property are controlled by the State and in case of the items of cultural property found outside the boundaries of the legal territory of the Republic of Indonesia the Government shall carry out for returning the items of cultural property in accordance with International conventions (Article 4). However, this law allows person can own the items of cultural property by taking into consideration their social functions and their possession is not a contradiction with the provisions of this law. The said possession means the items of cultural property cannot be inherited by descent unless the heirs are Indonesian citizens or when there are many items of cultural property and some of them are sufficient owned by the Government (Article 6). If heirs want to transfer his/her title in such items they would only transfer to the Government and the compensation is considered by the provision of the Government regulations (Article 7). In other hand the control of the items of cultural property in this law uses a registered system prescribing each

[349] Ministry of Culture and Tourism, "Compilation of Law and Regulation of the Republic of Indonesia concerning Items of Cultural Property," Retrieved on 10 February 2018 from http://www.mct.id.

ownership, transfer of ownership's right, and removal of items of cultural property must be registered and the provisions regarding the registration shall be stipulated by Government regulations (Article 8). For person discovering or having knowledge of the discovery of items of cultural property this law prescribes such person is obliged to report the aforesaid discovery or in case of the items of cultural property is destroyed or disappeared to the Government having duty to check immediately the said discovered item that it' s the items of cultural property or not. The Government shall return to the discoverer or discoverers, if it is proven that said item is not an item of cultural property and if it is proven that it' s the items of cultural property the Government will determine that it all or part of it belongs to state (Article 10). Searching for items of cultural property is prohibited unless there is permission of the Government by the provision of the Government regulations (Article 12).

In case of the care and protection of items of cultural property the person owning or controlling over items of cultural property is obliged to take care and protect it (Article 13). If person owning or having title does not undertake his or her obligations to take care of and protect that cultural property the Government will give a warning. If he or she does not comply with said warning within 90 days the Government may take over the right to protect such items (Article 14). Transporting items of cultural property from one region to another or out of the territory of the Republic of Indonesia including altering the form and/or the colour or restoring or separating a part of any item of cultural property from the whole or getting involved in any dealing or buying or selling items of cultural property are prohibited without permission from the Government (Article 15). The Government may seize or otherwise order the return to their original place of any items of cultural property which have been taken or otherwise removed without permission (Article 16). Management of items of cultural property and sites shall be the responsibility of the Government and the public, in group or individually, is involved in the said management (Article 18). Said items may be placed in and/or treated in a museum (Article 22). In other hand the items of cultural property can be utilized for religious, social, touristic, educational, scientific, and cultural purposes which not for individual or group of person interest and not contrary to the means of preservation of items of cultural property (Article 19). However, duplication of items of cultural property requires permission from the Government (Article 23). Besides the law has prescribed the penalty for breaking the law such as person intentionally damages or destroys and changes items of cultural property without the permission from the Government shall be sentenced to a maximum of ten years in prison and/or a maximum fine of 100,000,000 IDR (Article 26). In case of person, not complying with

his/her obligation in the provision of this law such as obligation to register items of cultural property, obligation to report the loss or damage to items of cultural property or obligation to report the discovery, shall be sentenced to a maximum of one year in prison and/or a maximum fine of 10,000,000 IDR (Article 28).

Government Regulation No. 10 of 1993 concerning Implementation of Law No. 5 of 1992[350]

It is a subordinate legislation for prescribe the rules in order to comply with the Law No. 5 of 1992 on Items of Cultural Property. The essence of this law, 47 Articles divided into 10 chapter, is prescribe the rules and methods to comply with the Law No. 5 of 1992 such as a registration of the items of cultural property, person owning the items of cultural property, the compensation in case of the return of the items of cultural property, Transferring the title in the items of cultural property including the reporting method of the lost or destroyed items of cultural property.

Nevertheless, Law No. 5/1992 lacks clarity on the criteria for determining a cultural heritage, especially the mandate that object to be considered as cultural heritage must be at least 50 years old, must have value of Indonesian history, science and culture. This had limited inclusion of various cultural heritage. The law did not focus on community involvement in the preservation of cultural heritage as well. Even though Government Regulation No. 10 of 1993 concerning implementation of Law No. 5 of 1992 accepts the principle of community participation, it narrowed the scope to merely information sharing and consultation. In addition, the protection of cultural heritage under the law had not taken into account the multidisciplinary approach but the role of archaeologist.

For this reason, 18 years later, in October 2010, the Indonesian government enacted a new law, replacing Law No. 5 of 1992: Law on Cultural Conservation (the Law No. 11 of 2010 on *Cagar Budaya* called in short as: Law No. 11/2010), aiming to be the basic law to protect and manage Indonesia's cultural heritage in all aspects. In addition, the decentralization of protection has been provided for by the establishment of a system of registration of cultural heritage. There are 3 levels: 1) national level; 2) provincial level; and 3) a municipal level, as well as a multidisciplinary approach in heritage conservation work.

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[350] *Ibid.*

In summary, the law concerning the promotion and preservation of Indonesian culture and way of life has only one, namely the Law No. 11 of 2010 on Cultural Conservation, mentioning the essence of this law in the topic (2) Essences of Laws.

1.2 External influences on promoting and preserving culture in Indonesia

In addition to domestic law, promotion and maintenance of culture in Indonesia has also been heavily influenced by international forums, the United Nations Educational, Scientific and Cultural Organization (UNESCO). Indonesia has become a party of various treaties on culture under the framework of several forums as follows.

(1) Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention. The Hague, 14 May 1954 (became a party on 10th January A.D. 1967)

(2) Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict. The Hague, 14 May 1954 (became a party on 26th July A.D. 1967)

(3) Convention concerning the Protection of the World Cultural and Natural Heritage. Paris, 16 November 1972 (became a party on 6th July A.D. 1989)

(4) Convention on Wetlands of International Importance especially as Waterfowl Habitat. *Ramsar*, 2 February 1971 (became a party on 8th April A.D. 1992)

(5) Protocol to amend Articles 6 and 7 of the Convention on Wetlands of International Importance especially as Waterfowl Habitat. Regina, Canada, 28 May 1987 (became a party on 8th April A.D. 1992)

(6) Convention for the Safeguarding of the Intangible Cultural Heritage. Paris, 17 October 2003 (became a party on 15th October A.D. 2007)

(7) Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Paris, 20 October 2005 (became a party on 12th January A.D. 2012)[351]

Indonesia uses Dualism system, international law must go through the implement process, transforming to the internal law process for enforcement, before it becomes effective. Therefore, Indonesia uses enacted laws and administrative measures at the same time in order to comply with the obligation of above-mentioned treaties. Especially, concerning this chapter found out that the content of the Law on Cultural Conservation (Law No. 11 of 2010) is the translation of the content of

[351] UNESCO, "Indonesiaconventions," Retrieved on 7 January 2018 from http://en.unesco.org/indonesiaconventions.

the Convention on the Protection of the World Cultural and Natural Heritage, such as the definitions and types of cultural heritage.

1.3 Protection of local wisdom or community life style

For the local wisdom, including traditional knowledge, cultural expressions and indigenous knowledge, in Indonesia there is no law to protect especially local wisdom or community lifestyle as well as the government has no clear protection measures, no record and conservation.

At present, such local wisdom is protected under the scope of intellectual property law, which is a law aimed at protecting persons who create commercial works. It is not intended to protect the wisdom of a community without commercial character, thus it is not the right law. Moreover, the use of intellectual property laws to protect local wisdom is still limited because of differences in the concept of property and ownership of property, i.e., local wisdom is deemed as the property of the local community, which is holistic. The community commonly use it as a social, political, economic, and cultural ecosystem; and is central to the local community. It cannot be categorized as personal property. Intellectual Property Law which protects commercial property of individuals cannot protect these local wisdoms. There is a need for a new concept of protection of local wisdom that does not allow anyone to claim the wisdom, to produce commercial goods. Hence, academics and civil society in Indonesia had asked government and parliament to enact law on safeguarding local wisdom and indigenous (Indigenous People Bill)[352].

(2) Essences of Laws

From the overview of the law on promotion and preservation of culture and way of life in Indonesia in the previous topic, it is known that the law on protection and preservation of Indonesian culture and way of life in now a day only has one namely, Law No. 11 of 2010 on Cultural Conservation; as summarized below.

Law No. 11 of 2010 on Cultural Conservation[353]

It is enacted to be the basis law to protect and manage cultural conservation on every aspect and to solve the problems of implementation of the Law No. 5 of 1992

[352] Panen Raya Nusantara, "Protection for Indonesia's Traditional Resources," Retrieved on 9 February 2018 from http://panenrayanusantara.com.

[353] UNESCO, "Indonesiaconventions," Retrieved on 7 January 2018 from http://en.unesco.org/indonesiaconventions.

concerning Items of Cultural Property, which has limited scope of application, including to set progressing guidelines of management of cultural heritage with greater involvement of the community and the use of multidisciplinary skills in the preservation of cultural heritage, as well as to comply with international standards, especially Convention concerning the Protection of the World Cultural and Natural Heritage. The law has 120 articles and is divided into 13 chapters and essence of the law can be summarized as follows.

(1) Purpose and scope

This law on cultural conservation preservation aims to preserving the national heritage and mankind; improving the nation dignity through the cultural conservation; strengthening the national identity, improving the people's wafer and promoting the nation's cultural heritage to the international community (Article 3), based on the principles of: Pancasila (It is Indonesia philosophy composed of 5 principles: belief in the One and Only God, humanity, a unified Indonesia, democracy and justice); unity in diversity; archipelago; justice; order and legal certainty; expediency; sustainability; participation; and transparency and accountability (Article 2). The scope of implementation covers the protection, development and utilization of cultural conservation on land and in water (Article 4). It also defines some definitions (Article 1), such as:

- " Cultural conservation" means cultural heritage in form of object, building, structure, site and cultural conservation on land and water that their existence should be preserved due to their value for the history, science, education , religion, and culture through the stipulation process.

- "Cultural conservation object" means the natural object or man made object, movable or immovable, individually or in group, including parts or remnants thereof, having close relation to the culture and history of human being development.

- "Cultural conservation building" means the built structure made of the natural object or human made object to fulfil the need for walled, or non-walled and roof space.

- "Cultural conservation structure" means the built arrangement of natural or man made object to fulfil the activity space integrated to the nature, facility, and infrastructure to accommodate the human being's needs.

- " Cultural conservation site" means the location on land or water containing the cultural conservation object, -building or -structure as the result of human being activity or evidence of events in the previous era.

- “Cultural conservation area” means geographical space unit having two cultural conservation sites or more located adjacent to or showing the typical spatial characteristic.

(2) The law set out criteria for consideration as cultural conservation as follows.

- The object, building, or structure are fulfilling the 4 criteria: 1) at age of 50 years or more; 2) representing of the era, having age at least 50 years, which is described from note of reference that must be considered from characteristic of that object existed in some period of time or not such as the characteristic of language, uses in writing articles or poems, or the characteristic of building such as the Indonesian national bank building, indicating the first Indonesian modern tropical architectural style; 3) having special meaning for history, science, education, religion, or culture; and having cultural value for strengthening of national identity (Article 5).

- The cultural conservation site: containing cultural conservation object, cultural conservation building, or cultural conservation structure; and storing the information on the human being activity in the previous era (Article 9)

- The cultural conservation area: containing 2 cultural conservation sites or more adjacent to each other; in terms of cultural landscape as the result of formation of human being at age of at least 50 years; having a pattern indicating the space function in the previous era at the age of at least 50 years; indicating the human in the previous era utilization of the space; indicating the evidence of formation of cultural landscape, and having buried soil layers containing the evidence of human being activity or fossil deposit (Article 10).

Nevertheless, object, building, structure, location, or geographical space unit that based on the research having special meaning for the community or the Indonesian nation but fails to fulfill the above-mentioned criteria may be proposed as cultural conservation (Article 11).

(3) Ownership and Control

The law governs that individual can have or control the cultural conservation of any kind if the ownership or possession is for social function, fulfill the state’s need, not in conflict with the provisions of this law. Transfer and inheritance are also allowed but, in the case, where there is no heir, the cultural conservation will be returned to the state (Article 12). Nonetheless, there is an exception in the case of cultural conservation area can only be owned or controlled by the State, except those owned on hereditary basis by the indigenous people (Article 13).

Foreigners and also be owner or acquire possession but they must have permanent residence in Indonesia (Article 14).

In the case of cultural conservation at the nation, provincial, or regency/ municipal ranking, transfer needs permission from the Minister, Governor, or Regent/ mayor as the case may be (Article 17). Owner or a person in control of cultural conservation have duty to report to the competent agency on damage, loss, or destruction to the cultural conservation within 30 days from the date of known. If not, the state may take over of the cultural conservation management (Article 19). It is prohibited to destroy or sell by auction, the cultural conservation sequestrated by the enforcer. The enforcer shall protect such cultural conservation (Article 21). A person having or controlling the cultural conservation shall be entitled to the compensation and tax benefits, if already performed his obligation under this law (Article 22).

The cultural conservation of which the ownership is unknown shall be controlled by the state (Article 15). In the case where the state holds ownership of cultural conservation, regardless of how such as receipt from transfer, the state is prohibited to transfer the ownership. It can place the cultural conservation in museum (Article 16 and Article 18). Further, the state has duty to undertake to have cultural conservation outside Indonesia returned (Article 20).

(4) Discovery and search of cultural conservation

The law governs that anyone discovered the object presumed of cultural conservation must report the competent agency within 30 days from the date of discovery to have the agency carry out study on the invention. Failing to report may occur in the state taking over the object (Article 23). If the discovered object is stipulated as cultural conservation, the discoverer is entitled to obtain the compensation. If such cultural conservation is extremely rate species, unique design, and few in number in Indonesia, the state will control it, but if not the discoverer may have the ownership thereof (Article 24). The Government has a duty to carry out the searching of object, building, structure, or location presumed of as cultural conservation. The searching can be made by everyone by digging, diving, or removal on the land or in water but must be done through the research whilst considering the proprietary right and location control (Article 26).

(5) Registration of cultural conservation

The law stipulates that administrative at the local level (regency/ municipal Government) has duty to register cultural conservation. Owner and anyone having control over the cultural conservation have duty to register cultural conservation, accompanied with description and documentation. Oversea registration shall be carry out through representative of Indonesia Government in that country (Article 29).

In addition, the law governs that the Government must provide digital and non-digital register system (Article 30). After registration the Government must pass to the cultural conservation expert team, which will be stipulated by the decree of Minister for national level; decision of Governor for provincial level, and decision of regent/mayor for regency/municipal level to carry out the study whether the registered is cultural conservation. During the study such object will be protected and taken care of as cultural conservation (Article 31). After the study, the law stipulates that the regent/mayor issue the stipulation of cultural conservation status within 30 days after the receipt of recommendation from the cultural conservation expert team stating that the registered is feasible as cultural conservation (Article 33). The result will be passed to the Government through local government (Article 35). After registration, owner is entitled to: cultural conservation status certification; certificate of ownership and compensation (Article 33). Cultural conservation site of cultural conservation area located in 2 regency/ town shall be stipulated as provincial cultural conservation, and if located in 2 or more provincial, it shall be stipulated as the national cultural conservation (Article 34). The Government and regional Government shall record and disseminate the information on cultural conservation by considering security and confidentiality. Government at each level also has duty to manage its registration system under the supervision of the above-level Government (Article 39 and Article 40).

Further, the law determines that rating of cultural conservation is divided into national-, provincial- and regency/municipal ranking based on the recommendation of the cultural conservation expert team (Article 41). Requirements for each ranking also be set out, such as: cultural conservation of national ranking must be materialization of nation unity, reflecting the Indonesian national culture uniqueness and is very rare species, unique design, and few in number (Article 42); cultural conservation of provincial ranking must reflect special creative work in the provincial area (Article 43); cultural conservation of the regency/municipal ranking must be as prioritized to be preserved, representing the distinctive style, or has high threatening level (Article 44). The cultural conservation ranking may be revoked if the cultural conservation is destroyed; loss its original form and shape; lost most part of its elements; or no longer in accordance with the requirements (Article 48).

The cultural conservation already recorded in the National Register can only be removed by the Decree of Minister based on the recommendation of the cultural conservation expert team (Article 50). Removal can only be done if the cultural conservation is: destroyed; lost and could not be found within the period of 6 years (if later found can be re-register), change in form and style and is therefore

lost its authenticity; or is later identified that its status is not cultural conservation. In any case, removal from registration is not removed data or documents from the registration (Article 51).

(6) Preservation of cultural conservation

The law set forth many cultural conservation preservation measures such as protection measures include salvage, protection, area identification, maintenance and restoration and development measures such as research, studies, rehabilitation, adaptation and utilization on principles that cultural conservation preservation must be made based on the feasibility study result that is accountable academically, technically, and administratively; must be carried out or coordinated with preservation expert while considering, preservation ethic, the possibility of returning of early condition, be supported by the documentation before the activity that may render the change of its authenticity (Article 53).

On protection measure, the law governs that anyone can carry out the salvation of cultural conservation owned or controlled in emergency or that forcing the salvation act (Article 57). Salvation must be carried out to prevent the damage due to the human being or natural factors rendering the change of cultural conservation' s authenticity and values or to prevent the removal and transfer of ownership or control of cultural conservation contradictory to the provisions of the law, in emergency and unusual condition (Article 58). Cultural conservation threatened to be damaged, destroyed, or demolished can be removed to other safe place by using safe procedure under coordination with the preservation expert (Article 59). The safeguarding cultural conservation under this law is duty of owner or a person in control thereof (Article 61). The cultural conservation safeguarding can be made by maintenance personnel or special police. Special police are authorized to patrol, examine the letter or document relating to the development and utilization of cultural conservation, receive and prepare report on occurrence of crime relating to the cultural conservation and forward it to the competent agency, including arrest the suspects for delivery to the Police of the Republic of Indonesia (Article 62).

The law allows community to take part in safeguarding (Article 63). Exporting cultural conservation outside the territory of Indonesia can be done only for the interests of research, cultural promotion, and exhibition, with the consent of the Minister (Article 68). Cultural conservation protection shall be made by stipulating its boundaries (zoning) based on study finding. A person in charge thereof is the Minister, or governor, or regent/mayor, as the case may be. It must be made for recreation, education, appreciation, or religious purposes (Article 72). Owner or a person in control

has a duty to maintain the cultural conservation. If such person abandons the cultural conservation, the state will take control (Article 75). Maintenance can be made in various way such as cleaning, preservation and repair. The government may appoint maintenance personnel to carry out the maintenance of cultural conservation (Article 76). Restoration of the damaged cultural conservation building and structure will be made to restore the physical condition by repairing, strengthening, or preserving it while considering authenticity of material, shape, layout, style, technology and try to maintain the original condition as much as possible, as well as the competency of executive in restoration sector. If restoration potentially rendering the negative impact, it shall be preceded with environmental impact analysis. The restoration also needs permission from the Government according to their ranking (Article 77).

Development of cultural conservation shall be carried out by taking into account the utilization, safety, maintenance, authenticity principles, and values attached thereto. The said development can be directed to support the economic development and improve the public welfare. (Article 78) Cultural conservation development plan research is to collect the information and disclose, deepen, and explain the cultural values. This can be done as part of the environmental impact analysis or separately. Further, the Government and Regional Government, or the organizer of research must inform and publicize the research finding to the community. (Article 79) Revitalization of potential cultural conservation site or area shall taken into account the space arrangement, layout, social function, and indigenous cultural landscape based on the study (Article 80). It must also provide the benefits to increase the community's life quality and maintain the local cultural characteristics (Article 82). Cultural conservation building or structure can be adapted to fulfill the current need by remaining original characteristic thereof. Adaptation must be carried out by: maintaining the values attached to the cultural conservation; increase the facility according to the need; make minimal change to the space order; and maintaining the architectural style, original construction, and environmental aesthetic harmony with its surrounding (Article 83). Moreover, in utilizing cultural conservations, the law stipulates that the Government and Regional Government and anyone can utilize the cultural conservation in the interest of religion, social, education, science, technology, culture, and tourism. The Government and Regional Government will facilitate the utilization and promotion thereof in form of utilization permit, support of preservation expert, financial support and training. Such promotion shall be made by strengthening the cultural identity as well as improve the community's life quality and income (Article 85). Utilization that may cause the damage shall be precede with the

study, research, or environmental impact analysis. (Article 86) When the owner or a person in possession is proven of committing damage or causing damage to cultural conservation, the Government and Regional Government may cease the utilization or cancel the permit of cultural conservation utilization. When the cultural conservation is no longer used, it must be returned to its original condition before utilization. A person utilized the cultural conservation shall bear the cost incur therefrom. (Article 88) Utilization by duplication the cultural conservation object recoded as national-, provincial-, or regency/municipal ranking can only be made at consent of the Minister, governor, or regent/mayor according to their ranking. (Article 89)The utilization by duplicating the cultural conservation object owned or controlled by a person of the state shall be carried out according to the provision of the law. (Article 90) No one is allowed to document the cultural conservation, entirely or partly for commercial purposes without the consent of the owner and controller. (Article 92)

(7) Funding

The law determines that funding of cultural conservation is joint responsibility of the Government, Regional Government and community. The funding shall be from: state budget; regional budget; cultural conservation utilization earning and other legitimate and non-binding sources according to the regulation. Government and Regional Government must allocate the budget for protection, development, utilization and compensation of cultural conservation according to the proportional principle. They must also make available the reserve fund to salvage the cultural conservation in the emergency condition and discovery already stipulated as cultural conservation. (Article 98)

(8) Sanctions

The law stipulates wrongdoing and sanctions in various cases such as: transfer of ownership of cultural conservation without permission is subjected to imprisonment between 3 months to 5 years and/or a fine between 400 to 1,500 million IDR (Article 101); intentionally failing to report the discovery of cultural conservation is subjected to imprisonment not exceeding 5 years and/or a fine between not exceeding 500 million IDR (Article 102); intentionally damaging the cultural conservation is subjected to imprisonment between 1 to 15 years and/or a fine between 500 to 5,000 million IDR (Article 105); receiving the stolen cultural conservation is subjected to imprisonment between 3 to 15 years and/or a fine between 1,000 to 10,000 million IDR (Article 106). Moreover, there are various sanctions of imprisonment and fine following wrongdoing: removal (Article 107), or separation (Article 108), or sending out the Indonesian territory (Article 109) of the cultural conservation without permission,

or changing the space function of cultural conservation site without permission (Article 110), or documenting the cultural conservation for commercial purposes without permission from the owner or controller (Article 111), and intentionally utilizing the cultural conservation by duplication (Article 112).

In addition to the above- mentioned laws which govern directly on promotion and protection Indonesian culture and way of life, there is laws on intellectual property. But protection under such law has different purpose, namely focusing on the commercial purpose. Example: Article 29 and Article 30 of the Law No. 28 of 2014 on Copyrights[354] stipulate that batik art is a work protected by copyright law. It is protected from the date it was created until the 50th anniversary of the death of the creator. The Indonesian intellectual property law is already described in another chapter. Therefore, it will not be detailed in this chapter.

(9) Transitory provision

The law prescribed a management for cultural conservation, obtaining a permission before the effect of this law, must improve under conditions prescribing in this law within two years from the date of this law is effective (Article 116). In other hand it also prescribed the period of time to enact subordinate law under this law within one year from the date of this law is effective (Article 117) and in the period of time which there is no such enacted law the Government Regulation No. 10 of 1993 concerning Implementation of Law No. 5 of 1992, enacted under the Law No. 5 of 1992 canceled by this law (Article 119) still effective as long as not contrary to this law (Article 118).

(3) Roles of Relevant Agencies

Ministry of Education and Culture

Protection of cultural heritage in Indonesia is the main mission of the Ministry responsible for culture, which have always been changed. First, it was under the Ministry of Education and Religious Affairs, which later was changed into the Ministry of Culture and Tourism. At present administrative on cultural heritage protection is the responsibility of Cultural Department, under the Ministry of Education and Culture[355]. The Ministry of Education and Culture main mission are: to assist the

[354] WIPO, "Undang-Undang Republik Indonesia Nomor 28 Tahun 2014 tentang Hak Cipia," Retrieved on 10 February 2018 from http://www.wipo.int/wipolex/.

[355] Isnen Fitri, Yahaya Ahmad, and Ratna, *supra note* 345.

president in policy determination; coordinating; providing technical advice; support research; and enforcing the law in matters pertaining to basic education, intermediate education and social and cultural education. It is also the agency in charge of the law on cultural conservation (Law No. 11 of 2010). Under The organization of the National Government Organization in the ministry of education and culture all of offices obey to the minister the Organization and Administration Work, about the position, duties, functions, and organizational structure, in the Ministry of Education and Culture (MoEC). There are boards and supporting agencies to carry out important policies. Mainly, each directorate is responsible for policy making, implementation of policy, create norm in practice, and evaluation of policy achievement. In addition, expert staffs are categorized according to their expertise.[356]

(1) Secretary General, has a task to coordinate with agencies under the Ministry to carry out the mission of the Ministry such as coordinate on projects, plans, budget and draft of legislation;

(2) Directorate General of Teachers and Education Personnel, has the task of organizing the formulation and implementation of policies in the field of coaching teachers and education personnel;

(3) Directorate General of Early Childhood Education and Community Education, has a task to formulate and implement policies in the field of early childhood education and community education, support scholarship funding and basic infrastructure needed for children education;

(4) Directorate General of Primary and Secondary Education, has a task of organizing the formulation and implementation of policies in the field of basic and secondary education, formulation of curriculum, providing funding support and licensing foreign education institution;

(5) Directorate General of Culture, has the task of organizing the formulation and implementation of policies in the field of culture, cinema, art, tradition, history, cultural heritage, the museum, heritage, and culture, including local cultural exchange and proving support to cinema;

(6) Inspectorate Genera, has a task to give technical and administrative services, prepare and supervise internal on performance and financial;

(7) Agency of Language Development and Construction, has a task to do the development, establishment, and protection Indonesia's language and literature;

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[356] MEC, " Ministry of Education and Culture," Retrieved on 25 April 2018 from http://www.mec.id

(8) Agency of Research and Development, has a task to do some research and development in the MOEC such as research on children curriculum;

(9) Special Advisor to the Minister on Innovation and Competitiveness;

(10) Special Advisor to the Minister on Central and Regional Relations;

(11) Special Advisor to the Minister on Character Development; and

(12) Special Advisor to the Minister on Education and Culture Regulations.

Chapter 10

Laws on the Increasing of Bureaucratic System Efficiency

In this Chapter 10, the panel will present the Indonesian law related to the enhancement of bureaucracy. The study is divided into three parts: preliminary, essence of the laws and roles of the relevant agencies.

(1) Preliminary information

Increasing the capacity of the bureaucracy in Indonesia has taken place seriously by bureaucratic reform. This is in three areas: decentralization, government inspection, and the efficiency of the government system. The background and related laws are as follows.

1.1 Decentralization

Before the economic crisis in 1997 (B.E. 2540), the Republic of Indonesia has been trying to decentralization by enacting Law No.5/1974 on Regional Government which mentioned the relationship between the central and regional governments utilising the principle of decentralisation, deconcentration, and co-administration, Republic of Indonesia did not decentralise its power pragmatically. It was, however, only decentralisation and co-administration between the central and inferior governments.[357] After the economic crisis in 1997 (B.E. 2540), the country's reform started in A.D. 1998, the new decentralisation law has been drafted under pressure of civil society and foreign States. The Government has finally enacted Law No. 22 of 1999 on Regional Government and Law No. 25 of 1999 on Fiscal Balance between Central and Regional Government. The new laws had given the preparation for the government and thus came into force in 2001 (B.E. 2544). Nonetheless, the problem arose as soon as the new laws came into force. Those problems were said to derive from the rush of the law drafting process and the short period of preparation to implement them.[358] Therefore 2 new laws, Law No. 32 of 2004 on Regional Government and Law No. 33 of 2004 on Fiscal Balance between the Central and

[357] Rachmad Darmawan, The practices of decentralization in Indonesia and its implication on local competitiveness, (The Netherland: Public Administration- Public Governance study School of Management and Government University of Twente Enschede, 2008).

[358] *Ibid.*

Regional Government, were enacted to replace their predecessors. These law are still in force at present.

1.2 Inspection of Works of Government Sector

By the centralized distribution to the region for the economic development of the countries mentioned above, the economy of Indonesia have grown better. However, at the beginning of the decentralization of Indonesia, there were no rules regarding the monitoring and control of the use of state power in the region. Hence, many problems had occurred as follows.[359]

First, corruption issues: At the beginning of the decentralization process, many local public investment projects were launched. Indonesia had a lot of corruption fraud, including policy fraud, to amend the rules to benefit their own people;

Second, local service problems had not achieved their goals. Originally, the bureaucracy of Indonesia was based on the patronage system, which had led to the problem of inefficiency, lack of staff potential, abuse of power by the authorities and also bribes. As a result, the state of affairs was not conducive to business operations and caused damages the economy of the country;

Third, the issue of civil society participation is low. The Indonesian public had not yet solidified enough to demand public service or monitor the use of state power. They were not aware of their rights;

Fourth, the problem of lack of supervision of the duties of local government officials: Indonesia also lacked of control and preventive measures to properly utilize the authority of regional authorities:

The Indonesian central government has been trying to address these issues. It had pushed the concept of central agencies to oversee and monitor the performance of government agencies at different levels. In 2008 the Law No.37 of 2008 on Ombudsman of the Republic of Indonesia was enacted. The Ombudsman serves as an external audit committee by virtue of law. Afterward, powers of the Ombudsman were further defined in the Law on Public Services, which was enacted in the following year. The law has an influence from the ideas of the Ombudsman in Finnish law, Swedish law, and Norwegian law.

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[359] Danang Girindrawardana, “Public Services Reform in Indonesia,” Retrieved on 22 June 2018 from http://www.soumu.go.jp/.

The Indonesian Ombudsman is composed of 9 experts appointed by the parliament. It has the power and duty to recommend to the relevant government agencies to improve the law, regulations, procedures that cause trouble or unfairness to the public or to burden the public unnecessarily or unreasonably. It also has the authority to investigate the facts and recommend to the relevant government agencies to eliminate or stop the suffering of the people due to non-compliance with the law of the state agencies. At present, the Ombudsman of Indonesia has a clear and concrete strategy. It has thus helped in examining the use of state power to address the four issues above. Strategic policy guidelines are as follows;

1) Reengineering management (capacity building and enhancing team and personal skill);

2) Mass media involvement;

3) Renewing handling complaint procedure and own motion investigation;

4) Gaining public awareness to empower society's rights to receive proper public services;

5) Strategic collaboration with the Police and the judiciary body

6) Focusing program of important public services sectors i.e. education, health, employment, environment, economic competitiveness and administrative residency;

7) Strategic collaboration with other institutions including Governments, the Parliament, Local Parliament, Education, NGO's and the society.

1.3 Public Servant System

After the independence in 1949 (B.E. 2492), the bureaucracy of Indonesia has grown rapidly, as in the 1970s the number of government officials increased by 400 percent, and in 2010, the number of official servants was 4.7 million. However, Indonesia is facing the problem of efficiency of government officials because the number of the officials is far less than the work needed to be done, and the selection of persons, the pay roll system both salary and special compensation lack transparency, as well as not able to bring outside knowledgeable people to work at the executive level because executives can only be those who are from career based system. Hence, the Indonesian bureaucracy system has low efficiency. [360]Therefore,

[360] Michael Buehler, "Indonesia's Law on Public Services: Changing State-Society Relations or Continuing Politics as Usual?," Bulletin of Indonesian Economic

Indonesia has enacted two laws on bureaucracy system development, which are: Law No. 25 of 2009 on Public Services, to develop public service to response to the need and expectation of the people; and Law No. 5 of 2014 on State Civil Apparatus, to develop public personnel in giving the service by determination of civil servants' ethics, as to perform the duty with transparency, expectation of basic rights of the people, free from predomination of politics and patronage system.

In summary, there are 5 laws on enhancement of bureaucracy which will be explained further, as follow:

(1) Law No. 32 of 2004 on Regional Government;

(2) Law No. 33 of 2004 on Fiscal Balance between the Central and Regional Government;

(3) Law No. 37 of 2008 on Ombudsman of the Republic of Indonesia;

(4) Law No. 25 of 2009 on Public Services;

(5) Law No. 5 of 2014 on State Civil Apparatus.

(2) Essence of the Laws

2.1 Law No. 32 of 2004 on Regional Government[361]

Law No. 32/2004 on Regional Government consists of 240 Articles, divided into 16 Articles. The law on regional government aims to decentralize the central government to the provincial governorate This is in accordance with the principles of the 1945 Constitution (B.E. 2488), which is defined in Article 18, which determines the Republic of Indonesia governmental system[362] is divided into provinces. Each province comprises of regencies and municipalities. The Municipalities are autonomous and have the power to govern the affairs of the public service for speed, to develop the service delivery, public participation, increase competitiveness for the region. This is an important principle in increasing the capacity of the bureaucracy at the regional level. It can be summarized as follows:

Studies, Vol. 47, 2011): p. 65-66.

[361] International Labour Organization, "Regional Government," Retrieved on 22 June 2018 from http://www.ilo.org.

[362] The Constitution of the Republic of Indonesia determines that the State of Indonesia shall be a unitary state in the form of a single republic, with the President as the head (Article 4). Therefore, divides the rule into regions, unlike federal states which divided into states.

(1) The law on regional government defines “Central Government” as the President of The Republic of Indonesia who holds the administrative power of the Republic of Indonesia as meant in the 1945 Constitution of The Republic of Indonesia. “Regional administration” means the running of state affairs by the regional government and Regional Legislative Council (DPRD) in accordance with the principle of wide-ranging autonomy within the frame of Unitary Republic of Indonesia as meant in the 1945 constitution of the Republic of Indonesia. “Regional government” means the Governor, Regent or Mayor and regional apparatuses as the element of the operator of regional administration. “Regional autonomy” means the right, authority and obligation of an autonomous region to govern and manage state affairs and interest of the local people on its own in accordance with the existing law (Section 1);

(2) Establishment of Regions can be done by enacting laws, which must be specify: name, area, territory, main cities, authorities for regional head nominations, acquisition of members of regional parliament, transfer of personnel, budgets, materials, documents and human resource. A regional setting may consist of a combination of regions or a division into two or more regions (Article 4) and the disseverment of a region can be done by an act, in the same way as to establish one. But in the cases of change in details of a region such as change of name, reduction or extension of the area, move of main cities, etc. There is not necessary to enact an act, but these changes can be done by enactment of governmental rules, which are secondary law (Section 7);

(3) Regional affairs Regional entities have the authority to carry out all kinds of state affairs except those that are reserved to the exclusive federal jurisdiction, which are foreign policy affairs, military affairs, security affairs of the country, judicial policy, financial and fiscal policy of the country and religion affairs (Section 10). However, the law requires the following matters are responsibility of the region: 1) regional city planning development and control 2) urban infrastructure planning and control 3) keeping peace and order 4) provision of facilities and Infrastructure 5) public health problems management 6) provision of education and human resource 7) control of social problems in the district or municipality 8) allocation of force to the district or municipality development of cooperatives and small and medium enterprises including communities business 9) environmental impact control 10) provision of agricultural services 11) provision of demographic and statistical services 12) provision of administrative services [363] 13) provision of Capital investment

[363] Public administrative services means activities that the state is prepared to

services [364]and 14) other businesses as required by law. In addition to these obligated affairs, the region may operate to develop the welfare of the region in accordance with the conditions of each region (Section 13);

(4) In addition to being allocated a budget from the central government, the region has the right to collect tax and fees, to benefit from the management of natural resources and other resources in the region and is entitled to other legitimate income (Section 21);

(5) Administration of regions: the law stipulates control and balance between the regional legislative and regional executive by stipulating "Regional Parliament", which is the regional legislative- has power in regional laws, rules and regulations enactment to frame the use of power of the regional executive, as well as approval of the budget proposed by the executive.

"Regional Head", who is the regional executive has power and duties in executing and managing regional administrations within the legal framework stipulated by the legislative (Section 41). The regional executives composed of a Governor as the Regional Head and a Deputy Governor as the Deputy Head. They are from the regional election (Section 24);

(6) The relation between the Government and regional administrations: the law stipulates the relation by governing that the central government shall distribute its power in public administrations which are not specifically the tasks of the central government to the regions to reflect the need of the local people. The regions have autonomy to self-administrations under country development policy framework. The central government establishes the national strategy and support in finance. This law stipulates the duties of the central government toward the regional government as follows:

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meet the needs of the majority which is the director of the government with the aim to improve the quality of life for the people in both structure, the basic The quality of life The community organizing The environmental resources and cultural services such as recreation facilities in the district, The road accidents Prevention and Mitigation, local public bathroom, Tourism promotion and career Developing community forest and the promotion of local culture and customs.

[364] Capital investment services means activities that the State intended to meet the needs of the public which has the objective is to develop the local economy, and stable growth, such as finance, business loan support working in a low interest rate, business collateral support, funding sources, etc.

(6.1) In the financial, the central government will allocate budgets to regional governments for the execution of their responsibilities and for regional management expenditures; as well as lend loans for regional management (Section 15).

(6.2) In public service, the central government delegated authority, responsibility and minimum standard of service to the regional government. It also allocates funds for public services in regional tasks and also co-ordinate cooperation between the central government and regional governments (Section 16).

(6.3) On the use of natural resources or other resources: the central government delegated authority, responsibility, exploitation, maintenance, impact control, plant and preservation, sharing benefits and coordinating the management and sharing of benefits between regions to regional governments (Section 17).

When the Central Government has allocated the budget to the region, the region head who is the executive of the region has a duty to propose a draft budget to the region parliament to ask for an opinion to be spent on regional administrations. When the approval is granted, the executive can use the allocated budget for the planned activities. However, it has a duty to report the result to the region parliament and central government for the budgetary control under laws.

Further, when the regional executive spends the budget and there is a suspect of corruption, the president has power to suspend the position of and inquire the region executive. This is also one way of check and balance (Section 30 and Section 37).

Although the law aims to decentralize but regional governance is not clearly separated from the central government. In practice, it is like dividing power. This decentralization under this law is merely that the people can elect regional head. But after the election, the head is responsible to the central government. The public does not have the power to directly control or inspect the functions of the regional government. Public participation in the decentralization of the Republic of Indonesia is thus limited to elections.[365]

2.2 Law No. 33 of 2004 on Fiscal Balance between the Central and Regional Government[366]

Law No. 33 of 2004 on Fiscal Balance between the Central and Regional Government is intended to support and allocate money for governmental works which have been transferred to the regional government under the laws of the regional

[365] Rachmad Darmawan, *supra note 357.*

[366] GITEWS, "Status," Retrieved on 22 June 2018 from http://www.gitews.org/.

government. It is based on the principle "money follows function", and in accordance with the 1945 Constitution, Article 18A, paragraph two, provides for the relationship between central and regional governments in finance, public service and utilization of natural resources and other resources must be equal and unified. Therefore, it is considered as a law that empowers the regional government to carry out its mission as assigned. This principle is evident from the definition of the term " fiscal balance between the central and regional government" as " a fair, proportional, democratic, transparent and efficient sharing of revenues in the financing of decentralization, deconcentration, and co- administered tasks, with due regard to the potential, condition and need of the regions" whereas other important terms are defined substantially the same as that of Law No. 32 of 2004 on Regional Government.

However, the law on the allocation of income between the central and regional governments is not the main law that directly enhances bureaucracy in Indonesia. It is consists of 110 provisions divided into 14 categories. In this regard, Essence of the law can be summarized to reflect the overview as follows;

(1) Define the basic principles for allocating revenues between central and regional governments according to the principles of decentralization, division of power and co-management;

(2) Determine the details of the source of regional government revenue. The source of income of regional government under this law are: regional own revenue, revenue received from allocation from central government, loan and revenue under other laws:

(a) Regional own revenue composed of self-collected tax and fee, and the benefits of regional property management.

(b) Revenue that the central government allocate on a yearly basis composed of money allocated from the annual budget. It consists of four types of money (Section 10): 1) the money allocated from the land and building tax, the rental tax and the personal income tax, and the proceeds from the management of natural resources (Section 11); 2) General allocated money of at least 26 percent of the net income of the country (Section 27); 3) special appropriations from the annual budget for the specific purpose of operation of the region as specified in the annual budget (Article 39); and 4) grant and emergency assistance (Section 43 and Section 46).

(c) Regarding the government can only borrow money from domestic sources. The loan is only for the purpose of accelerating the economic development of the region and for the development of public services. Therefore, it is possible to borrow only for use in projects that generate revenue back or; It is a loan to maintain

the annual budget balance (Section 50). Nonetheless, the law set loan ceiling at no more than 75 percent of the annual budget before the year of borrowing (Section 54). The law also requires that regional governments have the power to issue regional bonds themselves, with the approval of regional and central governments (Article 58), but central government guarantees is prohibited (Section 59). Regional governments must be responsible for the risks due to the bond issuance of the region itself.

(d) Other income under other laws apart from the 3 types of income mentioned above, such as income from regional state enterprise, income from regional public service, shall be in accordance with the specific laws render power to the region for such income;

(3) Define the criteria for regional revenue management; including audit management of the revenue. The revenue management of the region must be based on priority, effectiveness, economical, transparent and responsible, as required by law and regulation. It must be determined with consideration to fairness, proportionality and public interests. Therefore, the source of income and annual expenses must be stated in the annual budget, modifications and budget expenditure audition are required annually in the regional regulations (*Perda*) (Section 66);

(4) Establishing a regional budget management mechanism to ensure transparency and accountability, by providing a regional finance information system at the national level, to use for fiscal policy and control, to display the financial information of regional governments at the national level, to set monetary policy of the region, to monitor, control and evaluate the spending of the region. The central government administers the information system (Article 101), which requires disclosure of information to the public (Section 103);

(5) A mechanism to examine the region's revenue management. Require disclosure of Regional Finance Information to a public relations people can access easily and quickly. Contains 6 items include reports on the results of the planned operating ,budget financial statement, cash flow statement, fund management reports, financial reports and information about the potential of the Regional fiscal capacity without spending the budget, such as the Government Accounting Standards under the supervision of the Department of the Federal Government and the Regional Council, the local resolutions endorsed by the law (Section 102), to provide oversight of spending by the Federal Government and the regional government have external verification from the public sector.

2.3 Law No. 37 of 2008 on Ombudsman of the Republic of Indonesia[367]

Law of 37 of 2008 on Ombudsman of the Republic of Indonesia consists of 47 provisions, divided into 12 chapters. This law is enacted with the objective of establishing an Ombudsman to monitor and supervise the work of government agencies and government officials, to achieve efficiency, good governance, and free from corruption. It is a principle of democracy that deserves to be developed and used to abolish the abuse of power of the government agencies and government officials. Ombudsman is a mechanism to monitor the performance of the state to be efficient and no corruption. This law has contributed to increase the capacity of the bureaucracy. The law is summarized for an overview as follows:

(1) The law establishes "Ombudsman of the Republic of Indonesia", which is the governmental institution having power in control and monitor use of power of the governmental agencies, officials, state enterprises of the central government, and of the regional government, public entities which are state agency (State owned legal person) having power in render public service with the private management, including private sector entity. The Ombudsman is an independent institution which has no institutional relationship with state and governmental agencies and is neutral from any state officials (Section 2);

(2) The law determines how to acquire the Ombudsman of the Republic of Indonesia, an organization in the form of a group of persons. The body of the Ombudsman consists of 9 members: chief of ombudsman, deputy chief of ombudsman and 7 members. In the case where the chief ombudsman cannot perform his duties, deputy chief of ombudsman has power to perform that duties (Article 11). The members of the body of the ombudsman are appointed by the House of Representatives, selected from the list proposed by the President (Article 14) by the President. The President appoints nomination committee, which composes of government employees, attorneys, academics, representatives of the community. The committee duties are: receipt of application from those who wants to apply for selection as a member of the Ombudsman; register applicants; select qualified applicants and proposes a list to the President. The committee must work with transparency and public participation (Article 15). Once get the list, the President must send the list to the House of Representatives. Within 15 days of receiving the list from the President, the House of Representatives must select 9 people from the list within

[367] FLEVIN, "Law No. 37 of 2008 on Ombudsman of the Republic of Indonesia," Retrieved on 22 June 2018 from http://www.flevin.com.

30 days and send to the President. The President must appoint those 9 persons within 14 days from the date of receipt (Article 16);

(3) The law requires the Ombudsman's office to locate in the capital of the Republic of Indonesia and have jurisdiction throughout the Indonesian. In addition, the Ombudsman may establish a representative office in any province, district or municipality (Article 5), with the regional ombudsman acts as the Ombudsman, and directly responsible to the Ombudsman, as well as receive support from the ombudsman's assistance. The Regional Ombudsman has the same authority as the Ombudsman (Article 43);

(4) The Ombudsman has the following duties and powers (Article 7 and Article 8)

(4.1) To received complains which claim abuse of administrative power (Maladministration), which means the behavior or act against the law, exceeding the authority, using power for purposes other than those which become the objective of such power, including ignorance or negligence of legal obligation in administering public services which affect damage to others, both materially and immaterially (Section 1);

(4.2) to conduct substantial investigation of the grievance;

(4.3) to follow up the grievance which is under the jurisdiction of Ombudsman;

(4.4) to conduct own motion investigation to the presumption of maladministration in administering public services;

(4.5) to conduct coordination and cooperation with other state organs or public agencies as well as non-governmental organizations and individuals;

(4.6) to develop networks;

(4.7) to conduct the prevention of maladministration in administering public services;

(4.8) to conduct other assignments as mandated by the law;

(4.9) to request information orally and/or in writing from the Complainant, the Party Complained, or other parties related to the Complaint as filed to the Ombudsman;

(4.10) to investigate the decision, correspondence or other documents from the Complainant or the Party Complained to obtain the truth of the grievance;

(4.11) to request for clarification and/or copy or photocopy of documents as required for the investigation of the grievance;

(4.12) to summon the Complainant, the Party Complained, and other parties related to the grievance;

(4.13) to dispose the grievance through mediation and conciliation at the request of the parties;

(4.14) to make recommendation on the disposition of the grievance, including the recommendation for the payment of compensation and/or rehabilitation which is given to the party damaged;

(4.15) for the interest of public to reveal the result of finding, conclusion, and recommendation;

(4.16) to submit recommendation to the President, Head of Region, or other high-ranking officials for the rectification and improvement of the organization and/or the procedure of public services;

(4.17) to submit suggestion to the House of Representatives and/or the President, regional House of Representatives and/or head of region so as to make amendments to other laws and regulations to prevent maladministration;

(5) The law stipulate conditions for complaint as follows:

(5.1) Person entitled to file grievance: any Indonesian citizen or resident whose rights are affected by the Maladministration, or a person appointed by such persons;

(5.2) Form of complaint: the complaint shall has name, place and date of birth, marital status, occupation, address of the complainant, description of event, action or decision complaint in details, in case where a lawsuit has been decided upon, the court decision shall be also enclosed, the complaint must be filed within 2 years from the date of event or when the decision is rendered;

(5.3) Procedure: upon reception of the complaint, the Ombudsman shall investigate the complaint, if it is incomplete, notify the complainant in writing to amend within 30 days from the date of reception of such notification. If the complainant does not correct within such period, there shall be considered to have withdrawn and will be disposed (Section 25). In the case where the complaint is completed, the Ombudsman shall consider whether the complaint is within its authority or note and inform the complainant within 7 working days. If the complaint is in the power of the Ombudsman, summon in writing to the party complained, witness, expert or other relevant persons for requesting further information within 14 days may be made. If summoned for 3 times consecutively, the person failed to comply, the Ombudsman may ask for the aid of the National Police of the Republic of Indonesia to compel (Section 31). Upon completion of information need, the

Ombudsman shall render recommendation within 60 working days to the relevant agencies or stakeholders to comply with. If the agency or stakeholder ignores the recommendation, the Ombudsman shall report to the House of Representatives and the President to impose administrative sanction pursuant to the provisions of laws and regulations (Section 41);

(6) The law requires the ombudsman to submit quarterly report and annual report to the House of Representatives and the President. The periodical report shall be submitted quarterly, and the annual report shall be submitted in the first month of the following year. The Ombudsman may submit special report to the House of Representatives and the President. Such special report shall be published after it is submitted to the House of Representatives and the President (Section 42);

(7) In the case of the obstruction of ombudsman's investigation, the offender shall be punished with imprisonment for a term of two years or fine of not exceeding one million IDR (Section 44);

2.4 Law No. 25 of 2009 on Public Services[368]

Law No. 25 of 2009 on Public Services consists of 62 provisions, divided into 10 chapters. This law is enacted with the aim of improving public service to be in line with the expectations and needs of the people. The law establishes mechanisms to monitor minimum standards of service; receive and consider complaints when public service is not up to standard. In some cases, compensation may also be required. When officials are under Public Service Standards control, this will result in more careful and efficient operation. This implies that this law contributes to the enhancement of bureaucracy. The law can be summarized to present an overview as follows.

(1) "Public Service" means the activities which *Pelaksana* (Public Services Operators) have provided for Indonesia citizen and the people who lived in Indonesia under the laws of Indonesia. The scope of public services includes education, business, residence, communication and information, environment, health, social security, energy, banking, transportation, natural resources and tourism (Section 1 and Section 5).

[368] Michael Buehler, "Indonesia's Law on Public Services: Changing State-Society Relations or Continuing Politics as Usual?," *supra note 360*, p. 67-73.

(2) Scope of the Law: The law on public services governs the case of public service rendered by government entities as well as public services of state enterprise, public entity and private who is assigned to provide public service.

(3) The law establishes public service standards that service providers must comply. Such standards include, for example, clear timelines for public services (Section 21), determination of clear tax and fee rates (Section 31), assessment of public service providers must have clear indicators (Section 10) and must be performed through internal and external regulatory mechanisms. Internal audits are performed by senior executives and head of internal auditors of the public service organization. External audit is done by the public, ombudsman and the House of Representatives, the Regional parliament (Section 35). Public service providers must follow the advice of the Ombudsman, the House of Representatives or the Regional parliament, as the case may be, within the time limit (Section 36).

(4) The audit mechanism

(4.1) The internal audit mechanism is divided into two parts.

1) Surveillance and complaint management: The law provides for a system of surveillance and the reception of complaints about public services by government officials. At the central level, minister, head of the governmental agency and other positions at the same level must evaluate public service and report to the President and Parliament. At the regional level, it is the duty of the regional head of government to clarify the results of the evaluation of public services to his superior, which will be elevated to the local council and to the minister who supervises that matter, as the case may be (Section 6);

2) Complaints Management: The law requires public service agencies to make public details about the person responsible for managing the complaint of the agency, identify the executives who have authority to make the decision about the complaint, how to file a complaint and the due process, including how long it takes to process the complaint, report the results of the complaint, monitoring and evaluation (Section 36-37 and Section 50).

(4.2) The external audit mechanism is divided into three parts:

(4.2.1) Control by the Public

1) Citizen has the right to complain to the head of the public service provider agency, the Ombudsman, the House of Representatives or the regional parliament where it finds such agency violates, ignores or not comply with standards set out by law (Section 40), and the right to have the complaint considered swiftly and in a fair manner (Section 44);

2) Citizen has the right to compensation from the public provider agency who commit the violation, ignores or not comply with standards set out by law (Section 42);

3) Citizen has the right to establish an institute to monitor and control public service provision at the national and local level by the power of the law on public service, as to promote unify of citizen to control the state effectively (Section 39), and right to participate in the making of public service standards (Section 20);

Citizen has the rights to file the lawsuit to the court with jurisdiction; as follow:

Right to file a lawsuit to the State Administrative Court in the case of unlawful administrative order relating to public service, which is in accordance with the Law establishing the State Administrative Court (Law No. 5 of 1986), as amended by Law No.9 of 2004. Administrative case has a preliminary condition that the appeal to the appeal committee of the agency be made; and file the lawsuit within 90 days from the date of the appeal decision. This will be touch upon in the next chapter;

Right to file a lawsuit to the District Court, in the case of compensation for wrongful act relating to public service. This has no preliminary requirement;

Right to file grievance to the police to prosecute a person who commit crime relating to public service;

(4.2.2) Control by the Ombudsman

The law requires the Ombudsman to have power to review legal public service under the law. The details are in accordance with the Law No. 37 of 2008 on Ombudsman of the Republic of Indonesia (Section 46). However, this law further determines the powers of the Ombudsman that the Ombudsman or the mediator, whom the Ombudsman appointed, can mediate the dispute and to settle the dispute in accordance with the criteria prescribed by the Ombudsman (Section 50).

(4.2.3) Control by the parliament

The House of Representative has the power to receive and consider a report of monitoring and assess result of central public service, which Minister and head of governmental agencies related to public service proposed to the House for the consideration of the budget for the next fiscal year.

The regional parliament Representative has the power to receive a report of monitoring and assess result of regional public service, which the

head of the region government proposed for the consideration of the budget for the next fiscal year.

If the consideration finds that the public service has a defect, such as the service provider does not comply with the regulations regarding the resolution of the complaint, non-compliance with the standard of provision of public service set out in laws, ignorance of complaints, avoiding rules and regulations on conclusion of service provider contract or concluded the contract with a party who is unqualified, a report to the President for further punishment shall be proposed. The punishment has 2 cases; (1) punishment measure for state officer such as notification in written, salary reduction, lower the position, disciplinary measures and criminal proceeding; and (2) the punishment of the government agency providing services such as the suspension of the permit, revocation of the permit (Section 54).

2.5 Law No. 5 of 2014 on State Civil Apparatus[369]

Law No.5 of 2014 on State Civil Apparatus has 144 Articles, being divided into 15 chapters. This law is enacted with the purpose to be a part of bureaucracy reform, to make officials be professional, and have qualifications consistent with authority and the position appointed. This law has contributed to the enhancement of the bureaucracy. The summary of the law is summarized as an overview in the following:

(1) The law provides the eleven ethic principles for the administration of government officials as: 1) Professionalism, 2) Integrated 3) Authority 4) Impartial 5) Integrity and accountability 6) Effectiveness and Efficiency 7) Disclosure 8) Non-discrimination 9) Unity 10) Equality and 11) Appropriate welfare (Article 1).

Furthermore, the law also defines the seven basic values of civil servants as: 1) Working under the principle of respect for basic rights 2) Ethics 3) Responsibility for duty 4) Be suitable for the duty 5) Having academic qualifications 6) and 7) Be professional (Article 3);

(2) Apparatus State Civil is divided into 2 groups, namely:

1) Civil Servants: a person who gets into the permanent position and get monthly salary from the State (Section 7);

2) Government Employee: a person who contracted to perform official function for a period of time and is under the protection of the labour law (Section 7);

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[369] Indolaw, "Indonesian Law and Regulation Translations," Retrieved on 24 June 2018 form http://www.lio.org.

Apparatus State Civil has power and duties to carry out the State policy under laws, provide public service and create unity in Indonesia, by carry out the duty as professional, honest and free from political influence (Section 11 and Section 12);

(3) The law provides for a mechanism to increase the capacity of civil servants. There are three mechanisms as follows:

(3.1) Establish an independent committee, which is free from political interference; called KASN (Committee on State Civil Apparatus), consists of seven members, one chairman, one vice chairman and five members. They all must be Indonesian citizens, respect Pancasila principles, and the constitution, age not over 50 years old, have a functional body, having knowledge in human resources management, public policy, laws and governance, has never been imprisoned under the final judgment (Article 35 and Section 38).

Committee on State Civil Apparatus has the authority to track and monitor the work of officials. Government employees and state employees to perform their duties under the law and behave in the discipline of ethics commissioner. It also has the power to order The Personal Officer Trustee to investigate a breach of discipline and disciplinary action by the Agency. The committee will investigate and report to the president to conduct a disciplinary directly. The sanctions committee of government personnel punished with 7 measures include warning, reprimand, revocation, cancellation, Refund, disciplinary punishment, and legal sanctions (Section 33);

(3.2) Establish a public administration institute, called in short as LAN, *Lembaga Administrasi Negara* (State Administration Institution), which is responsible for the development of standards in education and training of government officials, provide guidance on the provision of education and training for civil servants to improve their performance, provide education or training courses to government officials, either self-organized or jointly with other institutions, evaluate government policy and administration, certify educational institutions or government training institutions. It has the power to revoke certifications, licenses of the education- or training institution, including provides policy advice on public governance to the Minister for Legal Affairs and Human Rights, who is responsible under this law (Section 43 and Section 45);

(3.3) Establish public sector agencies, called in short as BKN (*Badan Kepegavaian Negara* (State Personnel Body)), which is responsible for overseeing government officials and collecting information about government officials, control the selection of government officials, development and evaluation of the performance of

civil servants, development of a career path system based on the ability of government officials, set standards, norms and methods of government administration, including monitoring compliance with such standards, norms and procedures (Section 47 and Section 48);

(4) Other parts of this law regulate the process of procuring civil servants and government employees, career path which based mainly on competency (Section 69). The function in official position ceases in 2 cases:

1) Honorable discharge: in cases of death, resignation, retirement, poor health physically or mentally that renders the person not able to perform official function or receive final judgment to imprisonment no longer than 2 year, except the case of negligence (Section 87);

There are 2 types of retirement: higher rake official or government employee (Servant leadership position) retire at the age of 60 years; others at the rank of practitioner, professional and junior executive levels retire at the age of 58 years (Section 90);

2) Dishonorable discharge: in cases of receive final judgment of intentional wrongdoing and got penalty of imprisonment not less than 2 year or violates the Pancasila and the Constitution (Section 87).

(3) Roles of Relevant agencies

There are two agencies involved in the enhancement of the bureaucracy under the law which are as follows:

3.1 The Office of the Presidential Secretariat

The Office of the Presidential Secretariat is established on 19 August 1945 (B.E. 2488), is equivalent to the Ministry and is responsible for supporting the work of the President and Vice President in fields of academic, management and analysis, to use the Presidential and Vice-Presidential power, and to use the military power of the Army including responsible for general administration, public governance supervision, informatics, the relationship between institutions as well as development of personnel and infrastructure of the Secretariat. Structure of the Office of the Presidential Secretariat consists of the Secretariat of the President, Secretariat of the Vice President and the Secretariat for Military Affairs.

The Secretary of the President is responsible the role for increasing of bureaucratic system efficiency as follow:

(1) the role in State Administration Institution, which has the authority to develop standards, training of civil servants, training of personnel to develop the operational capabilities, the course of education or training and consider allowing the State's personnel training institutes, including the personnel management policy suggestions to the public sector;

(2) The role in receiving complaints and the Committee by government personnel to conduct investigations into possible breaches of discipline, disciplinary sanction civil servants and government employees under the law No.5 of 2014, which is required by law, guidelines on best practices for enterprise party State;

(3) The role to coordinate the appointment Committee selecting a person to be nominated Ombudsman by the parliament and appointing by the President that has authority under the law No.37 of 2008). The Ombudsman will be in the power to give suggestion (Recommend) in order to follow good governance to develop the potential of the next government system;

3.2 Ministry of Justice and Human Rights

The Ministry of Justice and Human Rights was established on 19 August 1945 (B.E. 2488). At first, it was established as the Ministry of Justice, which continued from the Dutch colonial era. In 2001 (B.E. 2544) it changed the name to Ministry of Law and Human Rights, and later in 2004 (B.E. 2547), it changed the name to Ministry of Justice and Human Rights;

The Ministry of Justice and Human Rights are responsible for legal affairs and human rights, which covers the legislative affairs, civil servants and government employees, correctional, immigration and intellectual property. It also has a role in research and development in law and human resources. It also serves as an advisory body to ministries such as the Ministry of Economy, Ministry of Politics and Security. The Minister is the head of the Ministry and is responsible directly to the President. Every positions of the Ministry are responsible directly to the Minister. The structure of the Ministry is: 1) Office of the Permanent Secretary 2) Department of Law 3) Department of Public Law 4) Corrections Department 5) Department of Immigration 6) Department of Intellectual Property 7) Inspectors of the Ministry 8) National Legal Development Agency 9) Research and Development Division 10) Human Resources Development Unit 11) Special Advisor to Minister of Politics and Security 12) Special Advisor to the Minister of Economic Affairs 13) Special Advisor to the Minister of Social Affairs 14) Special Advisor to the Minister of Inter-Agency Relations 15) Special Advisor to the Minister for the Promotion of Government Reform.

Ministry of Justice and Human Rights is responsible the role for increasing of bureaucratic system efficiency as follow:

(1) The role of support and assistance to citizens in the exercise of administrative action complaint was maladministration in the law on No. 37 of 2008;

(2) The role of support and assistance to citizens in seeking to disclose the public service, the complaint against the supervisor of public services, filling the case to the administrative court that has jurisdiction under the law No. 25 of 2009;

(3) The role of support and assistance to the people to ask for financial disclosure and expenditure of the region and monitoring under the law No. 32 of 2004.

3.3 The Committee on Civil State Apparatus

The Committee on Civil State Apparatus are sourced from the recruitment of qualified approval of the Cabinet and the President nominate. Membership consists of 7 members; a chairman, a vice Chairman and members of the other five persons by a qualified person who is Indonesian, and must be no older than 50 years with respect to the Pancha Sila Constitution, not holding any political participation, never get a final judgment to imprisonment, and are competent in the field of human resource management, law, political science or public policy. (Section 35 and Section 38)

Committee on Civil State Apparatus is responsible the role for increasing of bureaucratic system efficiency as follow:

(1) The role of recruitment examination training to enhance technical knowledge and skills to civil servants. Government employees and employees of the state;

(2) The role of monitoring and reviewing the behavior of employees and state employees of State duties in accordance with law and discipline code of conduct contained, and also has the power to order management and human resources departments, which are government personnel assigned to complaints. (The Personal Trustee Officer) investigate the actions and sanctions action in order to disciplinary action in accordance with the laws of that unit or reports to the President for disciplinary action;

(3) The role of consideration sanctions to government officer, employees and state employees with 7 measures include warning, reprimand, revocation, cancellation, Refund, disciplinary punishment, and legal sanctions.

Chapter 11

Laws on Administrative Procedures, Government Information and Liability for the Wrongful Acts of Officials

In Chapter 11, the researcher will introduce the laws of Indonesia in relation to administrative procedures, government information, and liability for the wrongful acts of officials. The Chapter is divided into three parts: Preliminary, Essence of the Laws, and Roles of Relevant Agencies.

(1) Preliminary information

The researcher separates the discussion of the preliminary on the administrative laws of Indonesia as follows:

1.1 Administrative Court

The Constitution of Indonesia establishes a dual court system whereby administrative disputes are trialed separately and not within the jurisdiction of the court of Justice. There are five different branches of the courts: criminal court, religious court, military court, administrative court, and constitutional court.

The Administrative Court of Indonesia established on 29th December 1986 by the Law No. 5 of 1986. The Court has jurisdiction over a dispute between the citizen and government agencies or between government agencies. Those cases are as follows:

(1) dispute over an administrative order rendered by government official;

(2) dispute over an administrative act by government official.

Elucidation of Law No. 5 of 1986 elaborates details on rules of procedure that administrative order means an order of government official under the power of laws which orders a person or juristic person to perform something, including a permission to do something, a refusal of permission, and an order which constitutes rights or duties. Cases not within the jurisdiction of the Administrative Court (Section 2 and Section 49) are[370]:

1) Civil dispute related to an administrative order;

2) Dispute over an administrative order which is still in the consideration of administrative agency;

3) Dispute over an administrative order which has been rendered under the Civil or Criminal laws;

4) Dispute over an administrative order which is still pending in the court;

5) Dispute over an administrative order relating to the military;

6) Dispute over administrative order of election committee;

7) Dispute over an administrative order which has been rendered under laws in the cases of war, peril, natural disasters or perilous extraordinary situations;

8) Dispute over an administrative order which has been rendered under laws in a case of urgent public interest.

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[370] AIHJA Association, "The Jurisdiction of State Administration Courts in Indonesia's Judiciary System," Retrieved on 24 June 2018 form https://www.aihja.org.

As for substantive administrative law, Indonesia does not have a centralized law on administrative procedure and liability for the wrongful acts of officials. Rather, these provisions are prescribed separately in different legislations, for instance, the law on public services (Law No. 25 of 2009), which prescribes the minimum standards for public services, or the law on ombudsmen (Law No. 37 of 2008), which prescribes the rules for the consideration of the ombudsmen, both of which have already been mentioned on the previous chapter.

1.2 Government Information

Originally, Indonesia did not have a law on government information. However, a dispute arose when non-governmental organizations on environment brought a civil lawsuit against a company producing pulp and paper, which included relevant regulating government agencies as the defendants. In that case, the non-governmental organizations put forwards a request for disclosure of public information, but the request was declined by the court. This resulted in a public movement calling for the citizens' right of access to public information.

This principle of transparency was initially inserted in the environmental laws through an amendment. However, the right to disclosure was later affirmed by an amendment to Section 28 F of the Constitution of 1945 (B.E. 2488), which prescribes that the government shall guarantee the citizens' rights to communicate and receive information, including the rights to seek, accept, keep, and maintain information in different forms.

In 2001 (B.E.2544), Seven Central Government Regulation No. VIII/MPR/2001 concerning policy and recommendation on how to prevent corruption were issued. These seven regulations consist of the law on the elimination and prevention of corruption, the law on the elimination and prevention of money laundering, the law on the protection of witnesses and victims of crime, the law on organized crime, the law on the principle of action of the government, the law on the establishment of ombudsmen, and the law on the disclosure of public information.

The draft law on the public disclosure of information took as long as five years before it was enacted in 2008 (B.E. 2551), with a provisional chapter to allow regulated government agencies sometime to prepare themselves before the law came into force in 2010 (B.E. 2553). This was accompanied by the issuance of a central regulation on the compliance with the legislation on the disclosure of public information.

Based on the research of Global RTI rating, the law governing the disclosure of public information of Indonesia ranked 28th in the world, while the laws of developed countries have scored far less, including Germany, France, and Japan. This is due to the fact that the Indonesia law covers the right of access to extensive information and grants petition and appeal in the case where the disclosure of public information requested is refused. The law also provides criminal offenses.

In addition, it is found that all government agencies at the ministerial and departmental levels have already appointed public information officials responsible for the compliance with the legislation, while only one-third of regional government agencies have done the same. Nonetheless, the research suggested that 70% of relevant officials lack an understanding of the law on the disclosure of public information. As a result, a compliance manual was introduced in order to ensure compliance with the law in the same direction.

(2) Essence of the Laws

Indonesia is the second country in ASEAN, which has public information disclosure laws after Thailand. This includes the Public Information Disclosure Act 2008, and its subordinate law, Government Rules No. 61 of 2008.

2.1 Public Information Disclosure Act 2008

Public Information Disclosure Act 2008[371] was the 14th law of that year which came into force in 2010 (B.E. 2553), according to its provisional chapter. The purpose of the law is to affirm the citizens' right of access to public information, and the obligation of the state in publicizing this information to its citizens. The Act contains 64 Sections and is divided into 14 chapters. It also contains a comprehensive range of definitions pertinent to the disclosure of public information. The essentials of the law can be summarized as follows.

(1) There exist four fundamental principles under the law. First, the citizens have the equitable right of access to public information. Second, the state has the duty to provide information and informational services to the citizens. Third, the state shall provide public information to the citizens with a reasonable time, at a reasonable price paid by the citizens, and without unduly complicated procedures. Fourth, the

[371] World bank group, "Indonesia: Public Information Disclosure Act 2008," Retrieved on 22 June 2018 from https://www.worldbank.org.

restriction on the right of access to public information must be employed only to the extent necessary.

(2) The persons who have the right to request disclosure of public information are the citizens of Indonesia or juristic persons established under Indonesian law. A government agency is allowed 10 working days to fulfill the request, with an extension period of no longer than 7 working days.

(3) The followings are some of its important definitions.

Information means any description, statement, idea, and signs that contains value, meaning and message either as data, fact or their elucidation that may be seen, heard and read in any formats including electronic format.

Public information means any information produced, stored, managed, sent and/or received by a public body in relation to governments and governance of the state or other agencies pursuant to this Act, or other information concerning public interest.

Public body includes the executive, the legislative, the judiciary, government agencies which receive funding from the state's revenue, whether of central or local government, as well as other organizations which are established in Indonesia and which receive funding from public donation or foreign origin.

(4) The followings are the information which the state has the duty to publicize to its citizens, and which must always be accessible under the law:

1) Lists of public information maintained by such public bodies, expect information which is exempted by law;

2) Opinions and decisions of such public bodies;

3) Current policies and relevant documents;

4) Ongoing projects and budgets;

5) Agreements between public bodies;

6) Information and policies announced by the public bodies to the public;

7) Steps and procedures followed by the public bodies in providing public services:

8) Other lists of information as prescribed by law.

(5) The followings are information which the state has no duty to disclose to its citizens under the law:

1) Information which may jeopardize the state once disclosed;

2) Information which should not be disclosed in order to prevent unfair competition in the market;

3) Personal information;

4) Confidential information concerning certain professions;

5) Information of which the request of disclosure has been made unlawfully.

(6) Each public body has a duty to make an annual report on the requests for disclosure of public information, which shall contain the number of requests, the amount of time used in fulfilling each request, all permissions and refusals along with their reasons, to serves as an assurance that the right of access to public information under the Constitution is protected.

In a case of state enterprise, a state enterprise has a duty to disclose the following financial information: list of shareholders, annual financial report, annual audit report, report on corporate social responsibility, fiscal year change report, details of the projects awarded by the government or government agencies, and details of its public procurement processes.

A non- governmental organization has a duty to disclose information concerning its procedures, decisions, management, expenditures of the state revenue, and acceptance of any donation or funding of foreign origin.

(7) The law also establishes a Government Information Commission, with the power to make a final decision on a dispute over the disclosure of public information. The Commission also has the duty to ensure that government agencies comply with the legislation, to prepare a manual on the standard of information services, and to ensure that there is a mediation before a dispute enters the judicial process under the law.

2.2 Government Rules No. 63 of 2018

Government Rules No. 63 of 2018[372] is a subordinate law under the Public Information Disclosure Act 2008, which prescribes the compliance with the 2008 Act in details. The Rules consist of 22 Sections, the essentials of which are as follows.

[372] World bank group, "Government rules No. 63 of 2018," Retrieved on 22 June 2018 from https://www.worldbank.org.

(1) Each government agency shall categorize its public information. The criterion of the categorization shall be determined by the head of the agency in order to ensure that disclosure of public information is carried out in the same direction. The criterion shall include the categories of public information which can be disclosed and the categories which cannot, the period of disclosure, certain exceptions, and responsible government officials.

(2) The categorization of public information can be altered only by a recommendation of a responsible government official with an approval of the head of the government agency.

(3) The head of the agency shall appoint a public information official responsible for carrying out the disclosure of public information of the agency. The official shall also have the power and duty to provide, store, maintain, consider the information to be disclosed, and give advice on the policy of the agency in relation to public information.

(3) Roles of Relevant Agencies

Agencies relevant to the laws on administrative procedures, government information, and liability for the wrongful acts of officials, play the following roles.

3.1 Government Information Commission

The Government Information Commission has a role in protecting the citizens by reviewing an administrative order in the cases where a request for disclosure of public information is refused, where information acquired is incomplete or inaccurate, where a requester is charged an unreasonable fee, and where an official does not fulfill a request within the time specified by the law. In this aspect, Commission has the power to make a final decision in relation to a disclosure, partial disclosure, or non-disclosure of any public information.

The procedures for the Government Information Commission in making its final decision on disclosure of public information are as follows.

(1) Regarding the ground for submitting a request to the Government Information Commission, a requester has the right to submit a request only where there is a failure to disclose public information in accordance with the laws, for instances, where the requester receives incomplete or incorrect information, where the requester is charged an unreasonable fee, where the public body fails to disclose

public information as required by law, or where the official fails to fulfill the request within the time specified by law.

(2) Where a dispute arises, a requester shall appeal the case to a superior official of the official in the agency within 30 days from the date the requester becomes aware of the dispute. The result of the appeal shall be notified to the requester within 30 days from the date the appeal is submitted. The result shall be in writing and shall consists of the reasons for the decision. If the requester is not pleased with the result of the appeal, the requester shall have the right to appeal the case to the Government Information Commission within 14 days from the date the requester receives the result.

(3) Once the Commission receives the appeal, the Commission shall invite the requester and the public body for a mediation within 14 days from the date of receive. The mediation call be carried out within 100 days.

If the parties agree to settle the dispute, such agreement of settlement shall be final and shall be binding upon the parties. But if the dispute cannot be settled at this stage, the Commission shall proceed with its consideration of the dispute and make a final decision.

(4) The Government Information Commission consists of no less than 3 members, which is an odd number. The consideration of the Commission must be open to the public expect where the law requires. A testimony can be given both verbally and in writing.

(5) The Government Information Commission has the power to make a final decision allowing, or not allowing, full or partial access to public information. If a party is not satisfied with the final decision, the party can file a petition to a court to set aside the Government Information Commission's decision within 14 days from the date the party is notified of the Commission's final decision.

(6) Whether a court has the jurisdiction to trial a case regarding a petition to set aside the Commission's decision will depend on the nature of the defendant. If the defendant is a government agency, the case falls within the jurisdiction of an administrative court. If the defendant is a non-governmental organization, the case falls within the jurisdiction of a civil court. Once a judicial ruling has been made, if a party is not satisfied with the ruling, the party can appeal the case to the court of appeal or the High State Administrative Court within 14 days from the date the lower court gives its ruling.

(7) Apart from giving the citizens the right of access to public information, the law also prescribes the following criminal offenses.

(7.1) Any person who unlawfully exploits public information is guilty of a criminal offense and shall be liable to imprisonment for a term not exceeding 1 year and a fine not exceeding 5 million Indonesian IDR.

(7.2) Any person who intentionally provides false public information which is likely to cause a damage to another person is guilty of a criminal offense and shall be liable to imprisonment for a term not exceeding 1 year and a fine not exceeding 5 million Indonesian IDR.

(7.3) Any responsible official who negligently fails to disclose public information within the time specified by law, the failure of which results in a damage to another person, is guilty of a criminal offense and shall be liable to imprisonment for a term not exceeding 1 year and a fine not exceeding 5 million Indonesian IDR.

(7.4) Any person who intentionally and unlawfully destroys or causes a damage to public information is guilty of a criminal offense and shall be liable to imprisonment for a term not exceeding 2 years and a fine not exceeding 10 million Indonesian IDR.

3.2 Administrative Court

The Administrative Court has a role in making a final decision on a dispute arising from an exercise of an administrative power, in order to protect the rights of the citizens who are affected by such the administrative order by government official. Using a hearing method to trial its administrative disputes, Indonesia employs the following administrative procedures.

(1) A person who is entitled to initiate an administrative case is a natural or juristic person whose right is deferred by an administrative order or an administrative act of a government agency or official.

(2) One condition before a claim can be brought before the Administrative Court is that an appeal must be made to the Appeal Commission or Banding *Administrasi* (Administration Appeal) of the agency which issued the administrative order first. Where a party is not satisfied with the result, the party then has the right to submit the case to the Administrative Court to revoke the administrative order or order the agency to perform, restrain from performing, or provide compensation. In the case where the party is not satisfied with the decision of the Administrative Court, it can appeal to the High State Administrative Court.

(3) Procedures of the Administrative Court: where the claim is submitted to the Administrative Court, the case is referred to a judge of the case to conduct

preliminary hearings and to summon related parties, witnesses, and persons for fact inquiries. The judicial panel then conducts a hearing and renders a decision.

(4) The Administrative Court has the power to decide that the administrative order is partially effective, to revoke the administrative order, to order an agency to perform, or restrain from performing, and provide compensation. The Administrative Court's decision is also binding upon a third party.

Chapter 12

Laws on Public Orders and Situations

In this Chapter, the researcher shall present the law of Indonesia concerning public orders and situations which may be divided into 3 parts as follows: primary information; main substance of the laws and related agencies.

(1) Primary information

Indonesia is a nation that has been exercising their powers to control emergency situations for public order for over fifty years by using section 12 of the Constitution of Indonesia 1945 (B.E. 2488). It provides that the President shall have the power to declare emergency situations whereby the condition and measures for declaring emergency situations shall be as prescribed by law. Moreover, section 22 of the Constitution of Indonesia 1945 (B.E. 2488) also provides that in the case of necessary, the President has the right to issue governmental Rules which shall have an effect equivalent to Government Regulation In lieu of Laws (GRL) and in Indonesian, it is called *Peraturan Pemerintah Pengganti Undang-Undang* (*Perpu*). However, upon the issuance, such governmental Rules which shall have an effect equivalent to *Perpu* shall be presented to the Parliament for approval in the next meeting. In the case where the Parliament fails to approve such *Perpu*, it shall be ceased to be in effect (*Perpu* may be equivalent to Royal Decree).

In declaring emergency situations under such Constitution, it happened for the first time under the first President of Indonesia (Sugarno) who declared the State of Emergency on the 14th of March 1957 (B.E. 2500)[373] to solve the dispute between different political parties and rebel of soldiers in different regions such as west Sumatra and took control of powers. During that period, Indonesia had not yet drafted the law relating to administration of state of emergency as prescribed by section 12 of the Constitution. The Sugarno's government, as a result, bused the law on emergency situation during the colonization of the Dutch or Netherland (*De Regeling op de staat van OorlogenBeled* (UU SOB)). Nonetheless, during the same year, Sugarno used the powers under section 22 of the Constitution in issuing *Perpu* No. 23/Prp/1959 on State of Emergency to be enforced resulting in the previous law in the colonization period being repealed. Such *Perpu* was approved by the Parliament resulting it being the permanent law called Law No. 23/Prp/1959 on the State of Emergency.

The state of emergency was terminated on the 1st of May 1963 (B.E. 2506), however, the Indonesian government led by President Suharto issued the Law on Subversion called Law No. 11/Pnps/1963 on Subversion with the content to provide the powers to the government to suppress any act having the characteristics to destroy or aiming to overthrow the government. This law was criticized as the law violating human rights. Subsequently, in 1997 (B.E. 2540) Indonesia was affected by the economic crisis resulting in protests from university students demanding for the country reform after being under the Suharto's government for over 32 years. The President Suharto, as a result, resigned from the position and the new government led by President Habibie issued the law called Law No. 26 of 1999 regarding the Nullification of Law No. 11/Pnps/1963 to particularly repeal such law.

During the country reform period in 1999 (B.E. 2542), the Habibie's government drafted the law concerning State's Security and such bill was approved by the Parliament and the name was changed to Law No. 23/Prp/1959 on the State of Emergency which resulted in the public being scared that such new law may lead to the abuse of powers. During that period, the political parties of the army were powerful and may use this law to maintain their powers. The President Habibie saw this problem of not accepting such law amongst the public and university students. He subsequently refused to

[373] Bivitri Susanti, National Security Terrorism and Human Rights in Indonesia, (Canberra: presented at International Workshop on National Security and Constitutional Rights in the Asia Pacific Region, 2002).

sign in the draft law on state emergency and until today such bill is not a law. This results in the Law No. 23/Prp/1959 on the State of Emergency being the current law being enforced.

Since section 22 of the Constitution providing the President the powers to issue *Perpu* to be enforced in the case of emergency. This *Perpu* was the important tool for the President to maintain the public order and political situations. The examples of exercising the powers: Megawati issued *Perpu* No. 1 of 2004 (B.E. 2547) to amend the law on forestry (Law No. 41 of 1999) allowing 13 companies which were permitted before 1999 (B.E. 2542) to undertake mining in the reserved forest area[374] or the President Yudhonono issued *Perpu* No. 2/2007 on the administration of legal issues and structural areas and communities in Ache and Nias after Tsunami in 2004 (B.E. 2547)[375].

In addition, the President used this opportunity to issue the *Perpu* to maintain public order and political situation in the case of anti-terrorism as Indonesia is a terrorist target especially after the Bali bombing in 2002 (B.E. 2545). The Indonesian government under the President Megawati issued the *Perpu* to address the terrorists namely: *Perpu* No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism[376] and *Perpu* No. 2 of 2002 on Anti-Terrorism[377]. However, previously the issue of the terrorists in Indonesia was dealt under the Criminal Code, for instance, section 340 of the Criminal Code provides that premeditated murder is a crime or other equivalent and particular laws, for example, Emergency Law on the Possession of firearms and explosive. In this regard, *Perpu* No. 1 of 2002 prescribed the retroactive effect for the enforcement in the case of Bali bombing. Subsequently, the Parliament approved both *Perpu* and both have become the permanent law: Law No. 15 of 2003 and Law No.16 of 2003 respectively. Nonetheless, Law No. 16 of 2003 was declared unconstitutional as it was against the principle of retroactive effect of law as prescribed in the provision

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[374] Deloitte, "Law No. 1 of 2004 Causes Loss of Rp 70 Trillion to the State," Indonesian Investment Highlights (April 2004).

[375] Victor V. Ramraj, Arun K. Thiruvengadam, Emergency powers and the rule of Law in Indonesia, (Cambridge: Cambridge University Press, 2010).

[376] Melbourne Law School, "Perpu No. 1 of 2002 concerning the Eradication of Criminal Acts of Terrorism," Retrieved on 22 June 2018 from http://www.law.Unim elb.edu.au.

[377] Melbourne Law School, "Perpu No. 2 of 2002 on Anti-Terrorism," Retrieved on 22 June 2018 from http://www.law.unimelb.edu.au.

of section 28I (1)[378] of the Indonesian Constitution 1945 (B.E. 2488) protecting the rights of individual not be retroactively affected by law.

In addition to the laws concerning emergency states and anti-terrorism as mentioned, the law to maintain public order also covers the law on disaster as Indonesia is the island country resulting in difficulty in the coordination between the central and regional governments while it is the country frequently affected by the natural disaster. The government had the idea to prescribe the structure to manage the disaster systematically to respond to the disaster expeditiously by enacting Law No. 24 of 2007 concerning Disaster Management.

In conclusion, the law of Indonesia concerning the maintenance of public order and political situation which shall be presented in this Chapter consist of 3 laws as follows:

(1) Law No. 23/1959 on the State of Emergency

(2) Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism

(3) Law No. 24 of 2007 concerning Disaster Management

(4) The Government Regulation No. 23 of 2008 concerning participation of international institutions and foreign- non- governmental institutions in. disaster management)

(2) Essence of the Laws

2.1 Law No. 23/Prp/1959 on the State of Emergency

[378] Indonesia Constitution article 28 i (1) "The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retroactive effect are all human rights that cannot be limited under any circumstances"

Law No. 23/Prp/1959 on the State of Emergency[379] can be summarized as follows:

The law prescribes the power to the President in declaring any particularly area or several areas in Indonesia to be under the state of emergency when one of the following events occurs (Section 1) as follows:

- When a circumstance or threat on state security or public order occurs from revel, protest, natural disaster that cannot be solved under a normal procedure
- When a war breaks out or it is likely for a war to threaten the territory of Indonesia
- When the national security is at risk or under the indicating condition that Indonesia may be under danger

The law prescribes the types of emergencies into 3 categories namely civilian state of emergency, military state of emergency and war. The differences of the state of emergency are (a) the person having powers to order in the state of emergency area and (b) the level of danger of persons having the powers to order from the maximum to minimum threat for instance war, military state of emergency and civil state of emergency respectively.

During the declaration of state of emergency (regardless of the type), the President or persons having the authority shall have the powers as follows:

- To issue necessary rules to maintain public order and state security in the state of emergency area. In this regard, in so far as it is not inconsistent or contradictory to the higher level of laws;
- To issue orders to police officers and other supporting officials to search places regardless of whether the approval from the owner is granted;
- To issue order to police officers and other supporting officials to examine or confiscate documents or goods which are dangerous to security and to prohibit or restrict the distribution of those goods;
- To control, limit or prohibit the communications in every form, for instance, telephone, radio including to prohibit the use of code, secret code or signal for communications;
- To control meetings, gathering, associating;

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[379] Bivitri Susanti, *Supra note 373* and Leoni GI Silitonga Sianti Candra and Hanim Hamzah Roosdiono & Partners, "Legal System in Indonesia: Overview," Retrieved on 22 June 2018 from https://uk.practicallaw.Thomsonreuters.com.

- To prohibit the entering into some buildings, for instance, restaurants, meetings, or entertainment establishment;
- To prohibit the public from leaving their accommodation;
- To control the transportations on land, water and air;
- To control the borders in the territory of Indonesia

In this regard, during the declaration of state of emergency, the president still has the rights to issue the rules equivalent to law (*Perpu*) to be enforced temporarily but this shall be presented to the Parliament for approval in the following meeting. In the case where such *Perpu*, such *Perpu* shall cease to be in effect.

2.2 Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism

Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism[380] consists of the provisions of 47 sections which can be divided into 8 chapters and the summary is as follows:

(1) Framework of the enforcement of the law

the Anti-Terrorism law applies to any person or group of persons who commits or intends to commit a criminal act of terrorism in Indonesia and/or another nation that has jurisdiction and expresses an intention to prosecute that person and it also applies to criminal acts of terrorism which are committed: " Against the citizens of Indonesia overseas including the premises of the diplomatic officials and consuls of the Republic of Indonesia; (b) against the state facilities of Indonesia overseas including the premises of the diplomatic officials and consuls of the Republic of Indonesia; (c) with violence or threats of violence to force the Government of Indonesia to take or not take an action; (e) on board a vessel sailing under the flag of Indonesia or an aircraft registered under the laws of Indonesia at the time when the crime is committed; (f) by any stateless person who resides in Indonesia" (Section 3).

Criminal acts of terrorism under this Act shall be acts against Indonesian nationality outside the territory of Indonesia in foreign countries including accommodation of diplomatic and consular officials by forcing the Indonesian government to undertake an act or international organizations within Indonesia to undertake an act. An act made in a vessel carrying Indonesian flag or an aircraft registered under the Indonesian law at the time of act of terrorist and an act on

[380] Vertic, "Law No. 15 of 2003 concerning the Eradication of Criminal Acts of Terrorism ," Retrieved on 22 June 2018 from http://www.vertic.org.

stateless person living in Indonesia (Section 4) but shall not include criminal act concerning political matter (Section 5)

(2) Offences relating to terrorism under this Act are as follows:

Terrorism offences are namely violence or the threat of violence to create a widespread atmosphere of terror or fear in public or to create mass casualties, by forcibly taking the freedom, life or property of others or causes damage or destruction to vital strategic installations or the environment or public facilities or international facilities". Those who commit this kind of act of terrorism can be sentenced to death, or life imprisonment, or a minimum sentence of four years and a maximum of twenty years (Section 6). In this regard, terrorist offence also covers the offence relating to aviation security (Section 8)

Specific offences relating to explosive, firearms, and ammunition and for those who commit this kind of act of terrorism can be sentenced to death, or life imprisonment, or a minimum sentence of three years and a maximum of twenty years (Section 9). Moreover, the offences relating to the use of chemical, biological, and other weapon to create an atmosphere of terror or fear in the general population, causing danger and destruction to vital strategic installations or the environment or public facilities or international facilities, for those who commit this kind of act of terrorism can be sentenced to death, or life imprisonment, or a minimum sentence of three years and a maximum of twenty years (Section 10);

Offences relating to provide or collect funds or assets with the objective that they be used or if there is a reasonable likelihood that the funds will be used partly or wholly for

(a) committing any unlawful act of receiving, possessing, using, delivering, modifying or discarding nuclear materials, chemical weapons, biological weapons, radiology, microorganism, radioactivity or its components;

(b) Stealing or seizing nuclear materials, chemical weapons, biological weapons, radiology, microorganism, radioactivity or its components;

(c) Embezzling or acquiring illegally nuclear materials, chemical weapons, biological weapons, radiology, microorganism, radioactivity or its components;

(d) Requesting nuclear materials, chemical weapons, biological weapons, radiology, microorganism, radioactivity or its components;

(e) threatening to: (1) use such nuclear materials, chemical weapons, biological weapons, radiology, microorganism, radioactivity or its components to cause death or injuries or damage to property or; (2) commit criminal acts as stipulated in (b)

with the intention to force another person, an international organization, or another country to take or not to take an action;

(f) attempting to commit any criminal acts as stipulated in (a), (b), or (c); and (g) participating in committing any criminal act as stipulated in (a) to (f). The sentence for those found guilty is imprisonment with minimum sentence of three years and a maximum of fifteen years (Section 12);

Offences relating to assisting or inducing to conduct an act under this law, namely, the intention to borrow money or items or assets for a person committing a terrorist act, provision of accommodation to a person committing a terrorist act or concealing information relating to an act of terrorism shall be liable to imprisonment for a term of three to fifteen years (Section 13) or any person plans or induces other person to commit an act relating to terrorism under this law shall be liable to death penalty or life imprisonment (Section 14) or any person prepares, attempts or assists the commission of an act relating to terrorism under this law shall be liable to the offence as principal as principal as prescribed for such commission (Section 15). In addition, the law is also applied to those who provide any assistance, facilities, means or information for any criminal acts of terrorism committed extraterritorially. The sentence is the same as for committing the act of terrorism itself (Section 16)

(3) The procedure for terrorism cases can be summarized as follows:

The law provides that the investigation, initiation of a case and court trial relating to a terrorism shall be in accordance with the Criminal Procedure Code except if this law prescribes otherwise for the investigator to detain an offender for not exceeding six months (Section 25);

The law prescribes that investigators may use intelligence as the preliminary evidence and the evidence must be determined through an inquiry process by the Head or Deputy Head of the District Court. The inquiry process is conducted in closed session within a maximum period of three working days (Section 26)

The law also provides various extraordinary powers are conferred on investigators, public prosecutors or judges. Investigators may detain any person strongly suspected of committing a criminal act of terrorism based on adequate preliminary evidence for a maximum period of seven times twenty-four hours (Section 28). Investigators, public prosecutors or judges are authorized to order banks and other financial institutions to freeze the assets of any individual whose assets are known or reasonably suspected to be the proceeds of any criminal act connected to terrorism (Section 29(1)) and for the purpose of investigation Investigators, public prosecutors

or judges may request information from a bank or other financial institutions on assets of any person who is known or in suspicious of being a proceed of crime (Section 30(1)). In addition, investigators are authorized: "to open, examine and confiscate mail and packages by post or other means of delivery" and "to intercept any conversation by telephone or other means of communication suspected of being used to prepare, plan and commit a criminal act of terrorism". However, investigators may only intercept based on an order of the Head of the District Court for maximum period of one year (Section 31);

In this regard, the law prescribes an offence relating to obstructing the procedure to initiate a terrorism case, for instance, any person who uses violence or the threat of violence or who intimidates detectives, investigators, public prosecutors, solicitors and or judges who are handling any criminal act of terrorism, so as to hamper the judicial process, is guilty of an offence subject to a minimum sentence of three years and a maximum of fifteen years (Section 20) or a person who provides false testimony submits to a minimum sentence of three years and a maximum of fifteen years. Witnesses, investigators, judges, and their families are entitled to protection by the state before, during and after the investigation process (Section 33)

(4) Compensation and rehabilitation and international cooperation

The law prescribes that the state shall pay compensation to victims and families of victims from terrorism act and upon the payment, it shall be recorded in a court judgment (Section 36) and an offender whom the court dismissed the case shall have the right to rehabilitation and upon the rehabilitation, it shall be recorded in a court judgment (Section 37). In regard to international cooperation to prevent and suppress terrorism act, the law prescribe that Indonesia is obliged to provide assistance to other countries in intelligence, police and techniques relating to anti-terrorism measures under the provisions of related law (Section 43).

2.3 Law No. 24 of 2007 concerning Disaster Management

Law No. 24 of 2007 concerning Disaster Management [381] is the foundation law which prescribes the framework for disaster management by powers and duties of central and regional agencies, response to disaster, rehabilitation, emergency management, rights and duties of the communities, financial assistance

[381] Preventionweb, "Law No. 24 of 2007 concerning Disaster Management ," Retrieved on 22 June 2018 from https://www.preventionweb.net.

including the roles of business organization and international organization consisting of 85 sections and dividing into 13 chapters and can be summarized as follows:

(1) Law 24 of 2007 the definition relating to disasters, for example, "disaster management" is defined widely to means disaster prevention and effort to react to state of emergency and rehabilitation"(Section 1) which is a wide definition to be in accordance with the characteristics of disasters often occur in Indonesia. In this regard, according to the Government Regulation No. 21 of 2008 on Implementation of Disaster Control)[382] issued under Law No. 24 of 2007 explains that the word "disaster" means any incident threatening and affecting lives and the way of living of a community and this include both disaster occurred from nature and humans which results in physical losses, environment, assets and psychological impact.[383]

(2) Law No.24 of 2007 also provides the definition relating of "disaster management" to be defined widely to means disaster prevention and effort to react to state of emergency and rehabilitation (Section 1(5)). Pre-warning means "an activity to provide an advanced warning to communities relating to disasters which may occur in the area particularly by an authorized organization (Section 1(8)) Rehabilitation of disaster means "an effort to reduce risks of disaster through physical development including awareness and capacity building towards the threat of disasters" (Section 1(9)) and Rehabilitation means "activities with the purpose to allow ensure that the conditions of communities and environment affected by the disaster returns to the conditions prior to the disaster by fixing or rehabilitating by the responsible agencies including infrastructure and facilities" (Section 1(15)).

(3) The law stipulates cooperation between state agencies and international institutions in providing assistance during the disaster and such international institutions shall receive government protection for employee (Section 26). In this regard, according to Regulation 21 of 2008, it stipulates that international institutes shall be able to implement their operation to ensure "basic necessity" in responding to emergency situations and provides a definition of "basic necessity"

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[382] Food and Agriculture Organization, "Government Regulation No. 21 of 2008," Retrieved on 22 June 2018 from http://extwprlegs1.fao.org

[383] Article 1 of Regulation No. 21 of 2008 expands the definition: "an event or a series of events threatening and disturbing the community life and livelihood, caused by natural and/or non-natural as well as human factors resulting in human fatalities, environmental damage, loss of materials possession and psychological impact"

to include assistance on water, cleanliness, food, clothes, health, psychological assistance and accommodation (Clause 11 0f the Regulation)

(4) Law No. 24 of 2007 stipulates clearly that the central governments and local governments shall have duties to manage disasters (Section 5) and provides that the central government shall establish a main national responsible agency (Section 10) to receive assistant from foreign countries though the Presidential Regulation No. 8 of 2008 on National Agency for Disaster Management[384] (*Badan Nasional Penang gulangan Bencana* (BNPB)). The latter shall be mentioned in the next part of this research study. In respect of receiving foreign aid, *Badan Nasional Penanggulangan Bencana* has duties to control the movement of tools and equipments and logistics to the disaster affected areas which means "the use or operation from another country ... for responding against an emergency situation in the form of vehicles, airplanes and communication equipment.

At the regional level, the law prescribes that there shall be the establishment of regional disaster agency with the similar roles and duties to the mentioned national disaster agency by which the details of establishment shall be as prescribed in the rules of regional government (Section 18 to Section 25).

(5) The law provides for rights and duties of communities which shall be covered by the social security, training, information, planning and decision participation including the supervision of disaster management, right to receive assistance as necessary and the right to receive compensation from the disaster occurred (Section 26) and it also provides that the community shall have the duties to maintain unity, balance, sustainability of the environment, duties relating to disaster management and duties in providing the public relating to disaster management (Section 27)

(6) The law prescribes roles of business organizations and international organisations to participate in the disaster management, undertaking under the policy of disaster management and having the duties to report to the government or governmental agencies, the duties in considering the principle of humanitarian in disaster management in the economics prospective (Section 29 and section 30)

(7) The law prescribes the means to manage the disaster by considering the social, economic and cultural perspectives, conservation of environment, benefits

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[384] The International Federation," Presidential Regulation No. 8 of 2008 concerning National Disaster Management Agency," Retrieved on 28 July 2018 from http://www. ifrc.org.

and efficiency and territory (Section 31). It prescribes that there shall be 3 steps to respond the disaster: pre-disaster which shall be made in the preventative measure and reduce the risk of disaster. The response towards emergency: damages and resources shall be studied quickly and appropriately. The conditions of the disaster, assistance and evacuation of the people in the affected area shall be necessary. It is also provides for protection of the vulnerable group and rehabilitate the places and important infrastructure and rehabilitation (Section 33 to section 59)

(8) The law prescribes the assistance money by which the central government and regional government shall be responsible jointly financially in the disaster management and shall promote the community to participate in the assistance money with the transparent and examinable means (Section 60 to section 70).

2.4 The Government Regulation No. 23 of 2008 concerning participation of international institutions and foreign-non governmental institutions in. disaster management)

Indonesia has been affected by natural disasters are frequent. Such situation in Indonesia and has enacted the Act on the Management of Disaster (Law No. 24 of 2007), then in Indonesia, has issued regulations that government with the participation of international organizations and foreign non-government agencies in disaster management (Government Regulation No. 23 of 2008) by virtue of the Act to make such a push for the implementation. According to the legislation governing the management of disasters and to work effectively and deal with natural disasters on due time. This government regulation comes into force when it was announced and signed. This law enacted in Jakarta on 28 February 2008 (B.E.2551), signed by Gen. Susilo Bambang Yudhoyono, President of the Republic of Indonesia and the Government Regulation No. consists of 6 categories 18 Article. It has essential issue as follow;

(1) This regulation aims to manage the participation of international organizations and foreign non-government agencies in Indonesia to reduce risk and minimize damage victims and to accelerate the recovery after the impact of natural disasters and to establish a "natural disaster management center" or *Badan Nasional Penanggulangan Bencana*: BNPB an independent agency which is in accordance with the law. This directive also has a mandate to manage natural disasters have discretion to consider the participation of international organizations and foreign non-government agencies on the scene of natural disasters (Article 1).

(2) This regulation prescribes " International organizations, non-government organizations" that the international institutions which are managed independently and are not representative of the government of any state or an international organization established separate from the state. Further, "international organization" means an organization or the structure of the UN, which was conducted on behalf of the United Nations or other international organizations on behalf of (Article 1).

(3) This regulation also stipulates procedures and processes for participation of international organizations and foreign non-government organizations to cooperate with the management of natural disasters. Organizations that need to collaborate to offer a Memorandum of Understanding and action plans already submitted to the Center for Management of Natural Disasters (Article 5). However, the regulations allow international organizations or international organizations, non-government organizations providing immediate help without a Memorandum of Understanding and action plans to be submitted to the Center for management of natural disasters. If it is necessary to perform the work faster and respond to emergency events. Furthermore, international organizations or international organizations, non-government organizations can raise troops, logistic Support and equipment for helping (Article 8).

(4) The implementation of the cooperation of international organizations and foreign non-government organizations must adhere to the policy of disaster management and coordination center to deal with natural disasters fair. In times of emergency the cooperation of organizations such as the Command Center management of natural disasters justice (Article 10). Those organizations also receive exclusive coverage of the operation. A working group of international organizations and foreign non-government agency missions during natural disasters shall protected by the State (Article 11). Furthermore, International organizations and foreign non-government agencies can be involved in disaster management has individually or jointly or in a joint operation with agencies in Indonesia (Article 12) .

(5) Prohibiting foreign organizations, international organizations and non-government agencies commit any activities which involves political or stability issue and must to respect and honor the culture and religion of the indigenous communities (Article 14).

(6) Centers for handling natural disasters give a guidance to organizations, international organizations and foreign non-government organizations working in natural disasters (Article 15). The international organizations and foreign

non-government agencies shall submit reports related activities to the natural disaster assistance center (Article 16) In the case of a natural disaster aid from foreign states, the head of the Center for Management of Natural Disasters have to consult, coordinate and report to the Minister who is responded for international affairs (Article 17).

(3) Roles of Relevant Agencies

3.1 Agencies to the State of Emergency and Anti-terrorism

(1) Council for Maintaining Security and the Legal System[385]

Committee on Security and the legal system established by presidential proclamation No. 191 of 1998 (Presidential Decree No. 191 of 1998) in November 1998 (B. E. 2541). The President has authorized commander of the army's management committee, which consists of;

- Minister of Defense or the army commander
- Minister of Interior
- Minister of foreign
- Minister of Justice
- Minister of Telecommunications
- Minister of Finance
- Minister of Information
- Minister of Industry and Trade
- Minister of Agriculture
- Minister of Labor
- Minister of Cooperatives
- Minister of Education and Culture
- Minister of Religion
- Minister of Social Affairs
- Deputy of Prime Minister
- Minister of Youth and Sport
- The Attorney General
- Chairman of National police Commissioner
- Chairman of Corporate Intelligence Unit (KABAKIN)

[385] GlobalSecurity.org, "Council for Maintaining Security and the Legal System," Retrieved on 28 July 2018 form https://www.globalsecurity.org.htm.

- Secretary-General for Management Development
- Chairman of the Commission on Human Rights
- National President Islam
- Chairman of the Church - Chairman of Hinduism
- Chairman of Buddhism

DKPN has authority to give advice and coordination to deal with the crisis, legal integration as well as the usage of the resources of the military and civilian agencies and also maintain the stability of the legal system. Furthermore, DKPN will work in the form of meetings and reports directly to the president.

(2) National Intelligence Agency[386]

National Intelligence Unit (BIN), formerly called State Intelligence Coordinating agency (BAKIN), *Badan Koordinasi Intelijen* but renamed Negara (BIN) in the years 2001 (B.E.2544), to reflect changes after the end of the era of Suharto. This agency is under the direct command of the President. The head of this agency is the authorities there by the military since Lieutenant Lieutenant-level upwards and, in some cases, soldiers from the army joint task force, national intelligence.

BIN is the country's central unit for gathering intelligence both domestic and foreign and established its own separate from the military and police agencies. In addition, in the years 2004 (B.E.2547), later a huge bomb incidents in the country. The unit was assigned by the President in order to coordinate between military intelligence, police and civilians and to establish branch offices in various provinces across Indonesia in order to action against all terrorist.

(3) Coordinating Agency for National Stability[387]

Coordinating Agency for National Stability or BAKORSTANAS was established later ended the era of Suharto in 1979 group 1988 (B.E. 2531) instead of the original agency named, KOPKAMTIB. Coordinating Agency for National Stability or BAKORSTANAS, which under the commander of the army and directly to the President, has a duty to find a group of people who have a political opinion against the Government by investigate or arrested them. However, the Department was criticized that its actions are contrary to the principles of human rights. Then, this agency was reduced the power to act only as approved by the Government only.

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[386] GlobalSecurity.org, "National Intelligence Agency," Retrieved on 28 July 2018 form https://www.globalsecurity.org.

[387] FAS, "Coordinating Agency for National Stability," Retrieved on 28 July 2018 form https://fas.org/irp/world/indonesia/bakorstanas.htm.

(4) Indonesian National Police[388]

Indonesian National Police (POLRI) was part of the Indonesian National Armed Forces but there has been a restructuring of the bureaucracy. It separates itself independent of the Army in April 1999 (B.E. 2542). Then, the establishment of the Indonesian National police completed in 2000 (B.E. 2543). Now Indonesian National Police (POLRI) acting as an independent body reporting directly to the President, there are 3 main functions include to maintain public order and law enforcement, prevention and control of crime, and to provide services to the community.

The Structure of the National Police is divided into two sections. The first one is a metropolitan police office and the second one is a regional police office, which has 3 levels: (1) provincial level or *Polda*; (2) district level or *Polres* and sub-district level or *Polsek*. They are responsible within their area. Agencies under the National Police are:

1) Executive Sub- agencies: legal department, public relations department, foreign affairs department, information technology department, profession and security department and expert department;

2) Execution Sub-agencies:

2.1) Headquarter for Security and Intelligence (*Baintelkam*), has power and duties to promote and mange intelligence on security to accommodate the performance and execution of police and assist the government in national internal security;

2.2) Headquarter for peace and order (*Baharkam*) has power and duties to keep law and order, prevent and suppress crime by patrolling and social organization;

2.3) Headquarter for criminal investigation (*Barskrim*), has power and duties to investigate and inquire criminal act, identify the culprit and carry out forensic science;

2.4) Headquarter for Traffic Police (*Korlantas*), has power and duties to empower and organize the traffic system as well as educate the people, implementing traffic laws, evaluate traffic problems, identify driver and patrol highway;

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[388] Indonesian National Police, "Indonesian National Police," Retrieved on 28 July 2018 form https://ipfs.io/.

2.5) Headquarter for Special Mobile Police of Mobile Brigade Corps, has power and duties to provide security for politicians and important persons during high-level conference, manage an organized group of people and protest;

2.6) Headquarter for Terrorism Combat (Detachment 88 AT), has power and duties in intelligence, investigate and inquiry, prevent and suppress the terrorism crime.

Further, Indonesia National Police also manage personnel to balance and well-suited the order and peace keeping missions, as well as control of specific situations such as police performing task in prevention and suppression, police performing task in investigation, special mission police to manage terrorism threat, female police assisting in case of a female victim or an accused.

3.2 Agencies to Disaster Management

National Agency for Disaster Management

National Agency for Disaster Management (*Badan Nasional Penang gulangan Bencana*: BNPB) is an agency established by Regulation 8 of 2008[389] with the status as state agency and equals to a ministry. Expenses supporting the activities of BNBP come from state budget and/or other sources which are both legal and non-legal binding sources (Article 62).

The main duties of BNPB are as follows (Article 2) :

(1) Providing guidelines and directions on disaster management to the President;

(2) Setting disaster management standardization requirements by virtue of Legislation;

(3) Communicating information on disaster management activities to the community;

(4) Using and accounting for national and international contributions aids;

(5) Accounting for the spending of budget received from the State Budget;

(6) Carrying out other obligations in accordance with legislation.

The members of BNPB are as follows: (a) Head (b) Disaster Management Steering Committee and (c) Disaster Management Executive Committee (Article 5).

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[389] Food and Agriculture Organization, "National Disaster Management Agency," Retrieved on 28 July 2018 form http://faolex.fao.org.

(a) Head is appointed by the President and acting in management duties and powers of BNPB (Article 6).

(b) Disaster Management Steering Committee, is responsible directly to the Head of BNPB and play a role in recommending and advising the Head of BNPB (Article 7 and Article 8), has duty to suggest the policy concerning disaster management surveillance monitoring and evaluation (Article 9), The committee consists of The Chief BNBP and the other 19 members, 10 of whom were from government officials who have the nomination of heads of agencies[390]; Coordinating Ministry for People's Welfare, Department of Home Affairs, Department of Social Affairs, Department of Public Works, Department of Health, Department of Finance, Department of Transportation, Department of Energy and Mineral Resources, National Police of the Republic of Indonesia, and National Army of the Republic of Indonesia and the other 9 person were from qualified experts who have different professions involved (Article 11).

(c) Disaster Management Executive Committee, is responsible directly to the Head of BNPB and play a role in carrying out integrated disaster management that shall encompass pre- disaster, emergency response, and post-disaster periods (Article 14). The committee consists of Chief Secretariat, Deputy for Prevention and Alertness, Deputy for Emergency Management, Deputy for Rehabilitation and Reconstruction, Deputy for Logistics and Equipment, Chief Inspectorate Center and Technical Executing Unit (Article 15). [391]

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[390] Article 11(2) The state officials shall come from the following agencies: a. Coordinating Ministry for People's Welfare, b. Department of Home Affairs, c. Department of Social Affairs, d. Department of Public Works, e. Department of Health, f. Department of Finance, g. Department of Transportation, h. Department of Energy and Mineral Resources, i. National Police of the Republic of Indonesia, and j. National Army of the Republic of Indonesia.

[391] Article 15 The state officials shall come from the following agencies:

a. Chief Secretariat, b. Deputy for Prevention and Alertness. c. Deputy for Emergency Management, d. Deputy for Rehabilitation and Reconstruction, e. Deputy for Logistics and Equipment, f. Chief Inspectorate Center and h. Technical Executing Unit

Chapter 13

Law on Anti-Corruption and the laws governing the purchase or hiring of government

In Chapter 13, the researcher will present the laws of Indonesia that the law on prevention and suppression of corruption and the laws governing the procurement or procurement of government sectors. Which has divided the study issues into 3 parts, namely: Preliminary information; Essence of the law; and Role of relevant agencies as follows.

(1) Primary information

1.1 Elimination of Corruption

Corruption is a major problem in Indonesia and affect political stability. As well as the reliability and economy of the country. In Indonesia is presented in every branch, not only in administrative but also in the judiciary. Thus, there were many efforts to seriously reform to solve this problem[392] and to engage the private

[392] Lateef S. et al, Combating Corruption in Indonesia, (Washington DC: World

sector and the public to participate more. The Law No. 31 of 1999 on the elimination of corruption, which is a criminal offense in enacted.[393] The law further stipulates actions as corruption and penalties from the Criminal Code and governs that assistance is also guilty. Corruption is often found in public procurement. Hence, the presidential announcement established an office of procurement by Government Executive Order No. 80 of 2003 to lay down the guideline on public procurement to be more transparent and fairer. It has following key aspects:[394]

1. to develop strategies, policies and regulations relating to the procurement of the state;
2. to provide a surveillance and monitoring;
3. to implement electronic procurement;
4. to development of staff and procurement;
5. Counselling and disputes settlement.

Later in the year 2006 (B.E. 2549) the President announcement established agency acting on procurement in all government agencies.[395] However, self-assessment in 2008 (B.E. 2551) of the government of Indonesia found that the practices in procurement of each agency is not in line with each other because lack of procurement law which is precise. Hence, the President Regulation No. 54 of 2010 was enacted to prescribe criteria and the procedure on public procurement, which distinguished between normal procurement and procurement in the case of disaster in emergency. However, after a period of implementation, it has been found that the work was slow because the rules were complicated and required many processes. Some conditions conflicted with a specific law on procurement of public enterprise. Moreover, the Government had a policy to develop government system to be more efficient to accommodate the economy. Therefore, the President Regulation No. 16/2018 is enacted to replace the former rules as to expedite and make a public procurement both in general and in the case of emergency more flexible. This law is still in force today.[396]

Bank East Asia Poverty Reduction and Economic Management Unit, 2003), p. 1-3.

[393] Indonesia Criminal Code Section418 ,417 ,416 ,415 ,388 ,387 ,210 ,209 and 419.

[394] Karin Attström Ramboll, "Indonesia Strengthening Public Procurement Program," Public Procurement (2010): p. 122.

[395] Perpres 8/2006 (ULP-Unit Layanan Pengadaan).

[396] APEC, APEC Procurement Transparency Standards in Indonesia A work in

As for solving the structural corruption problem in 2003 (B.E.2546), Indonesia has established the Corruption Eradication Commission of Indonesia (KPK), to have the power to investigate and prosecuting the offense that is a corruption. In addition, Indonesia has established a special court for corruption cases in 33 provinces throughout the country and the Corruption Division of the Supreme Court to specifically consider cases of corruption-related crimes.

1.2 Government procurement control

Indonesia sets the policy direction for the government to be more transparent by adopting the principles of Good governance for public administration. The Presidential Regulation No. 54 of 2010, prescribing the process of government procurement process and granting authority to the original agency Including establishing new agencies to have the authority to inspect and control the procurement of public sector to be transparent and fair.[397] They are National Public Procurement Agency: LKPP and Inspection and Acceptance committee: PPHP, which will be discussed further.

(2) Essentials of laws

Essentials of the criminal laws of Indonesia on wrongdoing of the officials, the Act Number 31/1999, the Presidential Regulation No. 54 of 2010 on Public Procurement and law on electronics public procurement, which are laws on prevention and suppression of corruption and control of public procurement are as follows:

2.1 Criminal Law

The Indonesia Criminal Law Code Section 209, Section 210, Section 387, Section 388, Section 415, Section 416, Section 417, Section 418 and Section 419 stipulate offences and punishment on acts of corruption in office, which have following essentials.

1) Persons punishable under the criminal law

Progress Transparency International Indonesia, (Jakarta: Transparency International, 2011), p. 15.

[397] UNODC, "Anti-Corruption," Retrieved on 20 January 2018 from https://www.unodc.org/Indonesia.

Officials under the Criminal Code refer to the civil servants who by elections or by other means become representatives in the legislative, representatives established by the government or persons belonging to the army, including tribal leaders of ethnic groups with legal powers

2) Offences

An offence of graft is divided in to 2 cases: (1) any person gives a gift or makes a promise to an official with intent to move him to commit or omit something in his service contrary to his duty and (2) any person who gives a gift to an official following or in pursuance of what this official has committed or omitted in his service in contravention of his duty, shall be punished imprisonment for 2 years and 8 months or a maximum fine of 300 IDRs[398].

An offence against bribery in justice. In the case of an offense of bribery, an official who is a judge or official in the criminal justice system, offender shall be punished, if it isn't criminal case the punishment is 7 years of imprisonment, if it is criminal case the punishment can be rise to 9 years of imprisonment[399].

An Offence in the case of an official receiving bribes. In the case where an official receives property or any other benefit, which is related to his office, shall be punished by a maximum imprisonment of 3 years or a maximum fine of three 300 IDRs[400]. The sentences will be rise to 5 years imprisonment if there is bad motive[401].

Fraud against the state. In the case of contractors, architects, traders of construction materials, supervisor or any person involved in the construction commits fraudulent as a result of which the security of persons or property, the offender shall be punished by a maximum imprisonment of 7 years[402]. If that contract is related to military or national security, and the security of the state in time of war may be endangered, the sentences can be rise to 7 years' imprisonment[403].

Embezzlement by an official. Any official deliberately embezzles money or securities which he in service has under his custody or allows them to be taken

[398] Indonesia Criminal Code Section 209.

[399] Indonesia Criminal Code Section 210.

[400] Indonesia Criminal Code Section 418.

[401] Indonesia Criminal Code Section 419.

[402] Indonesia Criminal Code Section 387.

[403] Indonesia Criminal Code Section 388.

away or embezzled by another, shall be punished by a maximum imprisonment of 7 years[404].

Forge by an official. Any official in charge of any person who has been commissioned to furnish an official document who falsely draws up or falsifies books or registers, shall be punished by a maximum imprisonment of 4 years[405].

An offence of official destroy evidence. Any official or any other person in charge of a public service who destroys or renders useless property intended to serve as a conviction or as a proof before the competent authority, deeds, documents or registers which he in service has under his custody, shall be punished by a maximum imprisonment of 5 years and 6 months[406].

3) Burden of Proof and Weighing evidence

Proof of evidence in criminal cases. The plaintiff is responsible to proof beyond reasonable doubt before the court that the alleged offender had committed such offense under Section 137 of the Criminal Procedure Code in Indonesia. The defendant has the right to deny all charges and has no duty to deliver any evidence to use to consider punishment about their offense.

2.2 Act Regarding the Eradication of Criminal Acts of Corruption (Law No. 31/1999)

The purpose of the Act Regarding the Eradication of Criminal Acts of Corruption is to determine criminal liability, especially for State Administrators, Civil Servants, other types of government officials as stipulated by law, faculty of people or funds that are managed regardless of whether they are legal entities or not, including those who have been appointed or assigned to use the state power but perform their duties with dishonesty or omission of their duties.

Indonesia has the Act No. 3 of 1972 (B.E. 2522) as the law on prevention and suppression of corruption but this law had been in force for a long time and was no more harmonize with the state of society. Thus, it is abolished, and the Act No. 31 of 1999 (B.E. 2542) has been enacted, which prescribed that an Anti-Corruption

[404] Indonesia Criminal Code Section 415.

[405] Indonesia Criminal Code Section 416.

[406] Indonesia Criminal Code Section 417.

Commission shall be established within two years after the law enter into force. The law also established other new rules, such as:

a. Determination that a crime relating to corruption is a public offense which cannot be settled, which mean when the offense is committed, even though the state has the money returned or compensated, the case will be proceeded, and the offender will be punished;

b. Increase of punishment, introduce the death penalty, and prescribed that a private company can be a principle of a corruption crime, where the Board of Directors will be punished as an agent of the juristic person;

c. Widen the definition of "Government Officer" to include a staff of a private company, which receives or benefits in asset from the Government. Benefits in asset means such as to receive a lower loan rate than a normal rate, to be exempted from a fee without having a power by a law to do so;

d. Give power to an investigator, a prosecutor and the court to request an information on an accused or an offender from a financial institute;

e. Prescribe that the offender has a burden of proof, instead of having the plaintiff attest or bring witness to the court Reverse burden of proof). The offender also has a duty to provide information of its and family's asset, as well as other persons, who are accused of involving in the corruption.

The Act Regarding the Eradication of Criminal Acts of Corruption (Law No. 31 of 1999) is *lex specialis* because the Criminal Law Code stipulates only criminal offense committed by official (*pejabat*) in general whereas this law stipulates criminal offences merely criminal offence of high-ranking officials. The law has following essentials.

1) Persons punishable under the criminal law

Government officials under the Act on the Elimination of Corruption means civil servants under the Civil Service Act. Government officials according to the meaning of the Criminal Code Individuals who receive wages from the state or local budgets or from department stores, companies that receive funding from state or local budgets or receive funding or facilitation from the state or local (Section 1).

2) Offences

The offenses prescribed in the Act Regarding the Eradication of Criminal Acts of Corruption are categorized into 7 types[407], as follows:

[407] Yahman, "Reflection toward Reversed Verification System of Indonesian Corruption Acts," International Journal of Scientific and Research Publications, Volume

1) Unlawful enrichment: where a government official is unusually wealthy or exploits an opportunity arising from his authority and duty for his own advantage or an advantage of another, and such action is likely to create a damage to the financial system and the economy of the country under Section 2 and Section 3;

2) Bribery: where a person gives or agrees to give any property or any other benefit to a government official in order to convince the other to act or refrain from any action in accordance with his duty in relation to state administration, judiciary, or filing in the criminal justice system, the person is guilty of bribery;

3) Embezzlement of the asset of the Post: where a government official whose responsibility is to run the Post, exploits an opportunity arising from his duty to unlawfully misappropriate any asset of the Post for himself or another;

4) Exploitation of government property in an election: where a government official whose responsibility is to manage government property, exploits an opportunity arising from his power to unlawfully use the government property for his own benefit or a benefit of another in an election;

5) Abuse of power: this type of offense can be categorized into 3 different kinds, being: where a government official abuses his power to force another to provide him with asset or to act unlawfully; where a government offense misrepresents himself as a debtor and demands repayment from another government official or a foreign organization of the debt which does not exist; and where a government official unlawfully exploits from land use beyond what his legal right allows;

6) Corruption in public procurement: where a government official whose responsibility is to conduct public procurement, benefits directly or indirectly from the public procurement which he oversees;

7) Acceptance of a gift of value exceeding that prescribed by the law: where a government official accepts or agrees to accept a gift, the value of which exceeds 10 million Indonesian IDR, regardless whether the gift is proven to be a bribe, except where the Corruption Eradication Commission is notified within 30 days from the date the gift is accepted, and the Commission has the power to forfeit the gift.

In addition, the law also prescribes offenses for actions related to the aforementioned offenses: 1) where a person obstructs an investigation, inquiry, or trial of an offense under the Act Regarding the Eradication of Criminal Acts of Corruption; 2) where a person refuses to testify as a witness in a trial an offense under the Act,

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7 (2017): p. 8-9.

except where such a person is a spouse, parent, grand parent, sibling, or descendant of the defendant; 3) where a bank refuses to provide back account details of the defendant as requested; 4) where a witness or an expert refuses to testify or intentionally provides false information in a trial of an offense under the Act; 5) where a person who knew secret that is useful to the government but refuses to testify as a witness in a trial or give false testimony. 6) where a witness or a person related to an offense under the Act discloses the name, address, or personal information of the reporter of the corruption.

3) Burden of proof and weighing of evidence

The Act Regarding the Eradication of Criminal Acts of Corruption (Law No. 31 of 1999) prescribes that a defendant has a burden of proof of his innocence, instead of having the plaintiff attest or bring witness to the court (Reverse burden of proof). The defendant also has a duty to provide information of his and family's asset, as well as asset of other persons who are accused of involving in the corruption, according to Section 28 and Section 37A, paragraph one. Moreover, the law prescribed that the court has a power to listen to a testimony of the defendant given in another case to be an evidence in the case of unusual wealthiness. Nonetheless, the defendant is not deprived of the right to prove the source of such assets in order to prove his innocence under Section 37 a paragraph two.

This Act does not specifically provide for an extradition in the case of crime under the law on anti-corruption. Rather, the law on criminal extradition (Law No. 1 of 1979) governs that the country which has the wrongdoing person should extradite such offender only in the case where there is an extradition treaty with that country, or the country may enter into an extradition treaty on a case-by-case basis.

As for the procedures on extradition, where an agency of Indonesia receives a request for extradition of an offender, the agency must forward the case to the Indonesian National Police to proceed with the search and capturing of the offender. The police will then file a case to the prosecutor and present the offender before the court. The bench consisting of one judge will then decide whether the offender should be extradited. The case will then be presented to the President for an issuance of an order and for any further proceeding.

2.3 Presidential Regulation No. 54 of 2010 Regarding Public Procurement

The Presidential Regulation No. 54 of 2010 Regarding Public Procurement laid down the procedures for public procurement, amending the presidential Regulation No. 80 of 2003 in order to solve the problem of a lack of clarity of the existing laws at the time, expand the scope of public procurement, and increase flexibility of public procurement. The essentials of the law were as follows:

1) Expanded the coverage of public procurement to cover procurements using funds outside the government budget, for instances, foreign donation, or international development credit;

2) Increased the financial limit of sole sourcing from 50 million Indonesian IDR to 100 Indonesian IDR in order to increase flexibility in the methods used in public procurement;

3) Introduced an exception where security deposit is not required in order to increase flexibility of procurement in some cases;

4) Required disclosure of the estimated price of a bidding to ensure transparency and check of interested parties;

5) Introduced the use of electronic procurement for all public procurement from 2012 (B.E. 2555) onwards to ensure more transparency, ease, and fairness than traditional procedures where a person of influence may intervene prior to the bidding;

6) Allowed sole sourcing where the prices of products or services are widely known, for instances, car rental, hotel accommodation, or office rental.

Moreover, in public procurement, foreign companies are entitled to participate in the bidding only where there is no Indonesian company qualified according to the criteria. Such work must also worth not less than 100 million Indonesian IDR in the case of construction work and not less than 200 million Indonesian IDR in the case of goods and services.

The Presidential Regulation also divided the structure of the organizations responsible for public procurement into 3 organizations: (1) Budget Authority, which was responsible for procurement planning prior to entering into a procurement contract and disbursement of the government budget; (2) Procurement Service Unit (PPK), which was responsible for conducting public procurement for each project, determining the proposal, assessing cost- effectiveness of the procurement, and considering the terms of the procurement contract; and (3) Inspection and Acceptance Committee (PPHP), which was responsible for monitoring the result of the performance of the project, and assessing its cost- effectiveness and transparency after the procurement.

Despite its attempt, the law caused a delay in public procurement process because the rules were complicated and required several procedures. Some conditions conflicted with a specific law on procurement of public enterprise under the law on construction provision (Law No. 18 of 1999). Moreover, the Government had a policy to develop a government system to be more efficient to accommodate the digital economy by introduction of electronics procurement. Therefore, the Presidential Regulation No. 16 of 2018 is enacted to replace the former rules and remains in force today.

2.4 Laws relating to Electronic Public Procurement

(1) Presidential Regulation No. 16 of 2018

The Presidential Regulation No. 16 of 2018 is issued with the objective of solving the problems in the process of public procurement, reducing rigidity and increasing flexibility of the rules both in ordinary cases and in the cases of emergency, and supporting the policy of the government on sustainable economic development. The rationales for the issuance of the Regulation are as follows:

1) To improve the public procurement process to allow more flexibility, ease, and speed by abolishing unnecessary rules, which results in the Regulation containing only 94 rules under 15 subjects;

2) To improve consistency between the law and other existing laws containing provisions specifically on public procurement, for instances, the law on construction service and the law on state enterprise, and to improve the standard of public procurement in consistence with international standards;

3) To lay down a system of public procurement which supports the policy of the government on sustainable economic development, for instances, by supporting participation of small and medium enterprises (SMEs) in public procurement, supporting the use of domestic products, supporting research and development on local products, assessing cost-effectiveness or benefits obtained from public procurement, increasing flexibility in public procurement process both in ordinary cases and in the cases of emergency, including the introduction of electronic public procurement.

The Presidential Regulation No. 16 of 2018, currently applicable to public procurement of Indonesia, applies to procurements of goods or services of ministries, institutions, and local or central government agencies which receive budgets, fully or partly, from the government budget, including such agencies which receive subsidies from foreign origin. However, this Regulation does not apply to any

public procurement of which the procedures are already prescribed by other specific law, for instance the procurement of armament of the military. In that case, such specific law shall apply to the procedures of the procurement. Similarly, the law does not apply to public procurement of goods and services of agencies which provide public services where the prices of such goods or services are generally known under trade custom. In that case, the head government sector governing such agency shall prescribe the rules and procedures of public procurement within the agency. The essentials of the Presidential Regulation No. 16 of 2018 are as follows.

1) Objective of public procurement

The objective of public procurement is to ensure that the government receives, fairly and transparently, goods or services which are good value, efficient, and effective.

In conducting public procurement, responsible government officials must consider several factors to ensure that the government receives the best values for goods or services. Factors which must be taken into account are quality, quantity, time, place, cost, participation of SMEs, promotion of domestic products, promotion of research on products and services, promotion of innovative industry, reduction of inequality, and distribution of income, leading towards sustainable economic growth.

One remark regarding participation of SMEs is that Indonesia has a policy which states that where the value of procurement contract is less than 2,500 million Indonesian IDR, the government shall procure from a trader which is a small or medium enterprise and may break the procurement contract into smaller parts in order to comply with this rule in order to promote the development of SMEs[408] and distribution of income within the economic system.

2) Relevant parties in public procurement

The relevant parties in public procurement according to the Presidential Regulation are: [409]

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[408] Law on Small and Medium Enterprises (Law No. 20 of 2008) governs that Small- and Medium Enterprises (SMEs) means an enterprises which has property not including land and construction of value 50 million IDR or more but not more than 500 million IDR , or enterprises whose yearly revenue is 300 million IDR or more but not more than 2,500 million IDR .

[409] President Regulation No. 16 of 2018 Article 9.

Budget spenders, or *Pengguna Anggaran* (PA), meaning agencies to which the government budget is allocated in order to conduct public procurements in accordance with their powers and duties;

Officials responsible for conducting public procurement, or *Pejabat Pembuatan Komitment* (PPA), meaning officials of the budget spender agencies who have the powers and duties under the law or by appointment to make a binding transaction with a trader or a service provider;

Traders or service providers, meaning private parties who provide goods or services which possess the qualifications prescribed under the law on public procurement;

Procurement committees within the agencies, or *Pokja Pemilihan* (PP), meaning committees within the budget spender agencies which are appointed to consider the qualifications of goods or services, as well as the conditions of the procurement;

Officials responsible for monitoring the procurement outcome, or *Pejabat Pemeriksa Hasil Pekerjaan* (PPHP), meaning officials of the agencies who have the powers and duties under the law or by appointment to monitor the progress of traders or service providers in the performance of contracts;

Project procurement monitoring committees, or *Pemeriksa Hasil Pekerjaan* km (PjPHP), meaning a committee to inspects the product or service to be accurate in accordance with the procurement contract when the seller or the service provider completes the operation.

3) Types and methods of government procurement

3.1) Types of procurement

Government procurement can be classified into 4 categories: (1) products; (2); construction; (3) consultancy services and; (4) other services. Each time of procurement it can combine different types of procurement. The public procurement method depends on the type of procurement as follows:

a. Procurement of goods or construction. The procurement of such types can be done by 5 methods: (1) electronic procurement method; (2) direct procurement methods; (3) direct appointment methods; (4) fast bidding methods and; (5) bidding method. In consideration of which method of procurement will be deployed depend on the value of the product or construction to be purchased, general product quantity in the market, and the number of entrepreneurs that will compete on price. In general, electronic procurement methods and bidding methods are used, except in urgency, other methods are used.

b. Purchasing consulting or other services. Procurement of such types can be done by 3 methods: (1) pick up a service provider method; (2) direct procurement methods and; (3) direct appointment method. In consideration of which method of procurement will be deployed depend on the value of the service to be purchased and the number of operators that will compete on price. In general, the method of direct procurement is used, except in urgency, other methods are used.

3.2) Procurement methods

3.2.1) Electronic Procurement is a method of procurement using information systems in the activities of price negotiation, price examination, tender, and making list of electronic product and service (E-Catalog) through Internet system, which will make the procurement process more efficient, economical, cost-effective, transparent, and can be checked throughout the process. The Electronic Procurement Service (LPSE) is established to be responsible for managing the electronic procurement information system.

3.2.2) Direct procurement method is a procurement method without a tender. The price asked from the seller or service provider directly will be compared with the market price. This method is used in the case of consulting services that are worth not more than 100 million Indonesian IDR or in the case of construction contracting or other services which is worth not more than 200 million Indonesian IDR.

3.2.3) Direct appointment method is a procurement method in special cases. In emergency situations such as natural disasters, riot, etc., direct appointment method is allowed to be used without having to carry out the procurement process or tender process.

3.2.4) Quick tender method is a new procurement method, which allows bidders whose shop and products have been listed to submit bids. The lowest bidder is the winner of the tender without having to publish for general tender for convenience and swiftness.

3.2.5) Tender method is a procurement method which has announced the inviting bidders to submit bids in general or have invitations to participate in the tender. The lowest bidder is the winner of the tender.

4) Procurement period

The Presidential Regulation No. 16 of 2018 does not specify the duration of each procurement process, rather, it leaves this for the discretion of the responsible government official to determine the duration of the operation to be

suitable for each project[410]. If the party does not comply with the time frame that the government official has determined, the sanctions are fine, keep the deposit and listing such party to use in consideration of the next procurement. If the government officers do not comply with such time frame, such officers are at fault and disciplinary actions will be taken on that officers as well[411].

5) Documents relating to government procurement

Once the procurement has been carried out that the contract party has agreed to sell the product or service to the government, documents relating to procurement with the public sector will be issued. The Presidential Regulation set 5 types of procurement contracts as follows.

5.1) Proof of payment

In the case of purchasing goods or services that are worth not more than 10 million Indonesian IDR, the payment evidence is in writing, signed by the receiver.

5.2) Receipt

In the case of purchasing goods or services that have value from Indonesian IDR 10 million, but not more than 50 million Indonesian IDR, a receipt is in writing, showing the product or service details and signed by the money recipient.

5.3) Purchase order, hire order

In the case of purchasing products that are worth 50 million Indonesian IDR, but not more than 200 million Indonesian IDR or in the case of consulting services that have a value of not more than 100 million Indonesian IDR or in the case of construction with a value of not more than 200 million Indonesian IDR, the purchase or hire orders shall be made in writing signed by the customer.

5.4) Procurement contracts

In the case of consulting services that have value ranging from 100 million Indonesian IDRs or more, or in the case of procurement of other goods or services with a value ranging from 200 million Indonesian IDRs or more, the procurement contract shall be made in written signed by both sides of the contract parties.

5.5) Purchase orders

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[410] Presidential Regulation No. 16 of 2018 Article 9 (1) C in conjunction with Article 18 (1).

[411] Presidential Regulation No. 16 of 2018 Article 78 to Article 82.

In the case of purchasing, procurement of goods or services that are operated by electronic procurement methods, the list of goods or services and the price shall be clearly stated, considered that the purchase order by electronic means has been signed legally.

6) Control mechanisms for monitoring public procurement

Control mechanisms for monitoring public procurement are divided into 2 channels.

6.1) Supervision and monitoring by supervisors. This Presidential Regulation requires that the Minister and the head of government agencies that procure are responsible for control, evaluate and monitor the procurement results to be accurate, transparent and fair, as well as having the power to evaluate the value of procurement for maximum benefits for the state, achieve state policy in supporting the use of domestic products and the participation of small and medium enterprises (SMEs)[412].

6.2) Check and Control by the public. This Presidential Regulation set out a complaint system (whistleblower) for the public or stakeholders to report complaints about a public procurement process that is suspected of corruption directly to the National Procurement Committee. However, for the case that the bidder appealed against the procurement result, the government agency that had carried out the procurement has power to decide the appeal. This principle was first introduced by the Presidential Regulation No. 54 of 2010, which was revoked. Later, in this Presidential Regulation, the principle is set forth. However, such principle is a general power of the agency which carried out the procurement, therefore, there is no clear set of rules, procedures and methods for appealing against the bidding results.

7) Control mechanisms to monitor in the case of Electronic Procurement

The whole electronic procurement process is a procurement method that focuses on the principles of information disclosure that can check information from the beginning to the implementation of the procurement contract. Thus, the Electronic Procurement Service (LPSE) has established to be responsible for the management of electronic procurement information systems in particular and has created electronic list of goods and services (E-Catalog) showing information about prices and production details such as the proportion of domestic production, the use of environmentally friendly raw materials, etc. which are divided into a list of goods

[412] Presidential Regulation No. 16 of 2008 Article 76.

and services of the whole country, a list of goods and services classified by type and a list of goods and services classified by local.

The electronic government procurement process consists of 8 steps, namely: step 1: announcement of the qualifications of the bidder and the initial process. Step 2 announcement to bid at least seven days in advance. Step 3 bidder preparation. Step 4 tender submission. Step 5 inspect the tender and evaluate the technical proposal. Step 6 evaluate financial proposals. Step 7 Announcement of the winner. And Step 8 gives the right to appeal the bidding result.

When announcing the auction results, the bidder has the right to object the result to the agency which has carried out the procurement, when considered that the auction process is not in compliance with the laws, or the technical specification is incorrect or is fraud. The agency must consider the matter within 5 days after receiving the objection.

If the objector is dissatisfied with the decision of the agency, he has the right to appeal to the agency's affiliation. He has to place a guarantee of 2 percent of the auction value but not more than 50 million Indonesian IDR under the condition that the objector has the right to has it returned only when the affiliation of the agency considers the matter and agrees with the appeal of the objector and has the order to reverse the decision. However, if the affiliation has such opinion in accordance with the decision of the procurement agency and considers that the objector has appealed to delay the procurement, the affiliation may order to forfeit the guarantee.

(3) Related Agencies

Agencies related to the law on prevention and suppression of corruption and the laws governing the procurement or procurement of government sectors are as follows.

3.1 Indonesian National Police

Indonesian National Police have power to investigate, inquire, prevent and suppress Criminal offense. The high levels commanders of the Indonesian National Police include National Police Commander, Deputy Commissioner for National Operations, Deputy Commissioner of the National Police for Personnel, Deputy

Commissioner for National Finance Deputy, Commissioner of National Police for Maintenance and Inspector General.

Structure of the Indonesian National Police divided into the Metropolitan Police Bureau and the Provincial Police Headquarters, which can be divided into 3 levels: (1) Provincial Police or *Polda* (2) District Police or *Polres* and (3) Sub-District Police or *Polsek*. Each level has the authority and responsibility within their responsible area. The internal departments of the Indonesian National Police can be divided as follows.

1) Internal administrative departments of the Indonesian National Police: The Legal Division, the Public Relations Division, the Foreign Affairs Division, the Information Technology Division, the Professional and Safety Division and the Specialist Division.

2) Internal operational departments of the Indonesian National Police compose of 6 departments, namely:

2.1) The Security and Intelligence Command Center or *Baintelkam* has the authority to promote and manage the intelligence work in security for the purpose of carrying out the duties and administration of the police and supporting the government's operations to ensure internal security;

2.2) The Peace Command Center or *Baharkam* has the power to promote and maintain peace and order, prevent and suppress criminal offenses such as patrol and social control;

2.3) The Criminal Investigation Center or *Barskrim* has the power to investigate and inquire criminal offenses, identification of suspects and forensic operations;

2.4) The Traffic Police Command Center or *Korlantas* has the authority to promote and organize the traffic system which includes educating people, traffic law enforcement, traffic problems assessment, driver identification and highway patrols;

2.5) Mobile Special Operations Police or Mobile Brigade Corps has the authority to maintain security for political positions and important persons in high-level meetings, crowd and protest rallies management;

2.6) The National Counterterrorism Center or Detachment 88 AT has the authority to manage intelligence, investigate, inquire, prevent and suppress, prosecuting a criminal offense is a terrorism.

Role in the prosecution of corruption

Police officers of the Indonesia National Police have a role in accepting grievances in criminal offenses including criminal cases, which have corruption characteristics, gather evidence, furnish case file with opinion for further consideration to the prosecutor, and bring the offender to the court that has jurisdiction to further considering punishment according to the law. Nonetheless, when the case has corruption characteristics, the investigating officer shall notify the matter in writing to the Corruption Eradication Commission of Indonesia (KPK). If the action of the accused is in the power of the Commission to investigate, the case shall be transferred. When the transferred case has been accepted by order, the inquiry officer shall cease the power to investigation the case and transfer the case file to the Corruption Eradication Commission of Indonesia. The details will be discussed in the next section.

3.2 Office of the Attorney General

Office of the Attorney General is an independent body with the authority to help people in legal proceedings as well as in protecting the rights and freedoms of people, providing legal knowledge to the public, including providing consultation and inspection draft contracts or legal documents for the government and government agencies.

The prosecutor has the power to charge and proceed criminal case before the court to punish the offender, defend the state officials who have acted in the position in the case between government agencies and private sectors, be a state lawyer in civil and administrative cases, as well as having the power to investigate special criminal cases.

Structure of the Office of the Attorney General: The Attorney General is responsible directly to the President. Other lower levels are the Deputy Attorney General, the Assistant Attorney General, Provincial Prosecutors, and Prosecutors in District Court respectively

Role in the prosecution of corruption

Public prosecutor is a government official under the Attorney General's Office, having duty to proceed a case after the inquiry officer in furnishing the case file and bring the offender before the court that has jurisdiction to punish according to law. Nonetheless, when the case has corruption characteristics, the investigating officer shall notify the matter in writing to the Corruption Eradication Commission of Indonesia (KPK). If the action of the accused is in the power of the Commission to investigate, the case shall be transferred. When the transferred case has been accepted by order, the inquiry officer shall cease the power to investigation the case as well as the power

to charge with an indictment of the public prosecutor. The Corruption Eradication Commission of Indonesia will then have the power to charge with an indictment before the court that has jurisdiction. The details will be discussed in the next section.

3.3 The Budget Bureau

The Budget Bureau of Indonesia is under the Ministry of Finance. It has the authority to prepare the national budget and propose to the Council of Ministers for approval before the government proposes the Parliament for approval to be announced as an annual expenditure Act. The Budget Bureau's policy is to set up a budget with quality and contribute to sustainable development and reduce economic disparity[413].

The structure of the Budget Bureau: The Secretary of the Budget Bureau, the Income and Expenses Budgeting Division, Economic and Maritime Budgeting Division, Human Resource and Culture Development Budgeting Division, State Security and Safety Budgeting Division, Non-Tax Revenue Budgeting Division, Budgeting System Standard Division, Budget Policy Division and Budget Regulation Development Division[414].

The Budget Bureau has roles regarding the prevention and suppression of corruption and the laws governing the public procurement in controlling the budgeting process to be transparent and worth the value for money of the products and services that the government should receive, which helps to reduce the corruption channels in the public procurement process.

3.4 National Public Procurement Agency – LKPP

The National Public Procurement Agency (LKPP) has the authority to set public procurement policies, the standard and procedure in public procurement including procurement of the private sector, which has invested with the government; develop the electronics procurement information system; monitor and proof the procurement.

Structure of the National Public Procurement Agency: It was a former Public Procurement Policy Development Center (PPKPBJ), which has the authority to set policies on public procurement for the government. Later, the Government of

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[413] DEPKEU, " Bureau of the Budget," Retrieved on 20 January 2018 from http://www. anggaran.depkeu.go.id.

[414] *Ibid.*

Indonesia has envisioned the importance because the corruption often occurs in the procurement process. Therefore, the Government has elevated it as the National Public Procurement Agency, which respond directly to the President by the power of the Presidential Regulation No. 107 of 2007. The National Public Procurement Agency has the Secretary-General as the highest executive and the Deputy Secretary-General. The Agency is divided into 4 departments as follows.

(1) Procurement Policy and Strategy Department

Consists of 3 agencies, namely:

1) Public procurement Policy Bureau has the power and duty to formulate strategy, policy and guidelines for public procurement, including the preparation of standards for public procurement for both central and regional levels;

2) Special Procurement Committee has the power and duty to formulate strategy, policy and guidelines for procurement of state enterprises, including the preparation of standards for procurement of state-owned enterprises and procurement under the framework of public-private partnerships;

3) Foreign Procurement Committee has the power and duty to set policies, strategies and guidelines for foreign procurement including the preparation of foreign procurement standards manuals.

(2) Information System Development and Audit Department

Consists of 3 agencies, namely:

1) Bureau of Monitoring and Evaluation has the power and duty to set policies, strategies and guidelines for monitoring and evaluating procurement including making a standard manual, checking procurement;

2) Bureau of Public procurement Budget Information has the power and duty to collect information about procurement for the Ministry of Finance and the National Development Planning Agency or *Bappenas* to be used as a database for the implementation of the annual budget of ministries and agencies;

3) Bureau of Electronic Procurement has the power and duty to develop the system, determine and draft policies, guidelines and standards for use in electronic systems to carry out public procurement, coordinate and supervise electronic procurement service units, prepare technical advice and promote electronic procurement systems, including performance evaluation.

(3) Human Resources Development Department

Consists of 3 agencies, namely:

1) The Bureau of Vocational Education has the power and duty to set policies, strategies, policies and guidelines to promote public procurement skills to individuals, individuals and stakeholders.

2) The Training Bureau has the power and duty to arrange public procurement training for personnel and stakeholders.

3) Human Resource Management Bureau has the power and duty to set policies, strategies, certify public procurement professional and human resource management.

(4) Legal Department

Consists of 3 agencies, namely:

1) Technical Advisory and Support Bureau has the power and duty to render opinions on legal inquiry about the law on public procurement for those involved with public procurement;

2) Case Management Bureau has the power and duty to give advice on litigation, litigate and provide expert witnesses on public procurement;

3) Complaint Management Bureau has the power and duty to receive complaints in the process of public procurement, settle disputes, examine and process complaints and proposing matters to agencies involved in legal proceedings.

The roles of National Public Procurement Agency concerning law on Anti-Corruption and the laws on the purchase or hiring of government are divided into 2 roles as following:

3.4.1 Roles in corruption litigation

National Public Procurement Agency by the Case Management Bureau in the Legal Department has a role in prosecuting corruption as a victim when there is a corruption in the public procurement process and also plays a role in providing expert witnesses to the court in general disputes when the court has a summon or a party in the case requests an witness's opinion.

3.4.2 Role in corruption prevention

National Public Procurement Agency by the Complaint Management Bureau in the Legal Department has a role in receiving complaints in the complaint system (whistleblower) which is a channel for the public and stakeholders to report complaints about the public procurement process that is suspected of corruption directly to the National Procurement Committee.

In addition, the National Public Procurement Agency, by the Information System Development and Audit Department has a role in the development of

procurement information to be transparent and fair. By providing electronics procurement system and an electronic list of product and service (E-Catalog) showing information about the price and production details as the reference for medium price control in public procurement to prevent corruption in the price difference.

3.5 The Project Procurement Monitoring Committees

The Project procurement monitoring committees or *Panitia Penerima Hasil Pekerjaan* (Inspection and Acceptance committee) is not an organization as the National Procurement Agency. It is a component of the public procurement committee, which the Presidential Regulation No. 61 of 2018 governs that each project shall have one Project Procurement Monitoring Committee to perform the duty of inspecting and accepting the work under the procurement contract that the contract has been fulfilled correctly and completely, as to prevents the corruption of government officials and vendors of goods or services.

The structure of a Project Procurement Monitoring Committee consists of 3 - 7 members of the audit committee, who are government officials in the department that does public procurement and outsiders, having qualifications as a person with knowledge about products or services of that procurement and not being a stakeholder in such procurement contract.

Role in preventing corruption

The Project Procurement Monitoring Committees plays a role in examining the accuracy and completeness of compliance under the public procurement contracts. When the seller of the goods or services, which is a contract party, has complied with the procurement contract and send a letter requesting to withdraw money to the agency, which is the contracting party. The agency will appoint a Project Procurement Monitoring Committee to inspect goods or services received. In case of a defect, it must be corrected and carry out completely in accordance with the contract first. Then the Committee shall report to certify that the payment of goods or services is paid according to the contract to the counterparty, in order to prevent corruption conspiracy between government officials who have the authority to purchase and sell products or services.

3.6 The Corruption Eradication Commission of Indonesia

The Corruption Eradication Commission (KPK) is an independent organization with the authority and responsibility to conduct investigations of facts relating to corruption actions by government officials, who exercise executive,

legislative or judicial power, to support prevention and suppression of corruption; including witness protection in corruption cases,

There are 3 types of cases that are within the jurisdiction of Corruption Eradication Commission: a case involving a government official corrupt or misuse the authority, a corruption cases that are in public interest and a corruption case that damage the state, which is worth at least 1,000 million Indonesian IDR.

The Corruption Eradication Commission of Indonesia (KPK) has 5 members, comprising of High-level government officials and the Attorney General, who have been appointed by the Parliament through the process of nomination from the public and nominated by the President. The Commission has a term of 4 years, which can be extended once[415].

The structure of the Indonesian Corruption Elimination Committee is divided into 4 Bureaus[416], namely:

1) Corruption Prevention and Suppression Bureau consists of the Property Inspection of High-Ranking holders Division, Case Legal Opinion Division, Knowledge Sharing and Public Services Division and Research and Development Division;

2) Legal Bureau consists Investigation Division, Dispute Resolution Division and Litigation Division;

3) Information Bureau consists of the Information Processing Division, Promotion Division and Tracking Division;

4) Office of Internal Audit and receiving complaints consists of Internal Audit Division and Complaint Reception Division.

The role of the Corruption Eradication Commission (KPK) in relation to the prevention and suppression of corruption and the laws governing the procurement of government sectors is divided into 3 areas as follows.

3.6.1 Roles in corruption litigation

The Corruption Eradication Commission has the power and duty to investigate corruption cases. The investigation process is as follows.

1) When the inquiry officer receives a complaint about the crime of a government official regarding corruption, the inquiry official shall notify the

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[415] Section 21 and Section 34 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

[416] Section 26 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

Corruption Eradication Commission within 14 days from the date of receiving the matter[417].

2) When the Corruption Eradication Commission has received the matter, the Commission shall consider whether it is within their authority. If it is, the Commission shall notify the inquiry officer that the Commission will accept the case into his investigation.

There are 5 types[418] of cases that the Corruption Eradication Commission will accept the case transfer, namely; the government officials delayed in proceeding with Public fraud complaints without reasonable grounds; a government agency with authority not prosecuting the case for the victim without reasonable grounds; doubt that the investigation process was not fair; an interference with the work of government officials using legislative or administrative powers or the judiciary, or in the case of special circumstances that the believable that investigating officer or public prosecutor will not be able to perform his duties fairly.

3) The investigating officer is obliged to submit the case and all the evidences to the Corruption Eradication Commission within 14 days from the date of the transfer of the case.

4) The investigation authority of the investigating officer in the case has ended since the date of transferring the case to the Corruption Eradication Commission[419].

5) The Corruption Eradication Commission has the power to fully investigate, for example, has the power to seek evidence by intercepting and recording conversations, order financial institutions to disclose and deliver financial information of the accused, prohibit people from leaving the country, temporarily suspend the operation of the accused, and temporarily suspend the license or concession rights, etc.

6) The Corruption Eradication Commission shall submit the case to the Court of Corruption.

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[417] Section 50 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

[418] Section 9 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

[419] Section 8 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

6. 1) The Court of Corruption is a Special Court of Justice located at Jakarta. The Court has the power to consider and judge cases relating to the offenses of government officials, which are corruption or abuse of authority, including those who support the offenses of such government officials. There are jurisdictions covering the whole country by using the appeal system. The Supreme Court 3 layers are the Court of First Instance. Court of Appeal and Supreme Court respectively[420].

6.2) The Panel of Judges for corruption cases consists of judges of the Court of First Instance and associate judges.

6. 3) Qualifications of Judges of the Court of First Instance in corruption cases must have been a judge for not less than 10 years with experiences in considering corruption cases and have never received disciplinary action before[421].

6.4) Associate judge in the corruption case must be at less than 40 years old and is a person who has graduated in law or other fields but has at least 15 years of legal work experience, knowledgeable, capable, having behaviour to carry out the duty and has been appointed by the President by the advice of the President of the Supreme Court[422].

3.6.2 Role in preventing corruption

The Act regarding the Eradication of Criminal Acts of Corruption Section stipulates that the Corruption Eradication Commission has the power and duty to take measures to prevent fraud as follows[423]:

1) Control the account of the property of government officials;

2) Examine the facts about bribery reports of government officials;

3) Establish guidelines for instilling values in anti-corruption at all levels of education;

4) Supporting social programs related to corruption prevention;

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[420] Section 54 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

[421] Section 55 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

[422] Section 56 and Section 57 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

[423] Section 13 to Section 18 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

5) Disseminate knowledge and campaign against corruption to the public;

6) Research and development of anti-corruption in bureaucracy in both the Central and Regional governments.

The Corruption Eradication Commission has the authority to administer the government of all agencies by giving advice to the Head of the Agency in case where there is a weakness of the system which could be used as a channel for corruption, and has the power to render option to the President, the Parliament and the Ombudsman[424].

There are notable things about investigation the facts on government officials' bribery reports. In the event that government officials or high-ranking officials receive property or benefits worth more than 10 million Indonesian IDRs or more, even though it can be proven that it is not a bribe. The government officials or high-ranking position holder shall also report the receipt of such assets to the Corruption Eradication Commission for the consideration whether it should be vested in the government officials or in the state. When anything falls into the state property, then the Corruption Eradication Commission shall publish a report showing such property and disseminate to the public at least once a year[425].

3.6.3 Role in witness protection

The Commission for the Eradication of Criminal Acts of Corruption stipulates that the Corruption Eradication Commission has the authority to protect witnesses in corruption cases, including those who provide information, which is useful for preventing and suppressing corruption, to stay safe in life, body and property and receive appropriate compensation as well.

[424] Section 14 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

[425] Section 18 of Law on Commission for the Eradication of Criminal Acts of Corruption (Law No. 30 of 2002).

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