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COVID 19 SECTION

ANALYSIS OF BUSINESS MODEL INNOVATION IN POST-COVID ECONOMY: DETERMINANTS FOR SUCCESS

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***Abstract**: Post COVID economy addressed in this paper as "The Low Touch Economy" is already undergoing dramatic trends changes and behavioural modifications. Business model innovation subject has gained vital traction within the past years as an academic subject and corporate and start-ups management alike. Nowadays, more than ever, business model innovation could provide answers on where the winners and losers of are in the new normal. There is significant lack of empirical research regarding the increasing diversity of business model innovations in post-COVID global economy, and on their impact on community, business growth and sustainability. With this research, we use a comparative method fs/QCA to assess the business models of a sample of 51 companies in this new emergent economy. Leveraging a set of qualitative data, our analysis identifies 5 dimensions of potentially sustainable business models, revealing a typology comprising 5 ideal types.*
Keywords: *sustainable business models; fsQCA; typology; qualitative comparative analysis; innovation; post crisis pivots.*

INTRODUCTION

"The truth is that our finest moments are most likely to occur when we are feeling deeply uncomfortable, unhappy, and unfulfilled. For it is only in such moments, propelled by our discomfort, that we are likely to step out of our ruts and start searching for different ways or truer answers". (M. Scott Peck)

The term VUCA originated in the US War College to describe "situations that are volatile, uncertain, complex, and ambiguous". In this world, "unknown unknowns" can emerge that place teams in "white areas" that models cannot predict. COVID-19 events deliver the unexpected daily to every organization, from health care specialists to government officials.

The coronavirus pandemic is dramatically changing the way companies make business, as Harvard Business School teaching staff estimate (Gerdeman, 2020): "shifts in trust-base from employees and customers; shifts in perceived value creation (more engaged customers); balance shift between remote and on-site interactions; shifts in teaming up to co-create solutions for new problems arising; shifts in shortening supply chains or "islandization" of economies; thinking around traditional structures; raising health concerns to bring substantiated changes to the physical structures we live/ work in, and also to the collection of personal data".

According to OECD Policy Responses to Coronavirus report (OECD, 2020) , the initial direct impact of the economy taking a forced break could be a decline in the level of output of "between one-fifth to one-quarter in many economies, with consumers'

expenditure potentially dropping by around one-third". This kind of changes over surpasses the experience from the global financial crisis in 2008-09. Also, estimation only covers the initial direct impact in the sectors involved and does not consider any additional indirect impacts that may appear.

The implications for annual GDP growth will depend on several factors, from magnitude and duration of national shutdowns, the extent of reduced demand for goods and services in other parts of the economy, to the speed at which significant fiscal and monetary policy support takes effect. There is one thing certain, the impact will weaken short-term growth prospects substantially. There is no surprise of the arising interest and relevance of the subject of business model innovation to help business survive in this new normal. Are sustainable business models, circular or sharing / collaborative economy a go-to direction for business model innovation? Were talks about the emergence of a stakeholder capitalism premature (Govindarajan, 2020)?

In the last months, a theme appeared: " Survival is determined by those who adopt the path of solidarity, in comparison to those who continue to travel down the path of disunity – solidarity, realized and recognized as both the inter-dependencies among communities, and the inter-dependencies among people and organizations within communities" (Haywood, 2020). Could it be a call for a moral form of capitalism (Young, 2003) that reinstates moral principles for business and collective obligations – from people to community to company and vice versa?

While post-COVID renewal calls for higher degrees of cooperativeness, changing the competitiveness ethic, promulgated by World Economic Forum (2019), is bound to remain a challenge, even though the institution makes great efforts to improve sustainability. Business model innovation is a powerful tool for companies to achieve resilience and growth, especially in a global crisis and instability context (Lindgart, Reeves, Stalk, & Deimler, 2009).

"Only when the tide goes out, do you discover who has been swimming naked" - Warren Buffet

In boom times, most businesses profit. However, an economic damaging event will separate the companies with sound practices that will make them survive. It will be easier to understand which businesses were more vulnerable to the tide going out. Firms that are crisis-resilient can seize opportunities provided by the crisis to find better and more efficient ways of growing.

Business model innovation is an important tool for building a business that creates maximal value for all stakeholders: customers, shareholders, employees, and the society at large. This kind of three pillar approach creates several benefits or opportunities:

- Increased value creation will lead to increased growth
- As business model innovation often requires new operating models, it becomes harder for competitors to replicate
- …which can lead to a longer period of competitive advantage
- The right kind of business model also helps create positive brand recognition
- Some business models can make the business much more resilient towards market cycles and unexpected "black swan" events, such as the recent COVID-19 crisis.

There is lack of research on the potentially successful business model innovations or "pivoting" for sustainability in the post-COVID era, so this research is focused on understanding the complexity of business model innovation and elaborating on the

diversity of business models types, from the point of view of sustainability and crisis resilience.

In order to understand the particularities of many emerging business models in 2020, following dramatic shifts in behaviour, trust system and essentially the way companies operates, we analysed a range of secondary data from 71 different business model innovation patterns, representing 4 categories sourced from a massive community collective research The Low Touch Economy, performed by the consulting firm Board of Innovation (Board of Innovation, 2020). The Low Touch Economy model designs a strategy matrix based on crisis impact on company's prospects then identifies six categories of white space triggers with high potential of business model innovation.

Leveraging the data obtained from the collection of already in-place business model innovation, we rated the sample on six dimensions of their business model. Applying a configurational comparative research method (fs/QCA), an empirical typology comprising 5 emerging business models was observed.

We believe that this paper contributes to literature in several ways. First, we perform a literature review of consistent research on business models and business model innovation, to identify a set of criteria researchers used to identify sustainable business model innovations. To date there is much more reference found in conceptualizing BMI models, frameworks and approaches that reference to sustainability of business models innovations through times of volatility, crisis or market shifts, due mostly to the fact that this field of research emerged just in the last 15 years. Our configurational approach enables a thorough understanding of the sustainable business model innovations space. It tests a range of components for sustainable business model innovation and empirically demonstrates the many ways in which these components combine to create unique business models.

This paper is structured as follows. First, we present a literature review focused on business model and business model innovation concepts. Secondly, we describe our methodology and sampling approach; in respect to low touch, economy identified societal shifts. Thirdly, we describe the typologies identified and the new sustainable type of business model in the post-COVID shifts and ripples.

BUSINESS MODEL & BUSINESS MODEL INNOVATION IN LITERATURE

Before elaborating on business model innovation and its applications to leverage business sustainability and continuity in crisis, we will develop a basic understanding of the business model concept itself.

Business Model Concept in literature

Historically, the business model as a concept emerged as a buzzword in the media in 1990s. Ever since, it has raised significant attention from both practitioners and scholars and nowadays forms a distinct feature in multiple research streams. In general, the business model can be defined as scientific manner describing how the business of a firm works. More specifically, the business model is often depicted as an overarching concept that takes notice of the different components a business is constituted of and puts them together as a whole (Amit and Zott, 2001; Chesbrough and Rosenbloom, 2002; Demil and Lecocq, 2010; Johnson, Christensen, and Kagermann, 2008; McGrath, 2010;

Morris, Schindehutte, and Allen, 2005; Osterwalder and Pigneur, 2010) - a notion formulated by Magretta (2002, p.91): *"Business models describe, as a system, how the pieces of a business fit together"*.

There are several well-known conceptualizations of a business model, from business model canvas (Osterwalder, Pigneur, & Tucci, 2005) to the 4 I Framework of St Gallen University researchers (Frankenberger, Gassmann, & Csik, 2013). A main utilization of business model concept is that it supports understanding the big picture of the business, by combining factors located inside and outside the firm (Teece, 2010). Therefore, referencing it in innovation approaches is related to as a boundary-spanning concept (Frankenberger, Gassmann, & Csik, 2013), (Teece, 2010) that explains how the company interacts with its ecosystem, from a systems thinking approach (Brandstaedter, Harms, & Grossschedl, 2012). The business model often is used to explain how the company creates and captures value for itself and its various stakeholders within this ecosystem – shareholders and community included.

The capability to move into new business models rapidly and successfully is "an important source of sustainable competitive advantage and a key leverage to improve the sustainability performance of organizations. The sustainable business model concept model might eventually supersede the business model concept" (Geissdoerfer, Vladimirova, & Evans, 2018). This type of model is defined in literature review as one that "incorporates pro-active multi-stakeholder management, the creation of monetary and non-monetary value for a broad range of stakeholders and holds a long-term perspective".

Business Model Innovation: Concepts & Emerging trends

Business Model Innovation provides companies a way to breakout of intense competitors, under which product or service innovation are easier imitated. It can also help to address disruptions – regulatory, technological, and pandemic – that demand fundamentally different competitive approaches.

In "normal" times of operating, obtaining approval from stakeholders or consumer's adoption of a radical or divergent approach could be difficult, if not impossible. In times of crisis, business model innovation in a divergent way is easier to address (Lindgart, Reeves, Stalk, & Deimler, 2009). A crisis can be a lever for companies to start fresh, instead of employing defensive pricing or operational tactics. Business model innovation delivers superior return than process or product innovation. An analysis from Boston Consulting Group and Business Week, performed in 2008 on sample of companies survivors of 2008 economic crisis (Lindgart, Reeves, Stalk, & Deimler, 2009) discovered that "business model innovators earned an average premium that was four times greater than that enjoyed by product or process innovators. BMI also delivered more sustainable results."

St.Gallen University researchers (Gassman, Frankenberger, & Csik, 2014) conceptualize the business model in the form of a "magic triangle":

1. The customer – who are our target customers? Every business model conceptualization has at center the customer and the value created.
2. The value proposition – what do we offer to customers?

3. The value chain – how do we produce our offerings? To put the value proposition into effect the company needs to perform processes and activities, which leads to close connection to resources and capabilities available, and interdependence with the ecosystem.
4. The profit mechanism – why does it generate profit? This area includes aspects related to cost structures and revenue generated mechanisms, providing answers to the question on how to provide value to the stakeholders and shareholders.

We would extend the fourth dimension related to the profit mechanism and value created for shareholders to encompass the value created for the ecosystem, in respect to community.

By answering the four associated questions and explicating (1) the target customer, (2) the value proposition towards the customer, (3) the value chain behind the creation of this value, and (4) the revenue model that captures the value, the business model of a company becomes tangible and a common ground for its re-thinking is achieved. Innovation of the business models requires at least changes at two of the four dimensions of the "magic triangle", which sets the difference from product or process innovation, which operates at only one dimension of the model. Successful business model innovation "creates value for the customers and captures value for the company" (Gassman, Frankenberger&Csik, 2014), which in turns sets the pre-requisites for sustainable success.

There is a pattern to the types of innovators that emerge from a crisis, linked to the types of assumptions that they overturn. Overturn an assumption, and the opportunities that emerge form the nucleus of a new company archetype for innovation (McKinsey Digital, 2020). In a recent study, (Ludeke-Freund, Carroux, Joyce, & Breuer, 2019) identified a set of patterns leading to sustainable business model innovation. The purpose was to use the taxonomy as a decision-making heuristic in business model development projects, for example, by moving from sustainability issues (e.g., ecological issues related to waste) to pattern groups (e.g., eco-design) and finally to specific patterns (e.g., hybrid or gap-exploiter models). At the heart of a sustainable business model is a value proposition that is valuable to both a company's customers and other stakeholders who might otherwise be directly or indirectly affected by a company's activities.

From the 2008 financial crisis, we can draw conclusions of radical shifts in consumers and business behaviour that stuck with us until now. The sharing economy was born when assumptions about the use of assets and nature of possession were challenged. It is defined until now was "a socio-economic system enabling an intermediated set of exchanges of goods and services between individuals and organizations which aim to increase efficiency and optimization of under-utilized resources in society" (Munoz & Cohen). The low touch economy or the next normal already has clear trends that will stay with us to overturn assumptions about the way organizations and consumers operate.

The consultancy firm McKinsey identifies 7 trends that emerged in 2020, that are challenging the creation of new business models (McKinsey Digital, 2020). These are completed with the societal trends and estimated economy ripples identified by other consultancy firm (Board of Innovation, 2020):

- Social distancing and "islandization" of economies.
- Resilience and efficiency

- Rise of the contact free economy
- More government intervention in the economy
- Mission driven, the "triple bottom line" – profit, people and planet, or the idea that shareholder value should not be the only corporate value (already emerging since August 2019, when more than 181 US CEOs signed a statement committing themselves to other priorities—investing in employees, supporting communities, and dealing ethically with suppliers—in addition to shareholder value.
- Changing industry structures, consumer behavior, market positions, new regulations, sector attractiveness, new tech, access to resources
- The coronavirus is forcing both the pace and the scale of workplace innovation or digitization of those lagging.

METHODOLOGY

To analyse the structure of emerging business models in post-COVID global economy, we performed a two steps research. First, we performed a literature review of academic and consulting firms' literature to identify and elaborate a set of key indicators for business model innovation sustainability. Second, in dealing with the complexity of characteristics upon business model innovation and pivoting emerge at present days; we applied a multiple-conjectural causality and polythetic typology building (Munoz & Cohen, 2017). The econometric chosen approach is fuzzy set qualitative comparative analysis (fs/QCA) which is a rising method in entrepreneurship and innovation research (Krauss, Ribeiro-Soriano, & Schussler, 2018).

When causality in the research phenomenon is both multiple – when an outcome has more than one cause – and conjunctive – when these causes work together to produce the outcome, fs/QCA represents an appropriate method. Multiple conjunctural causations are identified by testing various combinations of antecedent conditions. Fs/QCA aims to show conditions that are sufficient but not necessary to cause an outcome (Ott, Sinkovics, & Hoque, 2018). Thus, rather than estimating some net effects of independent variables, fs/QCA employs Boolean algebra logic to examine the relationships between an outcome and all binary combinations of the independent variables. This methodological approach provides the opportunity to detect relevant configurations that guarantee a high performance in the outcome condition.

fsQCA is a technique that identifies meaningful cases and "sits midway between exploratory and hypothesis-testing research", being particularly accurate when causality is complex. (Vis, 2010).

DATA

Key predictors for future business model innovation success

Based on the literature review, we identified a set of key predictors subject to further testing using fsQCA approach:

- Consider the societal new emerged trends
- Learn from the past. A McKinsey study analysed the performance of 1000 publicly traded companies from multiple sectors (McKinsey Digital, 2019) and identified a subgroup of resilient organizations that delivered a growth in total return to

shareholders that was structurally higher than the median in their sector. The conclusion was that those companies have moved faster and further than the competitors, before, during and after the crisis.

- Innovate at least 2 out of 4 areas of the business model – to qualify for business model innovation according to St Gallen model (Gassman, Frankenberger, & Csik, 2014).
- Create impact and value on community (mission-driven enterprises). Sustainable business models, in this respect, are those that create useful value for the company if it helps the company to achieve its purpose (Geissdoerfer, Vladimirova, & Evans, 2018). Examples of useful value thus could be profit, strategic fit, and employee motivation. On a larger scale, such business could incorporate as Benefit Corporations (B Corp – following the example of Kickstarter to change its business model to be legally bound by social and ecological objectives) or social enterprises.

Based on the literature review above, we designed our typology development. Next, we will present the methodology chosen for the research and the typologies of business models, which emerged from the unique combinations of these key predictors for future business model innovation success, present or absent, in the sample of business model pivots we used for our research.

Causal and outcome conditions

As observed in our literature review, the use of conceptual terms is often coinciding. To harmonize this dispersion, we built upon our business model research and recent reports on post-COVID emerging trends and identified seven archetypes for post-crisis business builders for business innovation:

- Service automation (Remote services providers) – or "low touch economy"
- Digital platforms for collaboration
- High touch digital retailer
- Analytics and data automation
- Virtual workforce mobility (or job conversion)
- Crisis resilient and agile
- Mission driven (value creator for community, including helping lowering infection curve, protecting general health, etc.)

We also take into account when selecting data sets the definition of business model innovation proposed by the "magic triangle" concept (Gassman, Frankenberger, & Csik, 2014), meaning factual changes to at least two out of four dimensions (customer, value proposition, value chain and profit / value creation).

The methodological approach for testing our assumptions related to archetypes of post-crisis business innovation models is as follows:

- Identify which of the seven archetypes can be considered an outcome variable.
- Identify the one with the most predominance within the sample.

In order to do so, we noticed that PLATFORM for collaboration or Community Platform was used in most literature and is consistent to sustainable business models definitions (Ludeke-Freund, Carroux, Joyce, & Breuer, 2019) and (Geissdoerfer, Vladimirova, & Evans, 2018). We followed the econometric approach proposed by (Munoz & Cohen, 2017) and considered Digital platform for collaboration as the

Outcome Condition, measuring the extent to which the business delivers its value proposition (B2B or B2C) through a digital platform.
Remote service providers or LOW TOUCH ECONOMY measures the extent in which service delivery to B2B or B2C customers is provided through a distance enablement manner – in line with the "low touch economy" concept. HIGH TOUCH digital retailer measures the extent the new business model entails a human interaction through digital channels that steers free from social media marketing and automation (Treadgold & reynolds, 2017).
ANALYTICS and DATA AUTOMATION measures the extent the business model innovation includes automatized processes and data manipulation, including social media marketing without human interaction.
WORKFORCE MOBILITY, either virtual (people being able to work or operate in a different country) or by job reconversion (flight attendants trained to operate as nurses, or supermarket chains that hire temporary workforce – entire teams – from other fields) measures the extent in which business model innovation is changing HOW is the value proposition delivered from the point of view of people structure.
Crisis RESILIENT (or agile) criteria measures the extent the business model innovation is showing preparedness for future crisis in a way that is generates cash flow and has apt operational processes (McKinsey Digital, 2019).
MISSION DRIVEN seeks to capture how much social and environmental value is generated by the business (Ludeke-Freund, Sustainable entrepreneurship, innovation, and business models: Integrative framework and propositions for future research, 2019)
Table 1 provides a summary of the evaluation criteria.

Table 1. Data and evaluation criteria, including scoring

Archetype	Data	Scoring criteria
Platform for collaboration	Types of platforms used for value creation Role of the platform (B2B or B2C) and specific use Degree of importance of the platform in company's business model	0 = No evidence of platform for collaboration 50 = presence of platforms, but not essential for business operations 100 = full dependence of platforms for collaboration, essential in the success of business model
Post-COVID business model: Low touch economy	Way of reaching customers – in-person versus remote / distance Presence of "distance" or nonhuman interaction	0 = Business model requires human 2 human physical (face2face) interaction for business operations 50 = human interaction is reduced or of short duration, or full protective (shielding measures) are in place 100 = there is little no nonphysical interaction in operating essentially the business model
High touch digital retailer	Customer interaction and value creation is performed in a digital manner but with human counterparts Customer service representatives, call centers, focusing on creating quality customer experience	0 = there is no human counterpart or no digital interaction 50 = presence of remote human touch, but not essential for business model operations; customer service excellence is not the focus 100 = human interaction is performed in a digital manner, in a way that enhances customer service excellence and allows service / product personalization

Data automation	Data collection, analytics and automation, including social media marketing is key to delivering the value proposition	0 = no data automation 50 = basic data automation and analytics used, non-essential to value creation and delivery 100 = business model is oriented around data collection, analytics, deept tech, IoT or automation
Workforce mobility	Virtual mobility – virtual immigration (delivering services in another country) or using temporary job reconversion due to flexibility of job roles in industry ubiquity	0 = no evidence in workforce impact 50 = presence of some workforce mobility or inter-changeability, but not essential for business model operations 100 = business model is centered on high workforce mobility (virtual emigration feature)
Crisis Resilient	Crisis Resilient = companies move further, faster before, during and after the crisis	0 = no evidence of pre-crisis or during crisis agility 50 = presence of some pre- or during crisis agility and operations change 100 = business model is completely pivoted during crisis, based on pre-crisis preparations
Mission Driven	Formal mission statement Relevance of societal and community impact in relation to creating business value and social value The mission is implemented through consistent practices and stated strategies	0 – no evidence of social impact 50 = presence of societal and community impact, but it is not a core business value 100 = the mission is driving the whole business value creation. Evidence of implementation.

Data selection and analysis

The advantages of using fsQCA approach is that it facilitates a dialogue between theory and cases. Case selection consider a specific combination of properties within a specific context (maximum homogeneity in an area of heterogeneity). There needs to be an in-depth case understanding, before configuration the evaluation criteria; the cases should be comparable in terms of context, but the chosen sample should exhibit a heterogeneous selection of positive and negative outcomes. (Ott, Sinkovics, & Hoque, 2018). Given this criteria, our cases were collected during a collective research effort orchestrated by The Board of Innovation (Board of Innovation, 2020) in a public effort to identify the effects, trends and changes of business model pivots in post-COVID evolution. The cases were organized around business model patterns and characteristics, shared a similar background (post-COVID), but with a maximum heterogeneity, due to several industry verticals and global geographical diversity.

We have selected several 50 cases based on fs/QCA and scoring criteria defined. We have assigned scores for each case based on the defined criteria and in-depth analysis of the situation described (business model pivot). In comparative research, calibration is an essential step, allowing comparability. Using a simple estimation technique, calibration process transforms variable raw scores into set measures (Ragin, 2008), transforming the original scores into scores ranging from 0.0 (full exclusion) to 1.0 (full inclusion). Therefore, we defined a calibration process through three thresholds:

- Full inclusion (>=0.95)
- Full Exclusion (<=0.05)
- Crossover point (0.5), based on which we will establish deviation scores.

We assume that a variance below 25 and over 75 scores is irrelevant, based on other fsQCA research on business model innovation (Munoz & Cohen, 2017).

Table 2 Calibration scores

Threshold	0	0.05	0.25	0.5	0.75	0.95	1
Case ID	1) Low touch	2) Platforms for collaboration	3) High touch digital retailer	4) Analytics and data automation	5) Virtual workforce mobility	6) Crisis resilient	7) Mission driven
https://homesuitehome.co	1	1	1	0	1	0	1
https://www.opentable.com/	1	1	1	1	0	0	0
https://intelligo.uk/	1	0	1	1	1	0	0
https://boozi.com.au/	1	0	1	1	0	0	0
https://musicmessages.encoremusicians.com/	1	1	1	1	0	0	0
https://www.artnight.com/	1	1	1	1	0	0	1
https://www.kigili.com/ev-market/	1	0	1	1	0	0	0
https://www.panerabread.com/en-us/panera-grocery.html	1	1	1	1	0	1	1
https://www.stagekings.com.au/store/isoking	1	0	1	1	0	0	0
https://keepyourcitysmiling.com/	1	0	1	0	1	1	1
https://crave-emenu.com/news/servesafely-solutions-to-protect-restaurant-staff-and-customers-from-covid-19/	1	1	1	1	1	1	1
https://www.debuurtwinkel.nl/inloggen	1	1	1	1	1	1	1
https://delivery.citybee.lt/	1	0	1	0	0	1	1
https://youtu.be/GzSoa751Vtw	1	0	1	1	0	1	0
https://www.athome.com/pickup/	1	0	1	0	0	1	1
https://www.woolworths.co.za/?ds_rl=1256865&gclid=Cj0KCQjws_r0BRCwARIsAMxfDRgRLj4fHp5y_QZm6_Sy_QcXudDMlEDwgM0C2m8OqW1sv1ujyyv5zAaAmpoEALw_wcB&gclsrc=aw.ds	1	1	1	1	0	1	1

https://www.elmundo.es/motor/2020/04/16/5e9810ddfdddff0e948b459c.html	1	1	1	1	1	1	1
https://room.com/	1	0	0	0	1	1	1
https://linktr.ee/breadahead	1	1	1	0	1	1	1
airbnb.com	1	1	1	0	1	1	1
https://www.g4s.com/nl-be/companies-and-government/technology-solutions-and-monitoring/integration-camera-and-guarding	1	1	1	0	1	1	1
http://www.sklavenitis.gr/	1	1	1	1	1	1	1
https://www.engine-cw.be/keep	1	1	1	0	1	1	1
https://www.emicontrols.com/en/disinfection/	1	0	0	0	1	1	1
https://www.craftydelivers.com	1	0	0	0	0	1	1
https://www.ellanacosmetics.com/	1	0	0	0	1	1	1
Waze – navigates to emergency food cenetrs and Corona testing centers	1	1	0	1	0	1	1
Forte – top Vegas restaurant, selling gourmet kits	1	1	1	0	0	1	1
IKEA – engaging people from their homes using AI and digital tools	1	1	1	1	0	1	1
Lin Qinqzhan (cosmetic company China)	1	1	1	1	1	1	1
Global confectionary manufacturer CH	1	1	1	1	0	1	1
Girl Scouts going digital	1	0	1	0	1	0	1
www.gurme212.com	1	0	0	0	0	1	1
www.tcgcenter.com	1	1	1	0	0	1	1
https://granadillaswim.com/	1	1	1	1	0	1	1
https://intelligenceindustrielle.com/fr/signalisation/	1	1	1	1	0	1	1
https://myeongdongtopokki.com/	1	1	1	1	0	1	1
https://www.facebook.com/OrangeEsportsCafe/	1	1	1	1	0	1	1
https://esportsnederland.nl/home	1	1	1	1	0	1	1
https://mittliv.com/se/	1	1	1	1	0	1	1

https://www.sinews.es	1	1	1	0	1	0	1
https://centurionthermal.com	1	1	1	1	0	1	1
https://www.storehub.com/blog/storehub-launches-beep-delivery-for-fnb/	1	1	1	1	0	1	1
https://www.waylandsyard.com/shop	1	1	1	1	0	1	1
https://www.gympass.com/	1	1	1	1	0	1	1
https://groundupmusic.net	1	1	1	0	0	1	1
Car hood mask company company Mexico	1	0	0	0	1	1	1
https://lingkaran.co/	1	1	1	1	1	1	1
https://www.transferfi.com/	1	1	0	1	1	1	1
https://www.merco.mx/	1	1	0	0	1	0	0
http://www.onceagainhostel.com/	1	1	0	0	1	0	1
http://sofarsounds.com	1	1	0	0	1	1	0
https://edition.cnn.com/2020/05/07/world/dutch-restaurant-reopen-greenhouse-trnd/index.html	1	0	0	0	0	1	1
WithLocals (https://www.withlocals.com/es/)	1	1	0	0	1	1	0

Calibration procedure requires creating a truth table, which lists all different logically possible combinations of causal conditions along with the cases that are belonging to each combination.

Table 3 shows the truth table with the resulting cases, the selected outcome being **crisis resilience** – chosen as an indicator for long-term success, instead of crisis only temporary business model pivoting. Out of those, we have 31 relevant for the outcome (the lowest acceptable consistency set at 0.95).

Table 3 Truth table

Case ID	1) Low touch	2) Platforms for collaboration	3) High touch digital retailer	4) Analytics and data automation	5) Virtual workforce mobility	7) Mission driven	6) Crisis resilient	Consistency
https://www.craftydelivers.com, www.gurme212.com, https://edition.cnn.com/2020/05/07/world/dutch-restaurant-reopen-greenhouse-trnd/index.html	1	0	0	0	0	1	1	1
https://room.com/, https://www.emicontrols.com/en/disinfection/, https://www.ellanacosmetics.com/, x	1	0	0	0	1	1	1	1
https://delivery.citybee.lt/, https://www.athome.com/pickup/	1	0	1	0	0	1	1	1
https://keepyourcitysmiling.com/,	1	0	1	0	1	1	0	0.5
https://boozi.com.au/, https://www.kigili.com/ev-market/, https://www.stagekings.com.au/store/isoking, https://youtu.be/GzSoa751Vtw	1	0	1	1	0	0	0	0.25
https://intelligo.uk/	1	0	1	1	1	0	0	0
https://www.merco.mx/, http://sofarsounds.com, WithLocals (https://www.withlocals.com/es/)	1	1	0	0	1	0	0	0.666666687
http://www.onceagainhostel.com/	1	1	0	0	1	1	0	0
	1	1	0	1	0	1	1	1
https://www.transferfi.com/	1	1	0	1	1	1	1	1
, www.tcgcenter.com, https://groundupmusic.net	1	1	1	0	0	1	1	1
https://homesuitehome.co, https://linktr.ee/breadahead, airbnb.com, https://www.g4s.com/nl-be/companies-and-government/technology-solutions-and-monitoring/integration-camera-and-guarding, https://www.engine-cw.be/keep, https://www.sinews.es	1	1	1	0	1	1	0	0.666666687
https://www.opentable.com/, https://musicmessages.encoremusicians.com/	1	1	1	1	0	0	0	0
https://www.artnight.com/, https://www.panerabread.com/en-us/panera-grocery.html, https://www.woolworths.co.za/?ds_rl=1256865&gclid=Cj0KCQjws_r0BRCwARIsAMxfDRgRLj4fHp5y_QZm6_Sy_QcXudDMlEDwgM0C2m8OqW1sv1ujyyv5zAaAmpoEALw_wcB&gclsrc=aw.ds, , , https://granadillaswim.com/, https://intelligenceindustrielle.com/fr/signalisation/, https://myeongdongtopokki.com/, https://www.facebook.com/OrangeEsportsCafe/, https://esportsnederland.nl/home, https://mittliv.com/se/, https://centurionthermal.com, https://www.storehub.com/blog/storehub-launches-beep-delivery-for-fnb/, https://www.waylandsyard.com/shop, https://www.gympass.com/	1	1	1	1	0	1	1	0.933333337
https://crave-emenu.com/news/servesafely-solutions-to-protect-restaurant-staff-and-customers-from-covid-19/, https://www.debuurtwinkel.nl/inloggen, https://www.elmundo.es/motor/2020/04/16/5e9810ddfdddff0e948b459c.html, http://www.sklavenitis.gr/, , https://lingkaran.co/	1	1	1	1	1	1	1	1
Outcome: 6) Crisis resilient								

RESULTS & CONCLUSIONS

We further applied the fsQCA approach as an add-in to Excel file (Cronqvist, 2019) on selected cases, using a consistency threshold of 0.85 and a frequency of 1, to a solution table (table 4) comprising 6 simplified combinations of "implicants" or "causalities", in order to create business models leading to crisis resilience in the low touch economy. Out of the 16 possible causalities (the presence or absence of: Low touch; collaboration platforms; data automation; virtual workforce mobility; mission driven), the presence of platform for collaboration, high touch retailer, data automation, virtual workforce mobility and mission driven are all together causal mechanisms that exhibit a strong causal relationship with the outcome. Despite the strong relationship of each condition with the causal outcome, none of them are, on their own, sufficient for creating sustainable crisis resilient new business models. "Low touch" was considered irrelevant since all cases were collected based on the low touch economy assumption.

Table 4 Solutions table

# Solutions: 15	Consistency	Coverage
2) platforms for collaboration*3) high touch digital retailer + 2) PLATFORMS FOR COLLABORATION*4) ANALYTICS AND DATA AUTOMATION*5) VIRTUAL WORKFORCE MOBILITY + 5) virtual workforce mobility*7) MISSION DRIVEN	0.971	0.809
2) platforms for collaboration*3) high touch digital retailer	1	0.166
2) PLATFORMS FOR COLLABORATION*4) ANALYTICS AND DATA AUTOMATION*5) VIRTUAL WORKFORCE MOBILITY	1	0.166
5) virtual workforce mobility*7) MISSION DRIVEN	0.958	0.547
2) platforms for collaboration*3) high touch digital retailer + 4) analytics and data automation*5) virtual workforce mobility + 4) ANALYTICS AND DATA AUTOMATION*7) MISSION DRIVEN	0.971	0.809
2) platforms for collaboration*3) high touch digital retailer	1	0.166
4) analytics and data automation*5) virtual workforce mobility	1	0.190
4) ANALYTICS AND DATA AUTOMATION*7) MISSION DRIVEN	0.956	0.523
2) platforms for collaboration*3) high touch digital retailer + 4) ANALYTICS AND DATA AUTOMATION*7) MISSION DRIVEN + 5) virtual workforce mobility*7) MISSION DRIVEN	0.971	0.809
2) platforms for collaboration*3) high touch digital retailer	1	0.166
4) ANALYTICS AND DATA AUTOMATION*7) MISSION DRIVEN	0.956	0.523
5) virtual workforce mobility*7) MISSION DRIVEN	0.958	0.547

In Table 5, we represent the solutions as five simplified combinations of conditions. Black circles indicate the presence of conditions and white circles the absence of conditions.

Table 5 Solution Table: Low Touch Economy Crisis Resilient Business Models

Configurations	Solutions				
	1	2	3	4	5
Platforms for collaboration	●		●	O	O
High Touch digital retailer	●		●	O	O
Analytics and Data Automation	O	●	●	O	●
Virtual Workforce mobility	O	●	●	●	O
Mission Driven	O		●	●	●
Consistency	1	1	0.971429	0.95833	0.956522
Coverage	0.16	0.19	0.809524	0.547619	0.52831
Overall solution consistency	0.96				
Overall solution coverage	0.442				
Model: low touch economy = ft(platforms, high touch digital, analytics and data automation, virtual workforce mobility, mission driven) N=31, consistency cutoff = 0.95, frequency threshold = 1					

As expected, the highest consistency score is of Platform for collaboration with 0.97, followed by "Virtual Workforce Mobility" + "Mission Driven" with 0.95 and "Analytics and data Automation" + "Mission Driven" with 0.95.

CONCLUSIONS

Already, we can see companies, pushed by necessity, starting to overturn assumptions about the way organizations and consumers operate. Out of this, we can point out six early archetypes for post-crisis business builders:

The remote services provider. The COVID-19 crisis forced a massive shift to online delivery of society important services such as medical services and education. In many countries, online medical consultations and online education have suddenly become reality. Researchers and consultants expect this trend to go further, to law services, architecture firms and marketing & advertising. Business model pivoting is the norm, changing delivery channels, from videoconferencing to virtual reality and data

automation. Zoom and other videoconferencing providers have more than doubled their market value since the start of the crisis. The next step will be to reimagine delivering physical services in a remote manner. (McKinsey Digital, 2020) is envisaging trend extension to "equipment maintenance and other services we think of as in-person only. Imagine if home appliances such as dishwashers were built in a way that non-expert homeowners could swap out a modular part as easily as they swap out printer cartridges."
The collaboration platform. Although the platform concept is nowhere new (it has been a main feature of the sharing economy), the model development was catalyzed by the self-isolation situation. There is a sudden benefit and opportunity from interaction possibilities between people separated by geography but connected by technology. There are already several viable examples, from education platforms, to expert collaboration platforms or social benefit platforms.
The virtual work force "immigration". One of the possible benefits of this crisis is developing new recruiting pools for talent sourcing around the world, re-designing application process, employee engagement, resource allocations or cross-industry re-qualification. Talent becomes more mobile and more virtual. Many companies are learning now about reskilling at scale.
The high-touch digital retailer. Retail categories that have traditionally required a high-touch experience, because of either the customer base or category itself, will migrate online, due to the "low-touch" economy. Or traditional sectors (as grocery shopping) turning mainly online.
The data visionary. Data was already the currency of the future. More and more, companies are looking at ways to leverage the data, from automating functions as monitoring machinery in a remote manner instead of on-site operators to monitoring staff working remote or obtaining sector-level insigts from analysing real-time mobile location data.

The purpose of this research was to identify typologies of potentially sustainable business model innovation in post-crisis economy, in a developing context – post-COVID economy. We leveraged existing theory from business model literature to identify key components or conditions of sustainable (meaning crisis resilient) business models. The emerged typologies are intended to be used as a guide for companies trying to pivot during or post-crisis or for further research to validate or refine our findings.

There is further room for exploration, especially related to the obvious connection to circular economy or social innovation business models (due to the platform for collaboration as a main typology). The limitations of this research is that we selected business model pivots appeared at the beginning of COVID crisis, without further referencing of their medium term sustainability. A more comprehensive research would follow the selected sample over a longer period and re-assess the scores derived from the real evolution of these business models, including financial data and market peer comparison.
Nevertheless, our research managed to capture a living moment in out economic history and pinpoint the emerging trends that are here to stay. The study is relevant to business activity from any sectors or geographical location, since the sample and trends analyzed were heterogeneous and widely dispersed over business sectors and from several continents.

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GUARANTEE BENEFIT FOR CREDITOR AND CREDIT RECONSTRUCTION EFFORT DURING COVID-19 PANDEMIC

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Abstract: *Guarantee begins with the debtor credit agreement that followed with the handover of the object guarantee by debtor to creditor, where the creditors are banks. If referred in the regulation article 1 point 2 of Constitution No. 10/1998 concerning on banking stated that bank is a business entity that raised fund from citizen in the form of deposits and channeling them to the public in the form of credit and/or in other forms in order to improve the lives of many people. Bank has the important role in economic, because one of its function is giving the credit to citizen and helping the micro, small and medium enterprises. This given credit must be accompanied by collateral or collateral provisions from the debtor because it was one of the precautionary principal from Bank, and also with the efforts to protect the creditor at any time the debtor defaults. The covid-19 pandemic outbreak that had a profound impact on the entire life of society was also influenced the problem of credit and guarantee. The collateral agreement which is an accessoire agreement (follow-up or accompanying) follows the main or principal agreement, that is preceded by a credit agreement (debt agreement), including on what if there is bad credit and what efforts should be done by the Bank so that it does not experience even greater losses. For this reason, the writer is very interested, to find out the extent of the benefits of the collateral object for creditors as well as credit restructuring efforts during the Covid-19 pandemic.*
Keywords: *collateral, creditors, credit agreements, collateral laws, credit restructuring.*

INTRODUCTION

According to (Satrio, 2002), guarantee law is a legal regulation governing collateral receivables from a creditor to a debtor, In other words. It is a law governing collateral for a person's receivables. (Salim, 2007) also provides the formulation of collateral law, namely all legal norms governing the relationship between the giver and the recipient of the guarantee in relation to the imposition of collateral to obtain a credit facility. From the two opinions, the meaning of collateral law can be concluded as legal provisions governing the legal relationship between the guarantor or debtor and the recipient of the guarantee or creditor as the imposition of a particular debt or credit with a guarantee (certain objects or persons).

Property rights as repayment of debt (collateral law) is a collateral rights attached to creditors which gives the authority to implement the execution to the property become the guarantee if debtor implement *wanprestasie* of an achievement. If there are creditors who want more position more than fellow concurrent creditors, then the creditor can pledge collateral rights as well as individual collateral rights, such as the debtor's responsibility and the existence of *Borg*. The existence of Borg gives him a better position because there are more than a person who can be billed or pledges a material security right that gives him the right to take precedence in taking repayment of the

proceeds of the sale of certain objects or groups of certain objects belonging to the debtor, the guarantor, and there are times when it is-simplified to implement their rights.

These days, the world including Indonesia is faced with a Covid-19 pandemic outbreak which greatly affects the lives of the community in health, social, legal and economic terms. in economic field there are a lot of bad loans since people have difficulty to work due to the Government policies on Social Distancing and Large-Scale Social Restrictions. The collateral agreement which is the accessoire agreement follows the principal agreement, and the extent to which the functions and benefits of the collateral object for creditors in the credit agreement will be discussed in this paper. Based on this background, the writer is interested in formulating the problem limitation, "What are the benefits of collateral for creditors and credit restructuring efforts during the Covid-19 pandemic?"

THEORETICAL REVIEW

The Meaning of Credit

The term of credit is derived from roman, which is credere, or trust, Trust is a credence in delaying payments, both delays in debt and point of sale in which debtors are not obliged to pay their debts in cash but rather given trust by law in the credit agreement to pay later in stages or in installments. Because the debt is paid in installments, then the risk for the unpaid debt must be borne by the lender (Harun, 2010).

The Definition of risk there are:

- Credit risk, which is the risk arising from the failure of the parties to fulfill their obligations
- Market risk, the risk arising from the movement of market variables from the portfolio owned by the bank can harm the bank market variables, including interest rates and exchange rates
- Liquidity risk, i.e. risk due to the bank not being able to meet obligations that are due
- Operational risk, namely the risk caused by inadequate and / or malfunctioning of the internal system of human error, system failure or external problems that affect bank operations
- Legal risk, which is due to weaknesses in the juridical aspects, juridical weakness, and weaknesses in the aspect of the absence of legislation that supports or weaknesses of the agreement such as not fulfilling the legal requirements of the contract
- Reputational risk, which is partly due to negative publications relating to bank business activities or negative perceptions of banks (Direktorat Perizinan dan Informasi perbankan, 2009).

The Basic Law of Credit Agreement

In every banking and credit activity, it needs a juridical provision that become the basic law. This was the consequence from a principal that Indonesia is country of law, where the laws and regulations ranked as ‘very important’ in law sources. Moreover, the

act of legal credit rating needs a strong basis of law which seen on the following points below:

The article 1338 paragraph 1 of the civil code stated, "all agreements made legally apply as a law to those who make them". Then, with the provision in the Article 1338 paragraph (1), it is applicable that every valid or legal agreement has the same strength as the constitution power.

In Indonesia, banking is regulated within the constitution Number 10/1998 which arrange on the change of law Number 7/1992 concerning on banking. As stipulated that "Banking is everything related to banks, including the institutions, business activities, and the method and process in carrying out the business activities".

Place and Regulatory Law regulatory system

Book II Indonesia Civil Code arrange about the property agreement which includes the special accounts receivable (chapter XIX), fiduciary (Chapter XX), and mortgage (Chapter XXI). While, in the Book III of civil code KUHPerdata regulate the security of individuals that is debt suppression *(borgtocht)* chapter XVII.

Beyond the Civil Code law guarantees can be found in:

- Civil Code of trade
- Constitutions Number 16 of 1985 concerning about flats.
- Constitutions Number 4 of 1992 concerning about residence.
- Constitutions Number 7 of 1992 concerning about Banking As amended by law number 10 of 1998.
- Constitutions Number 15 concerning about aviation.
- Constitutions Number 17 of 2008 concerning about shipping.
- Constitutions Number 14 of 1996 concerning about mortgage rights to the land and the properties that connecting with land.
- Constitutions Number 42 of 1999 concerning about Fiduciary Agreement.

In addition, in colonial times there were several number of material security rights institutions, namely:

- *Credietverband* as it stipulated in *Staatsblad* 1908 Number 542 Jo. *Staatsblad* 1909 Number 586 and *Staatsblaad* 1937 Number 190 Jo. *Staatblad* 1937 Number 191; and
- *Oogstverband* as stipulated in *Staatsblad* 1886 Number 57. (Usman, 2009)

Meanwhile, for the Flats Constitution has now been changed to Constitutions Number 220 of 2011.

Material Law in the Perspective of Civil Law

The property law is closely related with civil law since it is included as one of the civil law field (Hasbullah, 2002). The property law that manage on the connection between someone and the object of property rights. In the other words, the property law is the regulation of law that stipulated about property/material. The system of civil law (materiil) can be chosen according to the science of law (doctrine) and can be chosen according to the civil law. It is in contrast with the system of civil code, the civil law has categorized according to the science of law in 4 (four) fields:

Law of individual (personrecht)

The law of individual is a legal regulation that stipulates about natural person (human) as law subject or stipulates the things that related with someone's legal skills, subjective rights (obligations), as well as things that have influence on one's position as a legal subject such as gender, marriage status, age, domicile status – under remission or maturity, and the civil registration data.

Law of family (familierecht)

Law of family stipulates about the connection between natural interpersonal relations of different types in one family bond such as marriage, divorce relationship between husband and wife, relationship between parents and guardianship children.

Law of wealth (vermogensrecht)

Law of wealth is the provisions that stipulate the connection of personal law with wealth that authorized and have the rights of wealth which is absolute. It arranged within material law including guarantee of law which have the rights of wealth in relative characteristic arranged in the law of binding.

Law of inheritance (erfrecht)

Law of inheritance stipulates about transfer of ownership of someone's property after the person concerned died or the heir had determined who is becoming the heir and how much is their portion (Usman, 2009).

METHODOLOGY

The researcher is used the Juridical Normative Method. According to Soerjono Soekanto juridical normative approach is the research of law conducted with the researcher‘s way from library materials or secondary data as the basic sources to be analyzed by implementing the search on regulations and literatures related with the problem (Soekanto & Mamudji, 2011). In this paper, the researcher is explaining and analyzing about the benefit of credit guarantee and the credit restructuring efforts during the Covid-19 pandemic as stipulate of applicable law.

ANALYSIS AND DISCUSSION

In giving the credit to citizen, commonly bank will implement the precautionary principle that known as the 5 C principle:

- One of the most important elements that must be considered by the bank before giving credit is the assessment of personality / character of the prospective debtor. The assessment including paying attention and researching about their habits, personal traits, ways of life (style of living), family circumstances (children & wife), hobbies, and so on, as a measure of willingness to pay or ability to pay
- Capacity (ability). The debtor candidates must have the business ability, thus his ability to pay off the debt can be predicted until can predict the ability to pay off the debt. If his business ability is small, then he is not feasible to be given credit in a large scale. As well as if the business trend performance decreases, the credit will not be given.
- Capital (modal). The Capital from a debtor is also an important thing that must be known and reviewed by prospective creditors. Because the capital and ability of debtor's financial will have the direct correlation with the ability to repay credit.

- Condition of economy. The economic condition in micro or macro is the important factors to analyze before the credit is given, especially those who directly related to the debtor's business. Because if there is change in policy by government in accordance with the development of the debtor's business, then credit lending must be done extra carefully.
- Collateral. In finding the data to ensure the credit value, collateral are the important things to gives the credit. Even the Constitution suggest that collateral should be appear in every loan or credit.

According to (Fuady, 1996), releasing credit by bank must be done by adhering to the principles: the principal of trust; the principal of prudential; 5C principals; character (personality); capacity (ability); capital; economic conditions; collateral (guarantee); 5P principals; party (the party); purpose; payment; profitability; protection; 3R principals; returns; repayment; risk bearing ability.

According to Marhainis Abdul Hay stated that: “the credit agreement is the synonymous with the loan agreement and is controlled by the provisions of Chapter XIII of Book III of the Civil Code” (Hay, 1975).

According to (Badrulzaman, 1994): “from the formula in the Constitutions of banking regarding on the credit agreement, can be concluded that the basic of credit agreement is the loan agreement in the Civil Code Article 1754. The loan agreement is also contain the broad meaning which is the objects that consume if *verbruiklening* includes within is money. Based on the loan agreement, the credit recipient becomes the borrowed owner and then the same type must return it to the lender. Because, the credit agreement is an agreement that is real and arranged in the Article 1320 of Civil Code. There are 4 (four) conditions that must be fulfilled for the validity of the agreement. These conditions are: the agreement of those who remind themselves; the ability to make an agreement; a certain thing; a lawful cause.

The Credit agreements need special attention, even by the Bank as the creditor or debtor. Because, the credit agreement is the basic relationships of contractual between parties. From the credit agreement can be explored some various things about granting, managing, or administering the credit itself. According to Ch. Gatot Wardoyo, the credit agreement has functions as below:

- The credit agreement has a function as the primary agreement, means the credit agreement, which determines whether another agreement that follows it, such as a guarantee agreement.
- The credit agreement has a function as the Evidence regarding the limitations of rights and obligations between creditors and debtors.
- The credit agreement has a function as a tool to carrying out the monitoring credit.

In the practice of banking, each bank has already served blank forms or credit agreement forms that have been prepared in advance (standaarform). The blank forms of credit agreement given to the debtor party to be approved and without giving any freedom to negotiate on termsthat offered. This agreement is known as the standardized agreement or (raw) adhesion agreement. In English legal literature, the term standard agreement used the term "standardized agreement" or standardized contract, while Dutch legal literature uses the term "standard voorwaarden", standard contract.Mariam Darus using the term of “standardized agreement”, which standard means assessment or

reference. If the legal language is standardized, it means that the legal language is determined by the size and the standard. Therefore, it has a fixed meaning, which can become a general grip. In standardized agreement without relying on the willingness of one party to use a standard agreement, the standard agreement which proposed by one party will follow the other party with acceptance. The standard agreement is binding when the agreement is signed (Ibrahim, 2004b).

Juridical Guarantee Function

A credit without collateral means increasing the level of risk (degree of risk) that must be faced by banks. Guarantee is the facility for creditor security, that is, certainty over the repayment of the debtor's debt or the performance of an achievement by the debtor or the guarantor of the debtor. The existence of collateral is a requirement to reduce the risk of banks in channeling credit. However, in principle, guarantee is not the main requirement. The bank prioritizes the feasibility of the business as the main collateral for credit repayments according to the agreed schedule (Ibrahim, 2004a). The Specific provisions regarding banking legislation, do not explain the position of the creditors. The provisions governing credit guarantees are listed in Law Number 7 of 1992 concerning on Banking, Article 8 that states “In providing credit, commercial banks must have confidence in the ability of debtors to repay their debts in accordance with the agreement".

The constitutions Number 10 of 1998 regarding the changes on the constitution Number 7 of 1992 regarding the banks, Article 8 stated that:

- Paragraph 1: “(1) In extending Credits or Financing based on Syariah Principles, a Commercial Bank shall have confidence based on thorough analysis on the intention, capability and ability of a Debtor Customer to repay its debt or the financing according to the agreed terms.
- Paragraph (2): A Commercial Bank shall formulate and implement guidance on Credit and Financing based on Syariah Principles, according to regulations stipulated by Bank Indonesia.

CREDIT RESTRUCTURING DURING THE COVID-19 PANDEMIC

The steps that can be implemented by Bank related with the 3R pattern as below:

- *Rescheduling,* which is the effort to make the changes for some or all of the terms from the credit agreement related to the credit repayment’s schedule or credit term.
- *Reconditioning* (review of credit back requirements), which is the effort to make the changes for some or all credit terms but not only the credit period, but will be borne by the company (company equity).
- *Restructuring* (realignment), means the effort to restructure credit terms, in addition to the methods described in items a and b above (Mansyur, 2010).

With the covid-19 outbreak that hit Indonesia, President Joko Widodo (Jokowi) gives some simplicity to several business sector and citizen that affected by the corona virus outbreak (Covid-19). This simplicity is given after hearing some complain from the businessperson, started from micro, small and medium enterprises (UMKM), to motorcycle taxi drivers and taxi drivers. (President, when opening limited meeting at the

Merdeka Palace, Presidential Palace complex, Jakarta, Tuesday (03/24/2020) (Asmara, 2020).

Financial Services Authority (OJK) issued Financial Services Authority Regulation Number11/POJK.03/2020 related with The National Economic Stimulus as a Countercyclical Policy impacts of the 2019 Corona virus Disease, with basic considerations as below:

- The development of spreading the corona virus disease 2019 (COVID-19) in global has been influenced directly or indirectly debtor performance and capacity to fulfilling the responsibility on credit payment or financing;
- The effect on the debtor performance and capacity will increase the credit risk which has potential to disrupt banking performance and system stability of financial even influence-the economic growth;
- To push the optimization of banking performance, specifically the intermediation function, to keep the stability of financial system and support the economic growth needs economic stimulus policies to be taken as a countercyclical impact of the spread of corona virus disease 2019 (COVID-19).
- The economic stimulus policy as a countercyclical impact of the spread of corona virus disease 2019 (COVID-19) is intended to be implemented while taking into account the precautionary principle;

Based on the consideration as mentioned in point a, b, c, and d, it needs to determine Financial Services Authority (OJK) related with National Economic Stimulus as Countercyclical Policy on the Impact of the Corruption Virus Disease 2019.

In the chapter I related with General Provisions Financial Services Authority Regulation Number 11 / POJK.03 / 2020, provisions of Article 2:

- *Bank can implement the policy that supported the economic growth stimulus for debtor that affected by the spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (MSME).*

The supporting policy of economic growth stimulus as mentioned in the paragraph (1) is including below:

a. asset quality determination policy; and
b. credit or financing restructuring policy.

Bank in implementing the policy that supported the economic growth stimulus as mentioned in the paragraph (1) still pay attention to the application of risk management as stipulated in the Financial Services Authority regulations related with application of Bank risk management.

In bank, implementing the policy that support the economic growth stimulus as mentioned in the paragraph (1), bank must has the guidelines for establishing to debtors that impact of the spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (UMKM).

The Debtor designation guidelines that impact of the spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (UMKM) as mentioned in the paragraph (3) as explained below:

- The debtor that determined to be affected by corona virus disease 2019 (COVID-19); and
- The sector that affect of corona virus disease 2019 (COVID-19).

In the chapter III the Credit Restructuring provisions are regulated in the following articles:

- Article 5. The credit quality or the financing that restructured determined smoothly since the restructuring. Credit restructuring or financing as mentioned in the paragraph (1) can implemented on credit or financing that gives previously or after debtor impacted of the spreading the corona virus disease 2019 (Covid-19) including the debtor of micro, small and medium enterprises (UMKM). Credit for rural Bank (BPR) or financing for BPRS (Sharia Small Business Bank) that restructured is excluded from the application of accounting treatment for credit or financing restructuring.
- Article 6, the regulation as mentioned in the Article 5 applies to loans or financing that meets the requirements:

a) Given to debtor impacted of spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (UMKM).
b) Restructure after debtor impacted of spread of corona virus disease 2019 (COVID-19) including the debtor of micro, small and medium enterprises (UMKM).

According to (Buchari, 2020) in Web Seminar on the Handling of problematic Financing and Restructuring of bank loans (impact Covid-19), which was held on 18 May 2020, that the effect of COVID-19 hampering the economic activities of the community, positive side can accelerating changes in work culture utilizing technology. The negative sides are many things cannot be done online, especially production; the prohibition on activities causes various parties to be affected by the economy. Banks disbursing credit and financing for economic agents, when the economic condition is decreased and economic agents can make credit or financing from banks experienced decreased of profit. So, then the ability to repay debt to the bank will be reduced, the Bank may experience bad credit problems.

The researcher is also stated that COVID-19 affected for the entire of society especially the economic impact, where all sections of society have difficulty earning a living, to banks that cannot carry out credit distribution activities as usual for even more than three months. With there are the regulation Financial Services Authority (OJK) issued Financial Services Authority Regulation Number 11/POJK.03/2020 concerning the National Economic Stimulus as a Countercyclical Policy on the impact of Corona Virus Disease 2019 Dissemination, also cannot return the economic condition as before, because all the party especially bank still need time to adjust to the OJK regulations. With the regulation of the OJK cannot deleted the payment of credit installments by the Debtor, but only delay the payment especially for citizen with micro, small and medium enterprises (UMKM) until a certain period of time in accordance with the policies taken by each Bank.

CONCLUSION

Based on the explanation above, can be concluded that:

- The basic law of basic law of credit agreement is based on the Constitution of banking while the regulation of collateral is based on Civil law. The benefit in credit agreement is form of prudential principle. Creditors extend the credit to the

public and gives law or legal protection for creditor, if at any time the debtor is doing wanprestasie.

The effort of the credit restructure means the efforts to restructure credit terms, Financial Services Authority (OJK) release the regulation Financial Services Authority (OJK) Number 11/POJK.03/2020 related with National Economic Stimulus as a Countercyclical Policy to Impact the Spread of Corona virus Disease 2019 in globally has been impact direct or indirect on performance and capacity of debtor in fulfilling credit or financing payment obligations as well as the impact on the performance and capacity of debtors will increase credit risk which has the potential to disrupt banking performance and financial system stability so that it can affect economic growth, but it is also hoped that this regulation will not harm the banking world, especially related to bad loans and credit distribution in a society that is stunted.

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INDONESIA' CRISIS RESPONSE TO COVID-19 PANDEMIC: FROM VARIOUS LEVEL OF GOVERNMENT AND NETWORK ACTIONS TO POLICY

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Abstract: *WHO China Office was informed and reported cases with no death of unknown pneumonia detected in Wuhan, Hubei Province in early December 2019. WHO published its risk assessment and advice on the status of patients by national authorities in Wuhan. On 10 th January 2020, WHO issued its first guidance for novel coronavirus. WHO made visit to Wuhan by delegation to discuss the status of the virus. Officially on 11 th February 2020, WHO named Corona Virus Disease (COVID-19) after declared the outbreaks. Many responses were coming from various countries to this crisis. The responses may vary according to crisis response management: public policies; networks interactions; and contextual condition that create the strategic and operational level (Boin & 't Hart, 2010). We adopt qualitative research. We focused on the actual textual documents as the objects of our analytical content from internet, articles from journals and reference books. The objectives of this research are: notifying government's actions towards COVID-19 pandemic; identifying government's policies on COVID-19 pandemic; and analyzing Indonesia's crisis response management to control COVID 19 pandemic. Indonesia is still slow to response the pandemic. The contextual dimensions from crisis response management in Indonesia include: citizen's behaviors, governments actions and the policy power.*
Keywords: *crisis response; government agencies; networks; collective action; policy*

INTRODUCTION

World Health Organization (WHO) China Office was informed and reported cases with no death of unknown pneumonia detected in Wuhan, Hubei Province in early December 2019. WHO (2020) published its risk assessment and advice on the status of patients by national authorities of Wuhan in January 2020 by issuing the first guidance to novel corona virus. WHO made visit to Wuhan, China by delegation to discuss the status of the virus. Officially, on 11 th February 2020, WHO named Corona Virus Disease

(COVID-19) after declared the outbreaks that could not refer to the geographical location, an animal, an individual or a group of people. On 13 th January 2020, the first case of novel coronavirus was confirmed in Thailand and until 15 th May 2020, WHO reported the total of new cases globally was 4.338.658 cases with 297.119 deaths. While total confirmed cases of Indonesia was 16.006 cases, 568 new cases, 1.043 total death, 15 new death through community transmission (*https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200515-covid-19-sitrep-116.pdf?sfvrsn=8dd60956_2 accessed on 16th May 2020 at 15:13).*

Compared to WHO updated news, there are 17.025 positive cases and 1.089 deaths reported on COVID-19 website of Indonesia (covid19.go.id *accessed on 17 th May 2020 at 14:21*). This government's agency faces big challenge to stop the spread of COVID-19 in society because people are required to be discipline to follow the protocol and guidance on COVID-19 during everyday activities. Every citizen is expected to be able to survive by adjusting his or her lifestyle. Other issue on COVID-19 is the evaluation of Social Containment in Large Scale Policy. The results vary in four provinces with 72 districts/cities. There were numbers of decreased cases consistently but not drastically in a few regions. Whereas some areas have decreased cases inconsistently. The evaluation data was obtained from 10 provinces with most positive cases. The result of the evaluation showed only three provinces implemented that large scale of social containment: DKI Jakarta; West Java; and West Sumatra. Each region in its implementation is not encompassed within the limits of government's administration. The implementation of this containment requires interconnection with a number of large areas *(https://covid19.go.id/p/berita/pemerintah-evaluasi-pelaksanaan-psbb-secara-menyeluruh accessed on 16 th May 2020 at 19:21)*. The implementation is supported by National Police of Indonesia as a national assistant towards law enforcement of the acceleration government's COVID-19 agency to support the social containment *(https://covid19.go.id/p/berita/operasi-ketupat-dilakukan-lebih-awal-sebagai-antisipasi-psbb-cegah-covid-19 on 16 th May 2020 at19:25).*

The presence of this virus has successfully paralyzed all worlds' activities from various sectors, ranging from education, business, politics, tourism, and so forth. This condition does not only occur in Indonesia but also affects all countries in the world. It is necessary to provide a form of community empowerment practice of the various problems that arise in the middle of the community (Saleh & Mujahiddin, 2020, p.1105). Community empowerment practice needs the collective responses of the society. The response may be anger towards the state for its potential lack of preparedness; especially the pandemic problem is considered the responsibility of the state. On individual level, the disappointment with the reaction of the state to the pandemic can result in an increase need for an agency (San Lau et al, 2020, p.648).

Before declaring social containment for large scale, President had recommended social distancing to the society to stop the spread of COVID-19. The term social distancing is then changed to physical distancing due to unpleasant meaning. Now the government has decided to implement Social Containmet in Large Scale, which is a term that refers to the Health Quarantine Law *(https://www.bbc.com/indonesia/indonesia-52109439 accesses on 16 th May 2020 at20:44).*

COVID-19 has affected over 100 countries. People's response towards social distancing in the emerging pandemic is uncertain. From the research of Qazi et al (2020,

p.1) showed that an increase in situational awareness in times of public health crisis using formal information sources significantly increase the adoption of protective health behavior. Pandemic calls on citizens (Voorberg et al, 2015, p. 10) in realizing policy goals. Social distancing recommendation and stay at home campaigns ask the society to put away the interactions in their social life.

COVID-19 pandemic has substantially changed private and public life all around the world. To contain the spread of the disease, governments first called the individuals to change their social behavior and hygiene for example: avoiding handshakes, washing hands frequently and avoiding social gathering (Fetzer et al, 2020). 91% from the global survey result from Early March to Late April 2020 from 58 countries and over 100.000 respondents conducted by Fetzer et al (2020) that the respondent did not attend any gathering in the past weeks, 69% reported keeping a distance of at least 2 meters to other people and 78% said that they stayed home in the past week. Their perceptions about protective behavior shown in the survey that 92% say people should not shake each other hands, 90% of respondents believe that social distancing measures are effective or very effective.

Since the first case of COVID-19 announced in Indonesia on 2nd March 2020, many strategies were made in order to prevent transmission and death from this disease. One forum for social change namely change.org Indonesia collected data and information related to perception of citizens about the crisis situation of COVID-19 in Indonesia. This data was collected through a survey. Data is needed to design a COVID-19 pandemic response strategy. The survey results conducted on 24 th March 2020 on 10.199 respondents in two days by online analyzed that various government agencies: President; Minister of Health; National Board of Management Disaster; and Local Governments showed that 42.8% of the government is less effective in crisis management response to pandemics; 36.3% of respondents think the President is not fast to response pandemic crisis; 35.1% of respondents think the Minister of Health is not fast to response pandemics, 43.6% of respondents assess National Board of Disaster Management is quite good to response the crisis; and 36.1% of respondents rated Local Government is quite good to response the pandemic. From these survey results, respondents have more trust in the performance of National Board of Disaster Management and Local Governments to response pandemic crisis *(https://www.kompas.com/sains/read/2020/04/02/100200323 /berbagai-respons-rakyat-untuk-pemerintah-terkait-penanganan-covid-19?page=2 accessed on 16 th May 2020 at 21:11).*

President's response pandemic by declaring COVID-19 as a crisis disease causes emergency and harm public health. Government issued Presidential Decrees based on Law Number 6/2018 concerning self-isolation and quarantine. This is as the response of public health emergency. The emergency status made government determine and revoke the territory along the country. This ban the entrance and exit means of transporting people; and/or goods in the ports; airports and land border crossings *(https://www.bbc.com/indonesia/indonesia-52109439 accessed on 16th May 2020 at 20:23).*

LITERATURE REVIEW

Social Distancing and Containment

Social distancing has emerged as the principal line of defense for human to fight against the COVID-19. The logic is reducing social interactions between healthy people to slow the spreads of the virus (Long, 2020, p.3). Reducing the spreads of infectious disease during COVID-19 pandemic prompted recommendations for individuals to limit physical contact with others. The most commonly reported motivations for social distancing concerned social responsibility and not wanting others to get sick. Greater social distancing motivations are concerning state or city lockdowns (Oosterhof et al, 2020, p.2). Social distancing practices reduce the contacts between infected and non-infected people.

According to Musinguzi & Asamoah (2020), social distancing is a term that mainly used with reality meaning of physical distancing. Human needs social life and emotional closeness with family, friends, peers and so forth. In egocentrics society, people are socially distant so this instruction refers to that context. Clear massages with clear language about the needs to prevent the spreads of the virus are critical. The governments as policymakers need to be clear about the resolution. Sharing data from all level of policymakers are important. The governments need to move forward to protect their people in a non-threatening, non-panicky manner to ensure citizen's safety (Ventriglio et al, 2020).

The importance of social distancing as tool to limit virus transmission is well recognized but there are many difficulties challenges especially in densely populated urban slums in developing countries where people focus to occupy and live together in in poorly home. It is the responsibility of every citizen to join hands to mitigate its impact following guidance provided by the national authorities within the country (Bhatia; Chodijah et al, 2020).

Social distancing is the practice of increasing the space between people to decrease the spreading illness, spacing of 2 meters away, doing individuals action include: working remotely, avoiding public transportations, and staying at home. Social distancing is a realistic solution that all individuals can take parts to reduce the infection. We can still practice physical distancing while remaining connected socially, emotionally and spiritually (Sen-Crowe et al, 2020).

While social behavior affects the dynamics of the spreads of infectious disease. The virus contributes disruptions in society: possible occurrence of panic; restriction on migration and participation in social event. In contrast, in a micro scale, they lead to various responses of individuals from panic and fear to misinterpretation. In pandemic, badly informed people tend to panic that may lead to bad decision making, high stress level causing anxiety. People who are not fully informed seek further information on the internet, which is full of diverse content (Jarynowski et al, 2020, p.8).

Social interactions influence the emotions, opinions and behavior. Advanced technology in social media lead to more dynamic interactions. Containment control is a particular class of consensus (Kan et al, 2014, p.2). Social Containment means self-control to behavior (Flexon, 2014, p. 1).

Collective Behavior

Political legitimacy or durability of political power is not always being a result of accurate information about the critical situation. Decentralization of information on the local level transforms the dynamic of collective behaviors. Accurate and consistent information is central to the state in time of crisis (Brown, 2020, p.3).

There are steps for society to commit to participate in COVID-19 response according to Maston & Miles (2020, p.1):

a. Investing in coproduction
b. Build dialogue and reflection to responses to invest not only for this emergency but also for long-term preparedness.
c. Work with community groups
d. Build and use their expertise and networks to mobilize their wider communities.
e. Commit to diversity
f. Include the most marginalize, capture the broad range of knowledge.
g. Be responsive and transparent
h. Collaborate to review outcomes on diverse groups containing the ideas and make improvements.

Voluntary approaches have been adopted in many developed countries as well as in a number of developing countries. The term voluntary approach refers to class of policies, programs, and initiatives under which parties voluntarily agree to participate rather than forced to do so. The practical implication is that all successful voluntary approaches must satisfy the participation, which effects policy design (Segerson, 2013).

Policy

There are some definitions regarding public policy from various authors concluded by Birkland (2015, p.8).

a. Action of governments and the intentions that determine those actions.
b. The outcome of the struggle of the government.
c. Whatever the government choose to do or not do.
d. Political decisions for implementing programs to achieve societal goals.
e. The sum of governments activities, whether acting directly or through agents and influece life of citizens.

Public policy is decisions and non-decisions of government as a reflection of social values and priorities can take traditional form: law; regulation; executive order; local ordinance. In these forms, public policies represent priorities of society. They are varied in range from designs and contents. Governments adopt public policies with different pathways. The pathways of policy change during COVID-19 pandemic as the examples: Partial closures (mitigation) to strict lockdowns in United Kingdom (UK); Negotiated agreement (United States of America, Canada and Japan); Diffusing and transferring ideas across governments, the lessons from South Korea with widespread testing and China's strict quarantine. From these countries illustration of policy decisions, showed contextual factors including institutional (legalistic structures), cultural orientations, economics and political style (Weible et al, 2020, p.3).

Public policy is bridging administrative actions and the government's intention to do something (policy). Pandemic COVID-19 crisis needs span coordination's from different agencies across level of governments. Policy responses call for joint action

among profit or non-profit government organizations, enterprises and individuals. Policy networks include political parties, public agencies, elected offices, non-government organizations, interest groups and so forth. These entities relate in policymaking as resource exchange of information or collaboration. Policy networks react and contribute to policy issues and changing government's agenda in response of COVID-19 Pandemic. Jenkins Smith et al (2018) state that policy networks remain stable with regularized pattern of interactions.

The government must intervene the citizens to control the behavior. There are four policy instruments according to Tummers (2019, p.4): incentives, bans and mandate, communication and nudges that control citizen's behavior. It is not easy to control individual mentality, but behavior approach in policymaking process by the use of social attribute (norms) could lead to better societal outcomes (John, 2016, p.128). The purpose of policy instruments are to:

a. Achieve behaviour change within individuals.
b. Realize social, economic and political conditions.
c. Provided service to the public.

Government's choice of policy instruments is restrained by financial, social, international, and cultural pressures. While the type of policy instruments available to the government include:

a. Doing nothing: deciding not to intervene.
b. Information-based: influencing people through knowledge transfers, communication and moral persuasion (behaviour is based on knowledge, belief and value).
c. Expenditure-based: using money for direct instrument for outcome (grants, vouchers, contributons).
d. Regulation: Government's role to command and limit citizens's activities.
e. Acting directly: Providing direct service to achieve outcome.

In policy making process, there is a decision making that refers to governments adopt of particular course of action. Policy making is a set of interrelated framework for understanding the policy process of activities and relationships that examine the issue (Araral et al, 2013, p. 17).

Crisis Response and Management

Crisis management is a priority in policy agenda of many countries. Crisis management has been defined from different aspects; administrations; recovery and response activities; mitigation efforts and organizational collaboration. While the crisis management concepts consist of: rescue; preparedness; mitigation; resilience efforts made by government; volunteer's organizations or other local departments. A crisis may trigger rapid public policy changes since drawing public and media attention and threatened public trust (Unlu, 2010; p.156-157).

Crisis response and management are interdependence with: 1). Public policies, 2). Individuals, groups, networks and coalitions interactions, 3). Contextual condition (level of income, global level decisions and local interactions). The responses occur as the strategic and operational level (Boin & 't Hart, 2010, p. 358). The operational level refers to grounds decisions including medical personnel, epidemiologists, and others professionals with pandemic's immediate threat. The strategic level includes: political

administrative leaders who carry political responsibility in making strategic decisions and support collaboration. The adjustment of the response from COVID-19 pandemic crisis requires engagement from both levels.

Most crises and disasters pose challenges to response. These challenges include: designing, maintaining and evaluating crisis response capacity in organization, government and communities. We must differentiate the strategic and operational level of responses. At the operational level: we use professional expertise to threat the responders who are close to the disasters to minimize the consequences to provide immediate relief. At the strategic level: the political administrative executives carry political responsibility to make decisions with long-term consequences to provide guidance to public and participants of the response network.

The challenges in strategic level according to Boin&'t Heart (2010) are:

a. Sense-making: diagnosing situation correctly.
b. Meaning-making: providing persuasive public understanding.
c. Decision-making: making strategic policy.
d. Coordinating: collaboration among public networks.
e. Circumscribing: targeting and rationing support among victims community.
f. Consolidating: relating government and society to deliver long-term service to eligible community.
g. Account-giving: managing the activities of media, expert, legislative and judicial that tends to follow crisis and disaster.
h. Learning: organizations and systems are involved in drawing evidence based and reflective lessons for the future performance.
i. Remembering: community should not forget the experience in time of crises or disasters.

While the challenges in operational level are:

a. Diagnosing and deciding: accurateing the threat under pressure and incomplete information, choosing feasible response approach and updating information with circumstances.
b. Mobilizing and Organizing: Soliciting the type of level operationally resources necessary to meet the demand of the situation.
c. Containing and Mitigating: using available resources to contain the destruction.
d. Informing and Empowering: making crisis response decisions to respective domains.
e. Coordinating and Collaborating: involving different units, organizations and disciplines in responding crisis together.

Critical decisions enable organizations cope with consequential environments. Critical decisions involve a process for thinking and acting for optimal solutions in restricted time. The context of critical decisions can be due to scarce natural/economics resource, uncertain factors, aversive environment, environmental difficulties, ambiguous circumstances, and unclear situation (Coccia, 2020, p.1).

Research Questions

There are some questions formulated for this article:

a. What are government's actions towards COVID-19 pandemic?
b. What are government's policies on COVID-19 pandemic?

c. How is Indonesia's crisis response management to control COVID-19 pandemic?

Research Objectives

Based on the formulation problems, the objectives of this research are:

a. Notifying government's actions towards COVID-19 pandemic.
b. Identifying government's policies on COVID-19 pandemic.
c. Analyzing Indonesia's crisis response management to control COVID 19 pandemic.

METHODS

According to Neuman (2014, p.28) social science research is about, for and conducted by people with the attention to the principles, rules and procedures. Social research is also a human activity. The researchers are conducted to discover new knowledge and understand social world. For this article, we adopt qualitative with some steps according to the type of qualitative research methods used (Neuman, 2014, p.5). We start with a topic of COVID-19 by situating the topic in socio-historical context then we choose some potential research questions. We design this study by collecting, analyzing and interpreting data. Qualitative research also provides a robust approach to enhance community-based research and action (Jason & Glenwick, 206, p. 21). Analytic work on documents divided in two areas: work that focuses on the actual textual or extra-textual content of documents, and work that focuses on some aspects of the use (Flick, 2014; p.378). We focused on the actual textual documents because this is as the objects of our analytical content from various digital data in internet. The development of internet and social media has changed social interactions. The transformation also changed the research methods. Social and cultural research about internet and digital media is due to its relative newness. This is a digital tool to enrich the method in information age as the new opportunity for analyzing society. Computer as a tool in searching the data and information by using internet is helpful in this era and enrich the qualitative data (Richards, 2015; p. 169).

We use concepts and theoretical interpretations. Finally, we inform others by writing a report. In this, case the article, this is an explanatory research because; we use conceptual theory, elaborate, link the issue or topic with those general concepts and determine several explanations (Neuman, 2014, p.43). We elaborate the general conceptual theory regarding the crisis response management from Boin and 't Hart (2010, p. 358) in figure 1:

Source: adopted from Bon and 't Hart (2010, p. 358), Crisis Response Management.

Conceptual framework explains the main things, the key factors, and variables to be studied either graphically or in narrative form and presumes interrelationships among them. This is a conceptual of the territory being studied. Theory building relies on a few general constructs containing many states, categories, processes and events (Miles et al, 2014; p. 37). We used quantitative statistical data from the survey (viewing in percentage) and qualitative data from content analysis as Leavy said that (2014, p.360) it was a technique for examining the content of information in written documents or other communication medias from newspaper online articles to record specific aspects regarding the research focus. Contents analysis lets us discover the documents of specific features.

RESULTS

The results of this research are displayed in three main focuses: Government's actions towards COVID-19 pandemic; Government's policy on COVID-19 pandemic; and Indonesia's crisis response management to pandemic.

A. Government's actions towards COVID-19 Pandemic

We retrieved the information from various news on website about the government's response:

1. Indonesian government was late to respond COVID-19 pandemic issue since last February 2020 with unclear opinions in mass media continuously *(https://ir.binus.ac.id/2020/03/23/respons-pemerintah-indonesia-terhadap-*

pandemi-covid-19-desekuritisasi-di-awal-sekuritisasi-yang-terhambat/ accessed on 26 th May 2020 at16:19).

2. Comparing cases of COVID-19 pandemic spreads in Southeast Asia, Indonesia has more chance to anticipate the spread of COVID-19. But the local governments were not showing fast response to this situation through coordination with the central government. When a number of countries in Southeast Asian region began to close their country's borders, the Indonesian government had just held a coordination meeting on 17 th February 2020 regarding the opportunity for tourism industry to give discounts to a number of national tourist destinations that resulted in spreading many cases of COVID-19 in Indonesia. Social distancing actions are taken as the first response to the handling of the spread of COVID-19 in Indonesia *(https://katadata.co.id/analisisdata/2020/03/26/pandemi-covid-19-yang-terlambat-diantisipasi-indonesia accessed on 26 th May 2020 at 16:30).*
3. Before declaring social containment for large scale, President had recommended social distancing to the society to stop the spread of COVID-19. The term social distancing is then changed to physical distancing due to unpleasant meaning. Now the government has decided to implement Social Containmet in Large Scale which is a term that refers to the Health Quarantine Law *(https://www.bbc.com/indonesia/indonesia-52109439 accesses on 16 th May 2020 at 20:44)*
4. The government formed COVID-19 task force as a mandate from the President. The task force should be led by an official at the level of the Coordinating Minister, reporting directly to the President, having budget coordinating with ministers and various local governments *(https://www.vivanews.com/berita/nasional/43205-pemerintah-indonesia-diminta-terbuka-dan-tegas-tangani-virus-corona?medium=autonext accessed on 26 th May 2020 at 20:27).*

We concluded that government responses the pandemic by various actions: recommend the society to do social distancing, physical distancing, and stay at home ; make the mandate to the minister regarding the needs to create special task force to respond COVID-19 pandemic spreads and issue the social containment policy on large scale with Presidential Decrees Number 11/2020.

B. Governmnet's Policy on COVID-19 Pandemic

We retrieved the policy from various website regarding the news on COVID-19 :

1. President's response pandemic by declaring COVID-19 as a crisis disease causes emergency and harm public health. Government issued Presidential Decrees based on Law Number 6/2018 concerning self-isolation and quarantine. This is as the response of public health emergency. The emergency status made government determine and revoke the territory along the country. This ban the entrance and exit means of transporting people; and/or goods in the ports; airports and land border crossings *(https://www.bbc.com/indonesia/indonesia-52109439 accessed on 16 th May 2020 at20:23).*
2. The government issued five protocols for handling COVID-19 as pandemic management: health protocols; communication protocol; border surveillance

protocols; education area protocols and public and transport area protocols. The five protocols were issued on 6 *th* March 2020 which were implemented simultaneously in all regions of Indonesia and coordinated by the Ministry of Health of the Republic of Indonesia. The protocol strengthens the health protocol that was issued by the Ministry of Health on January 28 *th*, 2020 and the five protocols were evaluated by the Government on February 17*th*, 2020 *(https://www.liputan6.com/news/read/4201341/headline-covid-19-pandemi-global-bagaimana-protap-dan-koordinasi-pusat-daerah-di-indonesia accessed on 26 th May 2020 at17:20).*

3. The government issued Social Containment Policy based on Regulation Number 21/2020 and Presidential Decree Number 11/2020 *(https://nasional.kompas.com/read/2020/04/26/19130971/kebijakan-presiden-terkait-penanganan-covid-19-disebut-bisa-berubah accessed on 26 th May 2020 at 20:20).*

From those information, we concluded the policy on COVID-19 pandemic in Indonesia are Government Regulation Number 21/2020 and Presidential Decress Number 11/2020 also some operational protocols to support the policy.

C. Indonesia's Crisis Response to Pandemic

Since the first case of COVID-19 announced in Indonesia on 2 nd March 2020, many strategies were made in order to prevent transmission and death from this disease. One forum for social change namely change.org Indonesia collected data and information related to perception of citizens about the crisis of COVID-19 in Indonesia. This data was collected through a survey. Data is needed to design a COVID-19 pandemic response strategy. The survey results conducted on 24 th March 2020 on 10.199 respondents in two days by online analyzed that various government agencies: President; Minister of Health; National Board of Management Disaster; and Local Governments showed that 42.8% of the government is less effective in crisis management response to pandemics; 36.3% of respondents think the President is not fast to response pandemic crisis; 35.1% of respondents think the Minister of Health is not fast to response pandemics, 43.6% of respondents assess National Board of Disaster Management is quite good to response the crisis; and 36.1% of respondents rated Local Government is quite good to response the pandemic. From these survey results, respondents have more trust in the performance of National Board of Disaster Management and Local Governments to response pandemic crisis *(https://www.kompas.com/sains/read/2020/04/02/100200323 /berbagai-respons-rakyat-untuk-pemerintah-terkait-penanganan-covid-19?page=2 accessed on 16 th May 2020 at 21:11).*

Based on the news from kompas.com, we concluded that Indonesia is still slow to response the pandemic and the citizens have more trusts in the performance of National Board of Disaster Management and Local Governments.

DISCUSSION

A. Government's Actions towards COVID-19 Pandemic

The result shows that government responses the pandemic by various actions: recommend the society to do social distancing, physical distancing, and stay at home ;

make the mandate to the minister regarding the needs to create special task force to respond COVID-19 pandemic spreads and issue the social containment policy on large scale with Presidential Decrees Number 11/2020.

From the literature review, that social distancing is the principal line of defense for human to fight against the COVID-19 by reducing social interactions between healthy people to slow the spreads of the virus (Long, 2020, p.3; Sen-Crowe et al, 2020). According to Musinguzi & Asamoah (2020), social distancing is a term that mainly used with reality meaning of physical distancing. The importance of social distancing as tool to limit virus transmission is well recognized but there are many difficulties challenges especially in densely populated urban slums in developing countries where people focus to occupy and live together in poorly home. It is the responsibility of every citizen to follow guidance provided by the national authorities within the country (Bhatia; Chodijah et al, 2020) so the Indonesia government made clear the actions by informing the five ptotocols.

Citizens are challenged to commit to participate in COVID-19 response to slow the spreads by working with community groups to make improvements (Maston & Miles, 2020, p. 1). These actions from governments and citizens called voluntary if refers to class of policies, programs, and initiatives to participate rather than forced to do so. The voluntary approaches will effect policy design (Segerson, 2013).

The government must intervene the citizens to control the behavior. There are four policy instruments according to Tummers (2019, p.4): incentives, bans and mandate, communication and nudges that control citizen's behavior. It is not easy to control individual mentality, but behavior approach in policymaking process by the use of social attribute (norms) could lead to better societal outcomes (John, 2016, p. 128). In this case, the government issued the mandate to all the ministers for doing the collaborative and voluntary action on COVID-19 pandemic. Government also intervene citizen's behavior by bans and nudges to stay at home, doing physical distancing and following the protocols in everyday activities.

Public policy is bridging administrative actions and the government's intention to do something (policy). Pandemic COVID-19 crisis needs span coordination's from different agencies across level of governments. Policy responses call for joint action among profit or non-profit government organizations, enterprises and individuals. Jenkins Smith et al (2018) state that policy networks remain stable with regularized pattern of interactions. By issuing the social containment policy on large scale with Presidential Decrees Number 11/2020 and Government Regulation Number 21/2020 that would stable and regulate governments actions to control citizen's behavior.

B. Government's Policies on COVID-19 Pandemic

From the analytical content retrieved from news documentation, it is clear that the policy on COVID-19 pandemic in Indonesia are Government Regulation Number 21/2020 and Presidential Decress Number 11/2020 also some operational protocols to support the policy. In policy making process, there is a decision-making that refers to governments adopt of particular course of action. Policymaking is a set of interrelated framework for understanding the policy process of activities and relationships that examine the issue (Araral et al, 2013, p.17). From international health organization board information, recommendations actions from various level of government's agencies

towards pandemic then voluntary approaches will effect policy design (Segerson, 2013). In this case, a crisis may trigger rapid public policy changes since drawing public and media attention and threatened public trust (Unlu, 2010; p.156-157). There are many media mass news related to COVID-19 pandemic that effect citizens trust towards government's actions and policies to control the spreads of the virus.

Crisis response and management are interdependence with: 1). Public policies, 2). Individuals, groups, networks and coalitions interactions, 3). Contextual condition (level of income, global level decisions and local interactions). The responses occur as the strategic and operational level (Boin &'t Hart, 2010, p.358). The adjustment of the response from COVID-19 pandemic crisis requires engagement from both levels.

Most crises and disasters pose challenges to response. These challenges include designing, maintaining and evaluating crisis response capacity in organization, government and communities. We must differentiate the strategic and operational level of responses. At the operational level: we use professional expertise to threat the responders who are close to the disasters to minimize the consequences to provide immediate relief. At the strategic level: the political administrative executives carry political responsibility to make decisions with long-term consequences to provide guidance to public and participants of the response network.

C. Indonesia's Crisis Response to Pandemic

Indonesia is still slow to response the pandemic and the citizens have more trusts in the performance of National Board of Disaster Management and Local Governments. This is the challenge for coordination from strategic and operational level responses. The strategic level must diagnosing situation correctly, building public understanding, making strategic policy, coordinating and supporting victims, mitigating the victims and informing public on COVID-19 pandemic (Boin & 't Hart, 2010). These steps will enable organizations cope with consequential environments due to scarce natural/economics resource, uncertain factors, aversive environment, environmental difficulties, ambiguous circumstances, and unclear situation (Coccia, 2020, p.1).

CONCLUSION

Indonesia is still slow to respond the pandemic. The government's actions still slow to respond the spreads of COVID-19 pandemic. The policy and protocols on pandemic crisis must be monitored, strictly implemented and evaluated to control citizen's behavior. The contextual dimension from crisis response management in Indonesia include citizen's behaviors, government's actions and the policy power. The government must regulate the actions to be Regulation based on clear Law regarding on isolation, quarantine and social containment on large scale and be well coordinated with all levels and networks.

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PUBLIC ADMINISTRATION

MANAGING IDENTITY DIVIDE: LANDSCAPING THE CONSTRAINTS OF THE NIGERIAN IDENTIFICATION SCHEME

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Abstract: *The spontaneous advancement in information communication technology aided several achievements in the way and manner government transacts business with citizens and private businesses. As such, the adoption of e-government in both public sector and private sector is attached to the growing wave of identity management across the globe. As it is practice in the public sector, policy intervention was adopted to manage the deployment of national identification schemes and this is applicable to Nigeria. However, a decade and half implementation of the policy yielded no significant results given the huddles of enrollment faced by an average enrollee. It was on these grounds that this article to investigate the constraints navigating the operation of the national policy and framework on identification system in Nigeria becomes researchable gap. Survey research (questionnaire and interview) and descriptive statistics (Relative Impact Index) were used in collecting and analysing data gathered from 214 administrators of four relevant identity-oriented agencies (NIMC, NIS, INEC and FRSC). The results indicated that constraints such as insufficient central database infrastructure, unstable electricity, poor internet connectivity, unclear delegation of responsibilities among agencies, insufficient funding and institutional corrupt practices were principal among the constraints of the new identity regime. It further concluded that more research of this nature is expected to explore the emerging issues from the implementation of the policy while advising the government to rework the identified constraints, for instance, it is expected that government decentralise the enrollment process following the model used in the telecommunication industry for registering SIM cards by accrediting private firms for the enrollment exercise. It added that for the system to be unique and foundational as claimed in the policy thrust, the policy guidelines on harmonisation and integration of existing functional database need an accelerated redevelopment for implementation as well as a separate legal instrument footing its legality.*
Keywords: *Policy, biometric, Identity, identification system, identity management, implementation*

INTRODUCTION

The spontaneous advancement in information communication technology aided several achievements in the way and manner government transacts business with citizens and private businesses. Identification system allows the arrangement to be made for more government ministries to provide e-services to the public (Arora, 2008: Naumann, 2008).

More specifically, UN Development Index Survey released in 2016 noted that more countries use e-identification as part of criteria to access online or mobile services. This new development was however linked to the government agencies in order to provide citizens-focused e-services. Originally, the adoption of electronic identification in the provision of e-services is sharply linked to the principle of new public service movement. This principle states that the provision of public services should be based on egalitarian and equal right ideology (Denhardt & Denhardt, 2007). This means that for services to be provided equally, numbers and identities of citizens are vital to the government especially for planning purpose. Again, the term such as "digital governance", "the paradigm of population data" added more weight to the significance of identification scheme (Dunley, Margetts, Baslow & Tinkler, 2006; Rahardjo, 2016). The importance of identification system in public service is more strengthened by the argument of Khatchateuror and Laurent (2014) that adoption of e-government in public sector and private sector is attached to the growing wave of identity management across the globe. Castro (2011) remarked that e-services are rendered by government and private businesses via identification system. For instance, Millard and Carpenter (2014), Castro (2011), Vassil et al (2016) and Kalvet (2012) cited that services such as "tax-on-web" in Belgium, "e-voting" in Estonia, "my people services" in Denmark, were deployed through the instrumentality of identification system. Studies have shown that e-identification has been extensively deployed in European centuries. This necessitated the introduction of an European Citizen Card (Castro, 2011). UN Survey (2016) posited that in order to identify and render governmental services to citizens and the business sector and reduce the cost of governance, thus, the implementation of identity management system is inevitable.

In the case of national policy on identity management system in Nigeria, available evidence has shown a low level of implementation. Comparatively, India started the enrollment process of her citizens in 2009, and has since captured 940 million Indians out of 1.2 billion people representing 78% (Asian Development Bank, 2016). Meanwhile, in Indonesia, 140 out of 252 million Indonesians representing 56% were captured within two years; 100 million in 2011, 40 million in 2012 (Asian Development Bank, 2016). Invariably, one could see that after 10 years of commencement in Nigeria, the system is struggling to capture less than a quarter of the Nigeria population. According to World Bank (2018), Nigeria population growth rate is put at 2.6%, therefore, the population is expected to grow at a minimum of 5 million persons per annum, thereby widening the gap between the enrolled and un-enrolled Nigerians. In addition, another issue affecting the implementation of the policy might be the delay experience in the production of the GMPCs. The production of these cards occupied a fundamental spot in the process of deploying the national identity management system. However, the World Bank reported that in 2015, only 418,000 GMPCs were issued as against 12 million GMPCs proposed in the first year of implementation. This figure is 6.8% of 6.1millions NINs already assigned as at 2015. These discreditable figures could be traced to the staggered manner in which the GMPCs are being produced and distributed. This policy output deviated from the policy target of distributing at least 12 million GMPCs to Nigerians in the first year of implementation. All these evidence indicated that there are clogs hindering the implementation of the policy as proposed in Nigeria especially in the area of citizens' enrollment and harmonisation of functional databases. This poses a threat to the policy

objective of ensuring interoperability among government institutions as the numbers of identities captured and databases integrated do not guarantee provision of all-inclusive e-government services. It was on these grounds that the need to investigate the constraints navigating the operation of the national policy and framework on identification system in Nigeria becomes researchable gap.

LITERATURE REVIEW

The term identity has been diversely conceptualised along different perspectives by several authors. Etymologically, the word identity is derived from a Latin word 'Idem' meaning "sameness, oneness, and state of being the same" (Wiktionary, n.d). This naturally means that identity is the ability to remain the same or identical irrespective of the location of the persons or objects involved, which means no individual can assume different identities at the same time. In this study, the identity of an individual as a member of a society is a major concern. Therefore, in order to aptly operationalise the concept of identity as used in this study, views of scholars on what constitutes identity were visited, though varied. The nebulosity in the definition of identity was established by Sullivan (2011) where it was stressed that the definition of identity has always been without exactitude; that is identity equals identity depending on the context and nature of the phenomenon in which such definition is given. This means the term identity could possibly be used differently in several fields of study. Identity according to Sullivan (2011) is a set of adopted information that is legally and statutorily driven under the enforcement of a government implementation mechanism. According to Mostov (1994), identity of an individual is a mirror image of his characteristics naturally noticeable by members of the community in which he resides while Ayamba and Ekanem (2016) defined identity from an information management angle as an embodiment of biophysical attributes which aid an individual to access bespoke benefits in an internet aided environment or in public places. By implication, however, it means that the identity of individuals in any society could be linked to the accessibility of public services electronically. Similarly, identity is defined based on components it entails – socio-demographic attributes; benefit oriented behaviour driven by shared value in multicultural settings; pattern of lifestyle activities such as travel pattern, consumption of public services; historical component of individual relationship with the public (state and individual) especially in purchasing decisions, tax obligations and participation in socio-political activities (Future of Identity in the Information Society Project, 2006)

In a clearer view, series of definitions of identity have been succinctly captured in a joint report issued in 2003 by the Independent Centre for Privacy Protection (ICPP) of Germany and Studio Notorile Genghini (SNG) of Italy. Identity to them can be defined from three perspectives namely sociological, legal and technical. Sociologically, identity is defined in reference to differences in public and private appearance of a person. It is the combination of the realisation of personal liberty and social attributes of the person. Identity equals the interface of a pre-lingual instance of the individual that supports social integration. The decision about a point in time for initiation of a personal trait or the blend of attributes in past, present and the corresponding summary of attributes that are uniquely captured is viewed as identity (ICPP and SNG, 2003). Technically, identity is conceptualised from an electronic point of view to mean all personal oriented data that

can be kept and routinely interlaced by computer-based solutions. It represents much more genuine ascription of properties to an individual that is designed to enable real-time accessibility for instantaneous operation (ICPP & SNG, 2003). The legal definition of identity derived it source from codifications of rights and obligations in the constitution or law of the society. For instance, ICPP and SNG (2003) operationalised the legal aspect of identity to connote establishment of person's obligations, rights, and privileges apportioned by existing legal system and constitution of a state. It answers questions on matters affecting identification and verification of individual rights and obligations. Analysis from the above definitions shows that identity is encapsulated in three-folded layers which involve social attributes, legal privileges and electronic accessibility of public services embellished in a single platform. For instance, World Bank Country Assessment Report (2015) stressed that the arrival of innovative technologies such as the internet, social media, digital solutions, and mobile telephone necessitated the designation of a digital method of identity, that it is a cross-sectorial solution providing a sole identity for accessing public service across multiple sectors.

Identity viewed from electronic parlance means a digital edify that provides means of affirming who people claim they are, as a result, give them accessibility to an array of public goods and services. Electronically, identity in the public realm allows one person to access services provided across numerous sectors such as social security, tax administration, education, banking, and financial services as well as performs other personal roles. Thus, legal coverage is required to regulate the protection and control over identity data in an independent manner (European Union Discussion Paper, 2006). Another comprehensive definition of identity was given in Greenwood (2007) cited in Lips and Pang (2008:12) as a three-legged topology was set while defining identity; the digital identity (such as username, IP, email address); the physical identity (such as passport, driver's license); the converged identity, a combination of the digital and the physical identity. In OECD (2007), identity from a physical realm is considered to involve perhaps a broad set of individual physiognomies by which a person is captured while in the electronic world; an identity can be simply regarded as a subclass of an individual's identity data. This study, therefore, defines identity as the ability of a person to prove the genuine existence of his or her biophysical attributes manually or electronically. It is a legally and generally accepted electronic distinguishable characteristic of a person or an entity defined in an identity management system of a country. It consists of biometric and fingerprint data of individual or legal features of an organisation that is in electronic or digital form. Henceforth, identity, as used in this article, means biometric and physical attributes of an individual codified into a verifiable platform electronically or manually.

Identification is a vital element in the interfaces existing among citizens, governments and private institutions in an organised state. An efficient means of establishing one's identity guarantees ability to exercise and access certain rights, privileges and access range of public services; as such an ineffective identification mechanism could jeopardize the principle of efficiency and effectiveness that are required of any responsible and responsive government (World Bank Digital Identity Toolkit, 2014). According to Jaide (2010) identification is the process that confirms social and physical attributes of an individual as a citizen of a country or society that qualifies such person to access certain government services through a distinctive

identification token. More so, identification is the course of recognizing and establishing similarity and dissimilarity of the identity of a particular person or entity (Concise Oxford Dictionary) while Clarke (1994) sees identification as the act of making a semblance of a thing or an entity same or identical. Therefore, identification of human being is the connection between the characteristics of the human and the being himself. In modern government and administration, therefore, the concept of identification is a daily terminology that is used by officials of public and private institutions in discharging their duties to the public. They ensure that any individual or legal entity accessing or providing public services such as banking and financial services, legal services, export and import businesses, the award of government contracts and other public-oriented services proves the authenticity of his identity. Identification in identity management is not only for natural persons but also artificial persons – corporate entity recognised by law as a separate individual (Ojaide, 2010). Identification and identity management, though a thin demarcation exists between the two terms, the latter is more encompassing, perhaps in definition and practicability. According to Ayamba and Ekanem (2016), identity management as a concept frequently appeared in the practice and literature, yet a victim of conceptual infancy. That is, no definition is accepted as a widely acclaimed conception that really captures what identity management is. For instance, Scorer (2007) described identity management as the combination of sets of business-oriented procedures and auxiliary infrastructure for the formation, preservation, and deployment of digital identities, while Crompton (2004) attested identity management to mean a set of information management structures and practices designed to promote assurance in verifying identities of individuals. From these definitions, identity management could be described as the application of new public management in managing individual's data and identity.

According to ICPP and SNG (2003), identity management from a sociological perspective is better named as identities management; it deals with administering and supervising possible forms of participation in a standard manner in order to differentiate social situations and methods of addressing them. This definition expanded identity from one-off meaning to involve all possible attributes that might be demanded by diverse situations. Legally, identity management is not well received. It is limited to the technological environment; not regulated by legislation as an organic entity; it involves establishment of subjects' reference points for rights and obligations while technically, identity is seen as numbers, directly or indirectly notating an object, a person, a device or a corporate entity (ICPP and SNG, 2003). For Lips and Pang (2008), identity management seems to attract technical definitions; that is, ample existing conceptions captured identity management from technological sensational perspective. According to Burton Group (2003) reported in Scorer (2007:43), identity management combines business procedure, and enabling infrastructure configured to ensure maintenance and usage of electronic identities while Brands (2002a) defined identity management as "management of identity-related information … simply the digital authentication and certification of identity -related information, with its biggest use in access management". These definitions share a similar stand, that is, identity management cannot be conceptualised without permitting a semblance of data management, and digital technologies to appear in the context and in the text. On the contrary, Lips and Pang (2008) negated their earlier view. They argued that the definitions were too digitized,

stressing the fact that digital appearance of citizens, though real, still exists in abstraction. People still relate with government agencies as social-being through one form of digital identity or the other. Hence, the social context in which people relate with the government agencies cannot be wished away. For instance, results from past studies in European countries indicated that public trust combined with socio-cultural tendencies cum historicity of citizens, to a meaningful extent predict acceptance and usage or otherwise, of any identity management applications (Prime, 2004; Mckenzie, 2008).

Essentially, it appears that placing a definition on identity management is more tasking than it seems to be, combining blocs such as physical and digital viewpoints; administrative principles like impartiality, equity, e.t.c; and socio-cultural attributes cum historicity of a state might provide a near-generally accepted definition. This study, however, views identity management as the application of administrative principles to electronically define socio-cultural and historical uniqueness of individuals and entities for the purpose of authenticating and verifying identities in the conduct of day to day activities. Authors have shown concern about fragmented conceptions of identity management system as the need to standardise and internationalise what constitutes identity management system is endlessly growing (Greenwood, 2007; Durand, 2003). It has been argued that given the diversity in economic, political and organisational peculiarities of different spheres, placing a generally accepted description of identity management system on institutional basis appears to be an unattainable fit (Backhouse 2006; Backhouse, Hsu & McDonnell, 2003). For instance, NIMC (2011) described identity management system as the combination of biometrics and demographical characteristics in a systematic approach with a view to authenticating and diversifying individual unique identifier. According to Claub (2001), identity management system is a set of interconnected technologies that empower operators or users to manipulate types and quantity of personal information released, while Ibrahim and Abubakar (2016) gave a related view of identity management system – it is information management system-like architecture with capacity to provide a networked identity management.

In a similar way, identity management system is seen as privacy technological innovations that allow the individual to protect his identity in an environment that is controlled by an external party with a view to anonymously authenticating his identity (David, 1985). A deep reflection of the views raised above gave an impression that the identity management system is defined based on what it does. However, these definitions appear too casual, as efforts were not made to reflect elements of the system since what is being conceptualised is a system. From here, Lip and Pang (2008) reported that Higgin, an internet-based company defined identity management system as a system that:

- Provides a manner in the management of personal identity data.
- Allows users to have control over their personal data circulated among government information terminals
- Provides an information model for electronic identity-related information as well as security safeguard for numerical access points or terminals
- Creates an electronic connector for providing access to registries communication channel, interoperability and databases among established institutions within an integrated framework
- Retains element of social interaction among users of identity-driven applications

More importantly, Cameron (2006), an architect with Microsoft offered what is conventionally termed "7 laws of identity" to describe Identity management system with the following element:

- User control and consent: the system must not disclose users' identity-related data without the users' consent.
- Minimal disclosure for a constrained use: in the event of disclosure, the system is expected to demonstrate refrain in releasing sensitive identity-related information.
- Justifiable parties: this must be able to identify genuine parties legally designed to have access to identity information.
- Directed identity: a good identity system should provide enablers for both multi-directional locators for public institutions and one-off identities for individual firms with the primary aims of managing issues relating to storage and historical transactions.
- Pluralism of operators and technologies: an efficient identity management system should be multi-centric by allowing inter-networking of several identity solutions operated by identity-driven entities.
- Human integration: the system must be aware of human nature of the users embedded with an interface that combines peculiarities of human and electronic device for smooth interaction. This, of course, will deepen predictability of the entire system.
- Consistent experience access context: the system created must be consistent and stand the test of time to become part of the world order without prejudice in the roles its offers the society.

The description above appears analytical, still alluded to the earlier position maintained that identity management system has mostly to be defined on the basis of what it consists. Again, Clark (2004) identified the following as the attributes of an identification system:

- The universality of coverage: it must be able to capture all eligible users.
- Uniqueness: two persons must not have the same identity.
- Indispensability: the system must be available all the time.
- Collectability: the system should be able to issue individual identifier without any form of delay.
- Storability: the system must be able to store a transactional history of users.
- Permanence: the system must not allow each identifier issued to be manipulated or changed.
- Exclusivity: the system should host the database hub for every identifier in the system as such no need for the creation of a parallel identification system.
- Precision: the system should process the transaction with accuracy and absence of mistakes.
- Simplicity: transmitting and recording identifiers should be simple and easy.
- Cost: the system should be cost-effectively designed.
- Convenience: the system should operate in a less time-consuming manner.
- Acceptability: the system should be socially and generally in consonance with social norms.

These features attempted to perfectly capture the identification system by featuring a system that is all encompassing. Furthermore, Duncastle (2015) explained

identity system as "the set of laws, standard supervision, and facilities that can contain one or more-ID means (and their systems) and are acknowledged as a national facility by the corresponding country". Hansen, Krasemann, Krause, & Rost (2003) equally attempted to converge on what identity management contains by proffering the following requirements of identification systems:

- : this connotes the ability of IMS to administer, manage and maintain identity resources in an efficient and productive manner. This includes the establishment of reliable and effective communication channels among parties in the system.
- Usability: this is another prerequisite for an efficient IMS, it requires the system to be usable to every normal user.
- Security: this criterion requires that an IMS is built in such a way that it will safeguard the integrity, availability, and confidentiality of the system.
- Privacy: this is important in order to comply with the existing privacy laws & rules guiding management of identity-related information as such the system should accommodate privacy-enhancing technologies (PET).
- Law Enforcement: this system is expected to strike a balance between protecting the privacy of personal entity-related data and providing state law enforcement agencies access to personal data of the public.
- Trustworthiness: this criterion believes that for an identification system to be generally acceptable, members of the public must be able to accord unreserved trust in the system where the personal data will be kept.
- Affordability: the cost of gaining access to IMS resources by the public should not be high. The system should be made available to the public considering the long-term benefits.
- Interoperability: this is a major prerequisite if not the most important. It drives the IMS environment by harmonizing existing identification schemes into one system that is accessible by the functional systems.

Developing an identity management system is a herculean task that requires careful planning and implementation. Gelb and Clark (2013) remarked that creating an identification system that has large-scale applications usually come with dire challenges, which make the process complicated. In a general assessment of the challenges affecting the implementation of identification system of 43 countries drafted from all continents, Anderson *et al*. (2016) identified certain challenges. The study reported corruption of varying degrees affects the implementation of identity management programmemes in many countries. This is said to occur at the micro and macro levels. This is subdivided into: (i) Local extortion of citizens by official and enrollment officers (ii) Collusion between public officials and (iii) Inappropriate procurement of equipment. The study revealed that concerns about the privacy of information hinder rapid implementation of the identification system. It is believed that there is the possibility of abuse of personal information of the citizens. The report shows that the issue of data maintenance is affecting the implementation of an identity management system. Also, the absence of central database infrastructure and inadequate data protection measures affect installing of identification system. Another factor that hinders drive for holistic and comprehensive implementation of the policy is enrollment politics. Here, inadequate access to resources like insufficient equipment and material, limited human resources, lack of logistical support, lack of public awareness were cited. Also complex enrollment procedures like

printing and physical mailing of applications and ID card as well as a lengthy feedback process were identified. Risk of critical mass exclusion was also established among the challenges of implementing identification system. The study identified poor coverage as a limiting factor. Issues such as insufficient enrollment and distribution centres, cost of enrollment (hurdles, long guess, long distance), exclusion of vulnerable groups (poor, rural dwellers, women: refugees) from enrollment suggests that the policies on biometric identification might have come into force without corresponding politics in these countries. Similarly, the financial implication of funding identity management programme also constitutes a challenge to implementation of identification system as claimed in this previous work. This includes insufficient funding by the government and dwindling financial support from international partners and high cost of training and building technical capacity. Staggered harmonisation of esixting identity programmes was also identified among the countries studied. This factor affects the full implementation of an identity management system, as there is always challenges of integration and interoperability of databases. Here, issues like lack of clear delegation of responsibilities and legal frameworks were also identified.

THEORETICAL FRAMEWORK

This article reviewed the Actor-Network Theory and Institutional Theory. These theories were reviewed due to their explanatory strength on the adoption of modern technologies in administrative spheres with specific explanation on the implementation of new technologies. The Actor-Network Theory (ANT) is often time associated with many scholars. The findings and works of the scholars have continued to give relevance to the theory. The works and efforts of Callon (1999); Callon and law (1997); Hassard, Law, and Lee (1999); Latour (2005); Law (1992); Brown (1994); Neyland (2006) gave a strong intellectual backing to the Actor-Network Theory (ANT). Actor-Network Theory (ANT) is a theoretical approach, which describes and explains the complexity in our socio-technical world. It is largely, a holistic approach in explaining activities within our socio-technological world. This theory view activities within the society or the environment with a broader lens, as it sees the actors within a network by looking both human and non-human actors. Administratively, the theory can be said to the summation of the integral view of administration and the system theory. The integral view of administration sees the administration as the activities of “everyone” in the organisation, while the Bertalanffy’s system theory also takes cognisance of the various sub-systems (actors) in a network or system. ANT also looks at the collective activities within a system, recognising the activities of subsystem including animate and inanimate elements required to achieve the required goal. For instance, in the work of Latour (1996:373), Callon and Latour (1981:286), the scholars gave a wider definition of an actor as “anything provided it is granted to be the source of action”. Every network will only be effective through the actions of all actors – both human and non-human elements.

ANT emphasised relationship, cordiality, and connection between human and non-human in a real-life situation. One cannot work without the other, that is human actors cannot work without non-human actors and the non-human actors will not function without the human actors. According to the theory, actors must be made, re-made, used and re-used to avoid systemic failures. The above point explains the formulation of a policy (making

of actors); implementation of policy (using of actors); evaluation of policy (re-making of actors); continued implementation of the policy (re-using of actors). However, the theory does not respect the power of human rather sees it as part of the system that cannot work alone unless the other systems are in use. These other systems can be political, economic, social and technological spheres as policymakers and implementers are still subjected to some conditions and factors, which could make or mar their policies. Like any other human inventions and reactions, the Actor-Network Theory has been faulted by scholars. One of the criticisms is that theory is largely descriptive and not explanatory, despite the criticisms; the significance of the theory in taking a holistic view of activities within our society cannot be over-emphasised. This theory suggests that attention should be given to human and non-human components in adopting an electronic-based innovation.

Another theoretical path of this work is the institutional theory of Philip Selznick (1957). Institutional theory is a product of intellectual journey of Philip Selznick. Selznick established institutional theory in 1957. The theory introduced institutional approach into the core field of administration that is, policy implementation. The theory exacts more influence on the adaptability of institutions to the environment where it operates. The theory illuminated on the fact that institution must design a method that takes into cognizance scarce resources, social support and institutional pressures in the process of implementing its strategies and tactics (Deephouse, 1996; Staw and Esptein, 2000; John et al, 2001). The strength of the theory lies in the belief that the institution will attain a near-perfect situation after several processes of similar nature have been carried out. Similarly, the theory assumes that for the organisation to be effective, attention must be paid to individual contributions in the organisation as well as the environmental pressure, which can limit present and future goals of an institution (Scott, 1985). According to Scott, the important ingredients to be considered in forming a working institution are the institutional integrity and continuity. He further observed organisation relation with the environment, informal relation within the institution, commonality and congruency of duties and roles of the organisation as other variables to be considered. Scott (1985) expanded the argument by stating, "institutional commitments develop over time as the organisation confronts external constraints and pressures from its environment as well as changes in the composition of its personnel, their interest, and their informal relations"

A succinct review of the historicity of institutional theory agreed that the theory derived its existence from sociological formulations and perspectives (Scott, 1987). Therefore, the body of works has been carried out to strengthen the tentacles of institutional theory. Hence, these submissions are premised on diverse thinking and views. Thus, institutionalisation is viewed as; the process of instilling value; the process of creating reality; distinct societal spheres; a class of elements. However, this study rest upon the view, which expresses institutionalisation as a way of promoting value in the society. Fundamentally, the argument here is that social orderliness is conceived as humanistic tendencies that are covered in social interaction. It is believed that social order exists through human actions and when these actions re-occur more often, it becomes structured and institutionalised (Berger and Luckmann, 1967). For instance, Berger, Berger, and Keller (1973) presented that modern awareness of society is modeled along series of interrelated systems that relate with advancement in (i) technological innovations (ii) rules and regulations (Bureaucracies) (iii) Multiplicity of real-life

situations. This theory suggests that for any institution to be effective, concrete attention must be offered to external forces such as social, economic and political environments. The theory provides a theoretical explanation on how institutions exist to contribute to social orderliness in society. The theory identified a productive combination of available resources, social support and institutional pressure as a prerequisite for the organisation to survive. This implies that for any public policy to be optimally implemented, the regulatory institution created to oversee the policy must be fashioned in a manner that resources(materials and human) available are well utilised, social implications are considered; pressure from other institutions (most often, of higher authority) are curtailed. Furthermore, the theory promoted an arrangement that should be followed perhaps when establishing the institution. It gives a framework that will aid the achievement of predetermined goals of any public institution. This includes interconnectedness of several structures that have technological, bureaucracy and multiple orientations undertones. Overall, the theory avails policymakers and administrators' ways to structure an institution in an optional manner with a view to achieving the predetermined policy objectives while giving the external environment the required attention.

METHODOLOGY

This work employed descriptive (qualitative and quantitative) research design as its blueprints. The study utilised a survey method to systematically seek data from the respondents using questionnaire and in-depth interview as research instruments. This study carried was out in the southwest geopolitical region in Nigeria. The south west was selected because it had the highest coverage (enrollment) for the period covered by this study. The region is densely populated by Yoruba speaking people and located along the West Africa Costliness, thereby having similar climatic condition, alternating dry and rainy season. The region comprises of six (6) states namely, Ekiti, Lagos, Ogun, Ondo, Osun and Oyo. The survey was conducted among the staff of National Identity Management Commission (NIMC), Nigerian Immigration Service (NIS) and Federal Road Safety Corps (FRSC) and Independent National Electoral Commission (INEC) in the selected three states (i.e. 50% of states in Southwestern Nigeria). NIMC was selected as the institution in the forefront of the policy implementation while NIS, FRSC and INEC were selected because of the currency and consistency of their activities in identity management. The study population was 2139; this included Ogun (766); Oyo (812); Ekiti (561). The National Identity Management Commission was selected being the regulatory agency in charge of the policy under review while Nigerian Immigration Service, Federal Road Safety Corps, and Independent National Electoral Commission were selected because of the currency and consistency of their activities in identity management.

The study employed multi-stage sampling technique. In the first stage, three states in the study area were selected using stratified sampling techniques from the three axes of Lagos/Ogun, Oyo/Osun, Ekiti/Ondo. Lagos/Ogun was grouped based on geographical proximity, Oyo/Osun was paired based on their common socio-political orientation, Ekiti/Ondo was combined based on common socio-political orientation. At the second stage, the National Identity Management Commission was purposefully selected being the institution in the forefront of the policy implementation, also, Nigerian Immigration

Service, Federal Road Safety Corps, and Independent National Electoral Commission were purposefully selected because of the currency and consistency of their activities in identity management. The sample size of the study was 214 representing 10% of the study population (see Table 1)A well-structured questionnaire was administered to the selected staff of NIMC, NIS, FRSC and INEC on the constraints of the implementation of the national policy on identity management system in Southwestern Nigeria and these items were measured using 4 ratings Likert scale of (1 – Not Significant, 2 – Slightly Significant, 3 – Averagely Significant, 4 – Highly Significant). The interview guide was administered on the interviewees in order to further gather information on the policy implementation. Deputy coordinator, one facility manager, enrollment officers from NIMC, public relation officers and two technical officers from NIS, FRSC and INEC were interviewed. They were interviewed because of their strategic positions in providing information on the issues affecting the implementation of the policy. Two hundred and fourteen (214) copies of questionnaire were administered to the respondents and two hundred and five (205) copies were retrieved. This means the response rate is over 90%. The quantitative data generated were subjected to descriptive statistical analysis while qualitative responses from participants in the interview conducted were logically narrated and reviewed in order to complement results from quantitative analysis.

Table 1 Population and sample

STATE	Number of Staff				Population e = (a + b +c+d)	Sample Size: (10% of e)
	Policy Implementers	Selected Government Agencies				
	NIMC (a)	NIS (b)	FRSC (c)	INEC (d)		
OGUN	110	303	286	67	766	77
OYO	122	312	306	72	812	81
EKITI	79	201	218	63	561	56
TOTAL					2139	214

Source: Pre-field Survey, 2019

DATA PRESENTATION AND ANALYSIS

Socio-demographics and Implications

This section presents the analysis and interpretations of relevant socio-demographical attributes of the respondents that participated in the survey. This was done in order to ascertain the relevance and predictability influence of personal features of the respondents on the results of the survey conducted. Table and percentages were used to analyse frequency of a feature of the respondents or the institutions while standard deviation reported the level of evenness in the distribution of respondents sampled for the study. A standard deviation that is less than one (i.e SD<1) indicates that the distribution tends towards equal representation while a standard deviation with a value greater than one (i.e SD >1) tends towards unequal representation. In terms of sex distribution of the respondents, Table 2 shows that out 135 male respondents, who participated in the survey

13.3% (18) were from NIMC, 41.5% (56) were from NIS, 34.8% (47) were from FRSC and 104% (14) were from INEC. 70 female respondents took part in the survey. These were distributed as follows: 14.3% (10) – NIMC; 22.9% (16)-NIS; 38.6% (27) – FRSC; 24.3% (17) – INEC. From this distribution, NIS had the highest number of male respondents in the survey while FRSC had highest number of female respondents. The mean value of 1.3 and standard deviation of 0.48 indicated that the distribution tended towards equal representation, though a slight spread occurred between the categorical variables tested. This might be attributed to the nature of the activities of these agencies or deliberate policy directives of the government. Reviewing the age distribution of the respondents, analysis enumerated in the table revealed that on the overall basis, 10.7% (22) of respondents were between the ages of 20-30 yrs, 55.6% (114) were aged between 31-40yrs, and 15.6% (32) were aged between 51-60yrs. The spread indicated in the mean value of 2.4 and standard deviation of 0.88 shows that majority of the respondents fell within the age range of 31 to 41yrs. Therefore, it is assumed that the respondents are mature enough to express their independent view on the implementation of national policy on identity management system in the study area.

Respondents were also asked to indicate the number of years they had spent in their respective institutions. Overall, 14.6% (30) had worked for 5yrs and below, 13.2% (27) had worked for 6-10yrs, 25.9% (53) had worked for 11-15yrs, 21.5% (44) had also worked for between 16-20yrs of active service in their respective institutions. 11.7% (24) of the respondents had also worked for a period between 21 – 30yrs, 13.2% (27) of the respondents had worked for 31-35yrs as at the time the survey was conducted. It further displays respondents' years in service on institutional basis. The table revealed that respondents from NIMC had work experience not more than 15 years, this indicated that the agency responsible for implementation of the policy only existed for less than 15yrs. This is substantiated by a mean value of 3.3 and a standard deviation of 1.6. Summarily, it implies that over 67% of the respondents have had more than 10yrs experience in the identity management sector in Nigeria. As such, they are expected to provide reliable responses to items raised in the research instrument. This added more validity to the results generated by the study. On the basis of study location (state), the table enumerated that out of 74 respondents drafted from Ogun State, 13.5% (10) were from NIMC, 44.6% (33) were from NIS, 32.4% (24) came from FRSC and 9.5% (7) came from INEC staff in the state. Also, 79 respondents came from Oyo State of which 13.9% (11) came from NIMC, 32.9% (26) came from NIS, 39.2% (31) came from FRSC and 13.9%(11) came from INEC. From Ekiti state, 52 respondents were sampled, this included 13.5% (7) from NIMC, 25% (13) from NIS, 36.5% (19) from FRSC and 25% (13) from INEC. This result shows equal representation among selected institutions across the states with a mean value of 1.9 and a standard deviation of 0.78. This indicates that none of the respondents of the selected institutions was given biased representation in expressing their view on the construct of the study. In view of academic qualification of the respondents, only (22) of the respondents had secondary education while 89.3% (183) of the respondents were educated up to tertiary level. This was further subdivided across selected institutions as follows. Secondary education NIMC – 13.6% (3); NIS – 36.4%(8); FRSC- 36.4% (8); INEC – 13.6% (3) and tertiary education NIMC – 13.7% (25); NIS – 35% (64); FRSC – 36.1% (66); INEC-15.3% (28). This distribution produced a mean value of 2.9 and a standard deviation of 0.31. Largely, the composition of the

respondents' shows that majority of them were educated enough and as such provided reliable and accurate information in terms of their knowledge of the new identity management regime in Nigeria.

Table 2 Socio-demographics analysis of the Respondents (N=205)

Socio-demographic Variables		Response	Institution				Overall Total (%)
			NIMC	NIS	FRSC	INEC	
Sex	Male	Freq.	18	56	47	14	135(65.9)
		%	13.3%	41.5%	34.8%	10.4%	
	Female	Freq.	10	16	27	17	70(34.1)
		%	14.3%	22.9%	38.6%	24.3%	
Age	20-30yrs	Freq.	2	9	9	2	22(10.7)
		%	9.1%	40.9%	40.9%	9.1%	
	31-40yrs	Freq.	18	36	38	22	114(55.6)
		%	15.8%	31.6%	33.3%	19.3%	
	41-50yrs	Freq.	5	14	15	3	37(18.0)
		%	13.5%	37.8%	40.5%	8.1%	
	51-60yrs	Freq.	3	13	12	4	32(15.6)
		%	9.4%	40.6%	37.5%	12.5%	
Education	Secondary	Freq.	3	8	8	3	22(10.7)
		%	13.6%	36.4%	36.4%	13.6%	
	Tertiary	Freq.	25	64	66	28	183(89.3)
		%	13.7%	35.0%	36.1%	15.3%	
Years in Service	Below 5yrs	Freq.	11	7	6	6	30(14.6)
		%	39.3%	9.7%	8.1%	19.4%	
	6-10yrs	Freq.	7	5	6	9	27(13.2)
		%	25.0%	6.9%	8.1%	29.0%	
	11-15yrs	Freq.	10	13	17	13	53(25.9)
		%	35.7%	18.1%	23.0%	41.9%	
	16 – 20yrs	Freq.	0	21	21	2	44(21.5)
		%	0.0%	29.2%	28.4%	6.5%	
	21 – 30yrs	Freq.	0	12	12	0	24(11.7)
		%	0.0%	16.7%	16.2%	0.0%	
	31-35yrs	Freq.	0	14	12	1	27(13.2)
		%	0.0%	19.4%	16.2%	3.2%	
Location (State)	Ogun	Freq.	10	33	24	7	74(36.1)

Source: Field Survey, 2019

CONSTRAINTS OF THE NATIONAL POLICY ON IDENTIFICATION IN NIGERIA

This section provides empirical results on challenges identified in the study as those confronting the implementation of national policy on identify management. A five-dimension rating scale was used to measure the perception of staff in the selected agencies on the significance or otherwise of each of the challenges identified. The scale was sub-scaled into Highly Significant (3), Averagely Significant (2), Slightly Significant (1) and Not Significant (0). Mode statistics was used to infer the direction of responses on each of the identified challenges in Table 3. Sum Score (SS) and Relative Impact Index (Rll) were further computed in order to rank the challenges in the order of their impact on the implementation process. Item 1 in the research instrument tested institutional corrupt practices as a challenge to the policy implementation. The outcome of the analysis revealed that institutional corrupt practices is highly significant (50.2%) compared to other issues militating against the implementation of the policy under review. Institutional corruption was ranked 6th among challenges identified by the study with a sum score (456) and a RII (2.22). This implies that although institutional corruption qualified as a challenge to the implementation of the policy, it might not a critical factor to be considered. The privacy concern of the citizens were ranked 12th among the suggested challenges. This view was reported by 55.1% of the respondents that saw the privacy concerns of the citizens as slightly significant when compared with other factors foot-dragging the implementation of the policy. This result produced a sum score (241) and a RII (1.18). Insufficient central database infrastructure exerted highly significant influence (62.9%) on the implementation of the new identity regime. This factor was ranked as the leading challenge confronting the implementation of the policy with sum score a (494) and a RII (2.41). This is an indication that central database infrastructure is a major factor to be considered when re-working the implementation of the policy. Item 4 on the research instrument tested inadequacy of data protection measures as a clog in the policy implementation process. The result placed inadequate protection measures as a slightly significant challenge with sum score (282) and RII (1.38). Inadequate data protection was ranked 10th among the suggested constraints of the policy implementation. The inadequacy of data protection is a factor but seems not to be a pressing challenge that affects the execution of the policy being considered.

Limited human resources appeared to confront the implementation of the policy under review but in a slightly significant manner. This result came with sum score (245) and RII (1.20). It ranked 11th on the table and was supported by 68.3% of the respondents. 42% of the respondents claimed that limited public awareness exerted an averagely significant influence on the implementation. Though the result was not convincing enough, limited public awareness ranked 9th among the challenges tested in the research instrument. This concussion was supported by a sum score (351) and a RII (1.71). This implies that public awareness needs to be given adequate consideration in the process of the policy implementation. Another challenge that clogged the implementation of the policy was confirmed to be ineffective feedback process. This position was corroborated by 60.5% of the respondents. The result also attached a sum score (364) and a RII (1.78) to this variable which ranked 8th. This outcome portrayed that complaint and feedback process designed to monitor the implementation of the policy needs a revisit.

This factor was rated to be averagely significant. Internet connectivity issue was reported to be the second leading challenge confronting the deployment of the new identity regime. This result came with sum score (493) and RII (2.40). The inability to provide strong internet connection might hamper the enrollment process as well as affect interaction with the new national database. This factor exerted a highly significant influence (63.9%) on the implementation process. Sixty-two per cent (62.4%) of the respondents pointed to unstable electricity as highly significant among other challenges confronting the implementation of the policy. This outcome predicted the possibility of frequent down time and delay in the enrollment process which is an important element in the new regime being implemented. This issue ranked third among others with sum score (472) and RII (2.30). Insufficient enrollment and distribution centres (50.7%) as well as exclusion of vulnerable groups (47.8%) were tested as variables respectively. The two variables also produced sum score (231); (190) and RII (1.13); (0.93) respectively. This indicated that insufficient enrollment and distribution centres as well as exclusion of vulnerable groups did not constitute major bottlenecks in the implementation process of the new identity system in the study area as they ranked 13th and 14th. The issue of funding was raised by 55.6% of the respondent as a highly significant challenge faced in the process of implementing the policy under evaluation. This came in the 5th position among others with a sum score (460) and a RII (2.24).This result casted doubt on the financial provision made for the implementation of the policy by the government. Incomplete integration of functional databases into the national database manned by NIMC was averagely significant among challenges raised in the research instrument. 61.5% of the respondents attested to this with sum score (398) and RII (1.94). This item was ranked 7th among the others. The analysis revealed that integration of existing databases as directed in the policy document has failed to materialize. This means the implementation process is being truncated by this factor. The result shows that relevant agencies still progress in error due to lack of clear delegation of responsibilities. This inference was drawn from the outcome that 56% of the respondents affirmed that lack of clear delegation of responsibilities as a challenge exerted highly significant influence on the implementation process. This item was ranked 4th with a sum score (467) and a RII (2.28).

A closer review of narrations of most of the interviewees revealed the following challenges clogging the implementation of the policy. Challenges such as inadequate public awareness of the new identity regime, lack of political will, poor funding and investment in the programme by the government, corruption, uneven distribution of enrollment centres (exclusion of rural areas), too much emphasis on documents required for enrollment and delay in the production of the general multiple purpose card (GMPC) were summarised from interview commentaries among which are: “Even producing the GMPC (the card) alone has been very hard, Federal government has not taken this project with more seriousness” – An officer from NIS. “The project is capital intensive. It needs more money from government” – An officer from the NIS “There is need for more infrastructure in terms of enrollment facilities in the rural areas, though some are in the local government offices but if they are also available at the rural community a lot of people would have enrolled” – An officer from the INEC. “There should be publicity, there is low publicity, and people still confuse the old card with the new smart card. In fact, people are not even aware of something like this exist”– An officer from the NIS.

"Government should invest more in the project because of the advantages. It will give government correct and current database and enhance provision of security" – An officer from FRSC. The issues of logistics and facilities were also identified by the interviewees. For instance, poor internet connection and fueling of generating sets were termed to be the reasons why some enrollment officers demanded for money from prospective enrollees, an act which is prohibited by the Nigeria Identity Management Commission. Other things which were common among the staff interviewed were lack of government support and insufficient funding. This position was captured in a statement made by one interviewee. He said "the source of problems we face in implementing this programme were simply lack of political will of government and underfunding of the project".

Table 3 Constraints of the Policy Implementation

SN	Items identified	N	Mode (%)	SS	RII	Rank
1	Institutional corrupt practices	205	HS (50.2)	456	2.22	6th
2	Privacy concerns by the citizens	205	SS (55.1)	241	1.18	12th
3	Insufficient central database infrastructure	205	HS (62.9)	494	2.41	1st
4	Inadequate data protection measures	205	SS (65.4)	282	1.38	10th
5	Limited human resources	205	SS (68.3)	245	1.20	11th
6	Limited public awareness	205	AS (42.0)	351	1.71	9th
7	Ineffective feedback process	205	AS (60.5)	364	1.78	8th
8	Unstable internet connectivity	205	HS (63.9)	493	2.40	2nd
9	Unstable power supply	205	HS (62.4)	472	2.30	3rd
10	Insufficient enrollment and distribution centres	205	NS (50.7)	231	1.13	13th
11	Exclusion of vulnerable groups	205	NS (47.8)	190	0.93	14th
12	Insufficient funding	205	HS (55.6)	460	2.24	5th
13	Incomplete integration of functional databases into national database	205	AV (61.5)	398	1.94	7th
14	Lack of clear delegation of responsibilities among relevant agencies	205	HS (56.1)	467	2.28	4th

Source: Field Survey, 2019. Highly Significant (HS); Averagely Significant (AS); Slightly Significant (SS); Not Significant (NS). SS (Sum Score); RII (Relative Impact Index); N (Total Responses)

DISCUSSION OF FINDINGS

The study identified a number of challenges facing implementation of the policy. Insufficient central database infrastructure was identified. This means that the central database infrastructure that will house identity-related information of individuals that are being captured because of the policy implementation might not provide adequate capacity required for the policy to be effectively implemented. This was substantiated by Anderson *et al*. (2016) that delay in completion of central database infrastructure undermined implementation of identity systems in their case studies. This challenge posed a serious drawback in the process of implementing the e-identification system as the whole identity ecosystem depends on it. The study revealed that unstable internet connection hampered the implementation of the policy. This was supported by 63.9% of the respondents. This was also confirmed from the narrations of the interview conducted. Literature further established unstable internet connection as a bane confronting the implementation of the identification system – (Olaniyi, 2017; Anderson *et al*., 2017). The study revealed that unstable power supply (electricity) is another challenge. The

argument is that given the poor state of the energy sector in Nigeria, the enrollment process that depends heavily on electronics such as computers and printers will be affected if alternative means are not provided.

Just like the position of Olaniyi (2017), Udunze (2015) and Zelezny (2012), lack of a clear legal framework and delegation of responsibilities among government agencies were identified as bottlenecks confronting the implementation of the new identity regime. Evidence in literature established the problem of multiple capturing by government agencies that is indication that the legal framework established for the identity industry in Nigeria is unclear. This led to litigation involving NIMC and commercial banks. Section 27 of NIMC Act placed the commission in the sole position to regulate identity-related information or issues in Nigeria. Despite this, several agencies continued to disjointedly carryout separate identity enrollments. This cast doubt on the possibility of having one unique identification system in Nigeria. This current study also identified insufficient finding as another challenge being faced in the process of implementing the policy. This outcome received support from interview session sand responses gathered through questionnaire. The interviews constantly mentioned inadequate funding as one of the major challenges limiting successful implementation of the policy. It was claimed that due to lack of political will of the government, inadequate financial support for the project was received from government. Literature evidence from Jan (2006), Harbitz and Boekle – Guffrida (2009) suggested a lack of traditional funding from the government led to the demand of enrollment fees by National Database and Registration Authority in Pakistan and Registro Nacional de Identificacion Estado Civil in Peru. The challenge of funding appears to be a general issue in developing identity systems in most developing countries (the Carter Center, 2011; Gelb & Clark, 2013; Chiluga, 2015). Finally, for Nigeria to exploit the benefits of an electronic-oriented identification system in her quest to tackle the mountain of development issues, aggressive redevelopment of the policy and framework on identification system that reflect the existing political, social, economic and cultural values is the starting point of the government intervention.

CONCLUSION

The major summation from the survey is that the ongoing development of biometric-driven identification system requires constant reevaluation vis-à-vis the targeted outcome. Therefore, more research of it is expected to explore the emerging issues from the implementation of the policy. The findings of this work indicted institutional, operational and legal capacities of the coordinating agency, the National Identity Management Commission (NIMC). On institutional basis, government should reform the existing arrangements in terms of budgetary allocation to the identity industry as the incidence of dwindling resources predict lack of government will to develop a system that deepen the governability of the state. The fragility of the institutional processes, especially during enrollment, calls for upward of review of the internal control mechanisms to block incentives for official corruption of the field officers. Operational logistics according to this survey further revealed that the level of preparedness for the smooth implementation of the policy under review was not optimal. The deployment of the policy is been foot-drag by infrastructural deficit, unstable electricity without reliable alternative and epileptic internet connectivity which portrays possible downtime for

enrollment process. This is evident in the identity gap being recorded in Nigeria as against the countries that started the same activity almost at identical time. Hence, concerted plan should be developed to rework the identified constraints, for instance, government could decentralised the enrollment process following the telecommunication industry model used in registering SIM cards by accrediting private firms for the enrollment exercise. This method has proved productive in countries like Indian and Indonesia. Another fundamental clog of the Nigerian foundational identity system is the growing numbers of government and private agencies collecting biometric data for supposedly identification in an apparent violation of the policy regulating the National Identification Scheme. The legal landscape requires for standardising the system appears toothless or weak. The act establishing the NIMIC positioned it as the sole coordinator and regulator of system but other sister agencies like Nigeria Immigration Service (NIS), Independent National Electoral Commission (INEC) and host of other agencies even in the private sector have continued to enroll individual without working synergy to collaborate with the coordinating agency in developing a foundational database. This absence of clear demarcation of responsibilities of government agencies in the identity management sector threaten the nation object as embedded in the slogan 'enrolled once and be identified for life'. For the system to be unique and foundational as claimed in the policy thrust, the policy guidelines on harmonisation and integration of existing functional database need an accelerated implementation and a separate legal instrument.

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PUBLIC SERVICE DELIVERY IN NIGERIA'S FOURTH REPUBLIC: ISSUES, CHALLENGES AND PROSPECTS FOR SOCIO-ECONOMIC DEVELOPMENT

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Abstract: *Government all over the world exist to provide essential services to the citizens. When there is effective and efficient service, delivery the citizens' well-being is assured and guaranteed. This paper is designed to x-ray the strategies that have been adopted by the Nigerian government over the years to deliver services to the citizens as well as to examine the challenges associated with public service delivery in Nigeria. The paper is qualitative because data for the study were sourced through secondary means and data gathered were analyzed using historical method. The paper found out there is low level of socio-economic development in Nigeria because government over the years has not been able to provide effective and efficient services to the citizens. The paper adopted the social contract theory as the theoretical framework. The paper recommended among other things that government officials should shun corruption, favouritism in the provision of services to the citizens. The citizens on their part should try as much as possible to hold government accountable in order to ensure improved service delivery.*
Keywords: *Public service, Development, Corruption, Government, Public-private Partnership*

INTRODUCTION

Government the world over exists to provide essential services to the citizens. It is on this note Burns cited in Akindele (1998:47) while defining representative democracy said it is a system whereby "all (i.e. people) elected a few to do for them what they could not do together". It is in order to ensure that services are well delivered to the citizens that government all over the world has been in constant search for efficient and effective ways of carrying out its functions. It is on this note that many reforms have been carried out in the public sector. The domain of governmental activities is known as the public sector, which is quite different from the private sector. The public sector has undergone series of reforms to make it more effective and efficient in the delivery of services to the people. This is because prior to the reforms, the public sector was entangled in a plethora of challenges that made it difficult for it to perform its functions creditably. This made Okoye (2011:1) to say, "the reliance on the public sector to finance and provide public services in most developing countries has resulted in disappointing results". Panayotou cited in Okoye (2011:1) observed that a combination of technical, financial and structural problems of public institutions have resulted in poor cost recovery, unsatisfied consumers, financially insolvent systems, and unreliable service delivery. This situation of the public sector necessitated the need to have it reformed to enable it perform its function effectively and efficiently. The place of the public sector in any country's development cannot be overemphasized and this explains why Fatila and Adejuwon cited

in Lamidi etal (2016:1) referred the public sector as a tool available to African government for the implementation of developmental goals and objectives. In the same vein, Haque cited in Lamidi etal (2016:1) is of the view that the public sector is to provide goods and services to citizens.

THEORETICAL FRAMEWORK

The theoretical framework for the study is the social contract theory

The major proponents of the social contract theory are; Thomas Hobbes, John Locke and J.J. Rousseau. The basic thrust of this theory is the fact that people who hitherto did not have government or lived under an organized state decided to form the state in order for the state to serve their basic needs. Anifowoshe (2015:95) corroborated this when he said, "according to the social contract theory, the state was created by a number of individuals voluntarily entering into a contract, the terms of which provided a political authority. As a voluntary association, however, it differed from any other because it provided for the exercise of sovereignty, the supreme power to control by coercive means, if need be, the conduct of its members". To Appadorai (1975:19), "the substance of the social contract theory is this: the state is the result of an agreement entered into by man who originally had no governmental organization. The history of the world is thus divisible into two clear periods: the period before the state was instituted and the period after. In the first period, there being no government, there was no law, which could be enforced by a coercive authority. Men lived; it was said, in a state of nature, in which they were subject only to such regulations as nature was supposed to prescribe. However, there was no human authority to formulate these rules precisely or to enforce them. After sometime, they decided to set up a government thereby; they parted with their natural liberty and agreed to obey the laws prescribed by the government". While there may be divergences in the opinions of the major proponents of this theory regarding how men lived in the state of nature without the coercive agency of a government, why they decided to establish a government, who were parties to the contract, and what terms of that contract were, they agreed on its essential idea, viz; that the state is a human creation, the result of a contract".

It is to be made clear that when the people in the state of nature were no longer comfortable with the kind of life they were living, a situation where might was right and the stronger/strongest amongst them devouring the weaker/weakest at will, that they decided to have an agreement to have a state that would protect their lives and property. It is on this note Burns cited in Akindele (1998:47) while defining representative democracy said it is a system whereby "all (i.e. people) elected a few to do for them what they could not do together". The people having decided to have the state must also decide those who would operate or run the affairs of the state and in doing that, they are expected to have at the back of their mind those that would effectively take care of their interest by making life meaningful for them.

This scenario explains why the social contract theory was chosen as a theoretical framework in this study. As far as this study is concerned, it offers explanations regarding the fact that the state has obligation to the citizens in respect of providing them with basic and necessary services. Though it does not explain the modus-operandi of how the

services would be rendered or what should be done when the state fails in its responsibilities.

CONCEPTUAL CLARIFICATION

Public Service

The term public service is a term used in understanding the public sector. We noted earlier in this paper that the public sector is the domain of governmental activities. These governmental activities are carried out by the public service. Public service can be used in two senses, first as an institution of government and second as service delivered by government. Adamolekun cited in Nwizu and Nwapi (2011:20) defines the public service as the "totality of services that are organized under government authority. The 1999 Constitution of the Federal Republic of Nigeria as amended defines Public Service to mean the service of the state in any capacity in respect of the government of state and include services as:

- Clerk of the House of Assembly
- Member of Staff of High Court, the Sharia Court of Appeal, the Customary Court of Appeal or other Courts established for a state by this constitution or by a Law of House of Assembly
- Member of Staff of any commission or authority established for the state by this constitution or by Law of a House of Assembly
- Staff of any local government council
- Staff of any statutory institution or corporation established by law of a House of Assembly
- Staff of any educational institution established or finance principally by a government of a state, and
- Staff of any company or enterprise in which the government of a state or its agency holds controlling shares or interest.

Public service from the service point of view according to Obikeze (2011:70) implies "all that are provided by individuals who operate in government agencies, institutions, organizations and establishments". The public service exists to perform certain functions to the citizens. According to Nwizu and Nwapi (2011:21). The role of the Public Service include:

- Prevention of exploitation: If private enterprises are allowed to render the essential services, there will be exploitation and discrimination in their provision so public service helps to eliminate exploitation for services rendered
- Ensuring a constant supply of service: If these services are left in the hands of private enterprise, there will be irregular supply in order for them to make huge profits
- Public service avoids private monopoly: Private monopoly in the provision of the essential services is detrimental to members of the public. It may lead to high cost of living but with public service whose aim is not to make profit but to render service to the people, the cost is usually lower
- Public service helps in economic development: Their presence attracts rapid economic development from both local and foreign investors and fasten the economic development of the state

Public Service Delivery

According to Olowu (2002:123) "services delivery is the raison d'etre of the public service. The primary responsibility of any public administration system is to deliver services that the private sector may not deliver at all or to deliver services to those who cannot afford the market price of the product". To Ahmed (2005:76-77) service delivery has been an old concept which draws attention of organizations to their responsibility to render service to their customers, in the most satisfactory manner. The terminology varies depending on the time, place or context. The concept presupposes that, in public service, there is contractual relationship between the customer (the public) and the service provider (government agency) which obliges the latter to render service to the former in most satisfactory way, be it in terms of utility, quality, convenience, timelines, cost, courtesy, communication or otherwise. Another presupposition is that just as in business, the customer is regarded as 'king'. Accordingly, in public service delivery, the public is regarded as 'master', and the ultimate judge of performance.

According to Ahmed (2011:77-78) the Nigerian public's expectations from the public service, in terms of service delivery include:

- An organization that is staffed with competent men and women and well managed

A public service that is:

- Courteous, friendly, receptive and is helpful in its relationship with the public
- Eager and proactive in offering information to the public with feedback and follow-up
- Transparent, honest and averse to corruption, fraud and extortion of the public in official dealings
- Exemplary in its standards of efficiency in both production and rendition of services with minimal waste
- Punctual and time conscious in all official business
- Run on well planned programmes with activity schedules and calendars that are firm and respected
- Prompt in response to problems and complaints of the public, which are conclusively attended to.
- Objective, professional, fair and patriotic in the treatment of matters of public interest or cases entailing competition among persons or organizations.

A Public Service whose:

- Services and products that are almost of cutting-edge standard are rendered with minimal need for members of the public to leave their homes to visit the office concerned or to spend substantial amounts of money or provide copious documents and passport photographs
- Charges and billing systems are affordable and convenient to the public
- Public infrastructure facilities are built to unblemished standards, regularly maintained and promptly repaired

A Public Service with:

- Continuous improvement in service mix and methods, based on communication and feedback from the public

According to Ahmed (2005:79), "at the time of the hand-over to democratic regime in May 1999, the state of the Nigerian Public Service, in terms of image,

operational modalities and service delivery was rather dismal. It was common for expert observers to paint the public servants as being:

- Lethargic and slow in official decision and action
- Insensitive to the value of time
- Irregular attendance at work
- Nepotic
- Wasteful with government resources
- Corrupt
- Slow to change
- Unresponsive and discourteous to the public, etc."

It was against this backdrop that Obasanjo's administration decided to carry out a reform of the Nigerian Public Service to enable it carry out its functions efficiently and effectively.

Development

Development is a multi-dimensional concept in the sense that there are various aspects of development. There is political development, social development, cultural development, technological development, as well as economic development. However, generally, development in all its ramifications connote improvement in the various aspects of human existence. On this note, Sen cited in Todaro & Smith (2004) enthused that development has to be more concerned with enhancing the lives we lead and the freedoms we enjoy. He argued that, to make sense of the concept of human well-being in general and poverty in particular, we need to think beyond the availability of commodities and consider their use and freedom to use; what he calls functioning and capabilities. Functioning refers to commodities of given characteristics. In addition, capabilities referring to the freedom the person have in terms of the choice of functions given his personal features and command over commodities.

According to Thomas (2010:132), an important deduction from the conceptualization of development in the extant development praxis is that development implies the capacity to secure and sustain a better life for human kind in society. The striving to elevate human life and comfort from a given level considered unsatisfactory to a better and perhaps more comfortable level. Development is about people- the mental state of people, the economic social and institutional activities and arrangements the people are capable of and put in place to enhance and sustain a better life in a given society and epoch.

STRATEGIES FOR PUBLIC SERVICE DELIVERY IN NIGERIA'S FOURTH REPUBLIC

In order to provide services to the citizens the Nigerian government over the years has adopted several strategies in doing so. The strategies adopted for public service delivery in Nigeria include but not limited to the following:

Contracting Out: According to Mcnabb (2009:171), "contracting out is the hiring of a private sector firm or non-profit organization to provide goods or services for the government. The government controls financing the activity and has management and

policy control over the type and quality of goods or services provided". This strategy is mainly adopted in the areas of roads and railway construction.

Public-Private Partnership: Public-Private Partnership is one of the new strategies introduced in Public Administration to bring about improved public service delivery. This view was corroborated by Olaopa (2012:149) when he asserted, "indeed, partnership between the private and the public sector is just another component of New Public Management (NPM) aimed at reforming public sector organizations for better public service delivery". According to the Canadian Council for Public-Private Partnership- "Public-Private Partnership is a cooperative venture between the public and private sectors, built on the expertise of each partner, that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards. There is a symbiotic relationship between the government and the private sector organization engaged in public-private arrangement in the sense that each of the partners is expected to benefit in relation to its objectives and goals for engaging in such partnership. Public services provided under the PPP arrangement are prevalent in the area of infrastructural provision.

Outsourcing Government Services: Oriakhi and Okoh cited in Okoye and Oghoghomeh (2011:4) see outsourcing as "the contracting of the delivery of goods and services (fully or partially) to a private sector entity under a contract that typically involves no equity and capital. Here, public ownership of the assets is retained, while the management and operation are contacted out". This strategy of public service delivery in Nigeria is prominent in the area of human resource function such as retirement plan management and prospective employee recruiting and screening.

Direct Public Service Delivery: This has to do with the services provided directly by the government and its agency. Here, the private sector is not involved in the public service delivered. Most public services are delivered through this means.

CHALLENGES OF PUBLIC SERVICE IN NIGERIA

The Nigerian Public Service is faced with a plethora of challenges, which have made the provision of essential services to the people to be inefficient and ineffective to the extent that the citizens are disappointed in the public service, which made them to keep wondering if they actually have government in their country. The challenges facing the Nigerian Public Service include but not limited to the following:

Problem of ethnicity and religion: - Nigeria is a multi-ethnic and multi-religious country. In the public service, issues of ethnicity and religion often rear their head the operation of public service in Nigeria to the extent that ethnic and religion factors and considerations often becloud the sense of judgment and operation of some public servants in the provision of services and other activities such as appointments and admission into unity schools and federal universities

Corruption: - Corruption has permeated and penetrated every segment of the country. The public service is not an exception to the malaise. Some public officials have embezzled money meant for the provision of services to the people. This is one of the greatest reasons why the citizens are not enjoying effective and efficient service delivery from the government. On this note, Niskanan cited in Sharma et al (2013:45-46) asserted that "just as businessmen maximize profits and consumers' utility, bureaucrats maximize budgets. The bureaucrats were identified as public enemy No. 1. It was because of this

economic rationality that government budgets were refusing to go down". This explains why budgets have been padded in Nigeria by the National Assembly.

Lack of technology and adequate skilled manpower in most technologically related areas: - No doubt, technology is essential for effective and efficient service delivery. Nigeria being a developing country is faced with the problem of lack of technology and adequate skilled manpower particularly in the area of technology. For instance, the essence of the introduction of the 6-3-3-4 systems of education in Nigeria during the regime of President Ibrahim Babangida which was aimed at ensuring that students acquired vocational training and skill that could make them to be self-reliant failed because of lack of the required technology as well as lack of the skills required by the teachers to train the students. As a result of this, most of the machines imported for the purpose got spoilt because they were not put to use. The result of this is that the 6-3-3-4 system of education failed to achieve the desired result.

Poor Power Supply: - The place of power in service delivering cannot be over-emphasized. Nigeria is known to be facing serious problem of electricity supply. Power supply has been epileptic. Even the privatization of NEPA has not really helped matters. There is no way effective service delivering can be done on the absence of power supply.

Politicization of the Public Service: Politics has seriously permeated the public service in Nigeria to the extent that virtually all the public services in Nigeria has been politicized. Politicians in power largely determine who should be employed and who should not. This condition has brought about a situation where some of the public servants are accountable to those who made it possible for them to be employed instead of being accountable to the Nigeria state and the citizens they are meant to serve. This situation no doubt affects adversely public service delivery.

PROSPECTS FOR EFFECTIVE AND EFFICIENT PUBLIC SERVICE DELIVERY FOR SOCIO-ECONOMIC DEVELOPMENT IN NIGERIA

For socio-economic development to be achieved in Nigeria, the government should make concerted effort to ensure efficient and effective service delivery to the citizens. This is because effective and efficient service delivery is sine-qua-non to socio-economic development. Below are some of the factors that can engender contribute to effective and efficient service delivery in Nigeria.

Giving contracts the companies that have the required capacity to deliver and execute projects. No doubt, there are some projects that require heavy capital and resources to execute and not only is that expertise important in the execution of most projects. Government and its officials should be able to identify companies that have all the necessary resources and equipment to properly execute projects and give them contracts to execute such projects. This is to ensure timely completion of such projects.

Corruption should be slummed by government officials. Corruption has been identified as one of the factors that have led to shoddy execution of projects as well as projects abandonment. When projects are done in a sub-standard manner and or even abandoned it leads to waste of public fund and the citizens are denied the benefits of such projects. According to Niskanem cited in Sharma et al (2013:45-46), "just as businessmen maximize profits and consumers utility, bureaucrats maximize budgets. The bureaucrats ware identified as public enemy No. 1. It was because of his "economic

rationality" that government budgets were refusing to go down". To guide against high level of corruption in Nigeria the anti-corruption agencies should be strengthened to be able to comprehensively and vigorously fight corruption in Nigeria.

Government should adopt the public-private partnership model in the delivery of some services. Okoli cited in Amujiri (2011:113) is of the view that "partnership is very necessary and inevitable whenever the owner of the project or service is unable to execute or provide the services in the face of competing demands. In other words, funds are at the root of partnership. In addition to the requirements of funds, technical expertise is another overriding considerations, especially in projects or services requiring high technology and expertise. Along with technological know-how, is managerial technology and skill. These can be pooled together to the advantage of the project or services".

One of the reasons for the reforms of the public sector which public-private partnership is a product stems from the ills associated with the traditional public administration and such ills include embezzlement of public fund, favouritism and nepotism. All these combined to weaken the ability of the public sector to provide essential services to the citizens and as a result of this and other factors, the citizens and world governance institutions like World Bank and United Nations organization had mounted and mounting pressure on government across the globe to live up to expectation particularly in the area of service delivery. This explains why it is necessary for the Nigerian government to consider and adopt the public-private partnership as a strategy for public service delivery.

Government should improve power supply. Many services are dependent on the availability of power and such would be adversely affected if there were epileptic power supply. Regular power supply is sine qua non for effective and efficient public service deliver.

Increase citizenship participation in the governance process. It is the responsibility of the citizens to take serious interest in the governance system of their country. With this, they are meant to ensure that the hold their government accountable. This will make the government officials to live up to expectation by ensuring that projects and programmes initiated for development purposes are carried out effectively and efficiently. This will bring about increase in infrastructure, economic development and citizens well-being.

CONCLUSION

Considering the relationship between efficient and effective service delivery and the increase in the citizens' economic activities and well-being, it behooves on the government to try as much as possible to put machinery in motion to provide effective and efficient services to the people. The advantages derivable from effective and efficient service delivery is enormous because it brings about enhanced infrastructural development with its attendant positive effects on the health of the people, job creation, increase in disposable income of the citizens as a result of increased economic activities. More money would still go to the government in the form of tax from the citizens.

When people are gainfully employed, it will reduce the number of people that would want to go into crime, thereby reducing the crime rate with its attendant positive effect on security. No doubt, development can only take place in an environment where there is relative security of lives and property. In recognition of these facts, it is therefore

incumbent on the Nigerian government not to rest on its oars in ensuring the effective and efficient service delivery.

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THE PHENOMENON OF THE POLITICIZATION OF PUBLIC ADMINISTRATION IN ROMANIA

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Abstract: *This article aims to capture the image of the evolution of the profile of the prefect in Romania between 2006-2020, with an important focus on the relationship between the policy and the Institution of Prefect, as well as the effects of politicizing the civil servant. Our analysis aims at presenting theoretical concepts and analyzing the effects of laws attesting to the status of the prefect. We observe a beginning of the process of public administration reform, but with different pathologies and stage imperfection. Actors involved in the construction of the prefect at the local level, independent actors and party members actors, have taken advantage of a development of the constant legal framework, a fluid political context, in order to form and develop clientistic, and patronage strategies that have prevented the expected effects of the Europeanization processes. We thus note that the appointment and revocation of prefects in Romania have a link of dependence on the legal framework as well as the existing dynamic political context.*
Keywords: *public administration, political function, political power, political parties.*

PUBLIC ADMINISTRATION AND POLITICS. THEORETICAL PERSPECTIVES AND MODELS OF COHABITATION.

Public administration is the interface between the state and society. It works in two senses: from the state to the citizens and vice versa. In fact, public administration institutions have the role of carrying out public policies, but also in resolving the requirements of the actors involved and civil society. Social reality, as well as existing theories (Denni & Lecomte, 2004), (Carpinschi & Bocancea, 1998) underline the difficulty of drawing a clear border between politics and administration. The causes may be diverse and they also encompass the pressure of politics, but also the complexity of human relations, social networks and networking strategies. In fact, we believe that the relationship between politics and civil servant will always exist. The differences are given by the degree of autonomy or the level of involvement of the political, but also by the social and political contexts at a given time. On the other hand, in democratic systems things are more nuanced, the public administration being autonomous from politics, partially subordinated to or imposed by politics, as is the case in the US. In the case of the United States of America, the time career was identified, a common practice of political parties after winning elections to grant jobs in public administration to supporters, relatives or friends. In the American administrative system, during the 19th century there

was a system called a spoils system, with which those who won the elections had the power to promote to public office people who were partisan and who were primarily loyal to politicians. Subsequently, the transition to a system based on the recruitment and selection of officials took place. However, there has always been the question of whether a civil servant needs to be elected on the basis of competence, skills or to be appointed by the party, knowing much better the mentality of the group from which he comes (Disalvo, 2016).

After the 1989 revolution, Romania had a public policy of depoliticization and training of administrative staff in order to streamline and develop services offered to citizens. The objective was only partially achieved. If we take into account the legislation on the Institution of Prefect, we may observe that, in fact, during 30 years of democracy, public institutions have experienced politicization. The institution of Prefect is regulated and organized by the Romanian Constitution, but also by the new Administrative Code 2009. The following paragraph shall be added to Article 249 of the Romanian Constitution, the Prefect is the representative of the Government at the local level. He is therefore appointed by the Government and must represent the interests of the government in the territory.

Today, journalistic investigations, investigations carried out by the "RISE Project", reports on the state of public administration in Romania and the involvement of politicians carried out by "Clean Romania" bring to the attention of the public situations in which politics penetrates quite deep into the administrative area. In a study carried out by the Faculty of Political, Administrative and Communication Sciences in Cluj County on a sample of 100 citizens and 50 civil servants, aspects have been noted that the spoils system still remains. When asked whether the selection of future civil servants is made on political grounds, from the point of view of citizens, in a proportion of more than two thirds they answered in the affirmative, i.e. 72.30%. We inevitably ask ourselves the question of what makes people understand and answer yes in such a large percentage? The situations found at the level of the institutions to date are the most appropriate answer. Reform in public administration in Romania was often done only formally or, at worst, only on paper. Nepotism and the power of political parties have often influenced public administration, which has led to the inevitable politicization of the civil servant.

All this shows that the link between politics and administration is a complex phenomenon in which partisan activities, political leaders, recruitment mechanisms and forms of engagement in local/national public administration will play a particularly important role. Relations between politics and public administration were theoretically analyzed by a number of authors such as: J. St. Mill 1859, K. Marx 1844, M. Weber 1978 and R. K. Merton 1952, Th. Veblen 1904, M. Croisier 1964 and many other contemporaries. In general, theoretical approaches move between three major levels that usually exploit the relationship of bureaucracy and administration with the state and politics. Thus, we identify *positive valorizations* (for Weber, for example, technological superiority over other organizational systems is important), *negative values* (bureaucrats for Marx, for example "delegates of the state tasked with administering the state against civil society" (Marx et al., 1933)) and *neutral values* (Touraine & Merton, 1952).

Joel Aberbach in Sharing Isn't Easy: When Separate Institutions Clash. Governance took into account four variables, and looked at the role and relationship between bureaucrats and politicians according to them. These variables are *the*

implementation of policies, policy formulation, citizens' interests and clarification of missions (Aberbach, 1998).

However, it should be noted that an important area for partisan action is the final results that are reflected in the work of the administration. Either this can only be controlled by the policy and its influence in the administrative apparatus or by the training of officials with specific expertise. However, Polit Boutkaert considers that the public administration is called upon to submit to the political which has gone through the legal stages and has come to represent the wishes of the citizens (Polit & Boutkaert, 2004).

In this respect, it is interesting to watch the influence that the civil servant exerts on the decision, how it can be a guarantee of the implementation of public policies. In view of all this, the public administration presents itself as a service to the citizen, which connects with the political area. The purposes of the public administration service, as well as those of political and non-political activities, are to achieve collective goals. For this reason, an accurate demarcation of the two in terms of actions and objectives is difficult to achieve.

The literature identifies several models of political relation with the administration. Guy Peters, for example, identified four models:

1. Formal-legal model

It is marked by a *subordination report.* The civil servant plays the role of adviser and mentor for the politician; the ones who will make the decisions are the political decision-makers. In this case, the official is prone to political compromises, being contractually constrained by the mandate of the elected politician. For example, where there is a single regime, a single party, the administration is subject. However, different forms of politicization can also be found in democratic regimes. For example, changing the administration in the White House involves certain changes in public administration.

2. Model of the administrative State

It affirms an area of *separation* between the administration and the political issue of the freedom of the civil servant whose career does not depend on political actions but only on his expertise. In this case, greater political imbalances give the public a greater power to manage problems. For example, it is interesting to follow certain departments of the national security state in which, regardless of the nature of the policy, expertise will be a safety bridge in the actions of that state.

3. Community model

The civil servant becomes the expert in relation to the politician. The report appears to be in favour of the civil servant. The civil servant may negotiate from an expert position the politicization of his actions or not, depending on his interests. His mandate is not constrained by direct political action. Usually, in this case, the upper hierarchical line of the civil servant is established politically and, in this case, there is perhaps a slight form of indirect coercion. When positioning the civil servant in the same relationship as in the Community model, the difference is given by the fact that the subordination ratio is made only on specific departments. For example, the county councillor on the Environment Commission may only influence the civil servant in the Environmental Opinions department, with a common area of action.

4. Conflicting model

This model creates a situation of conflict between bureaucrat and politics. This happens in situations of sudden change of government apparatus, of policy makers. It shall be balanced only when the Community model is available. An illustrative example would be the conflict between the institutions that ensure compliance with the laws and political parties in that country's parliament.

Beyond these models, we cannot fail to notice a permanent game between the political and bureaucratic system represented by the administration. Thus, we identify three situations: *balance* between the two when dealing with political stability and respect for the laws and rules of the democratic game, *a political imbalance favourable to* undemocratic states or those in which democracy operates, and a *monetary-friendly imbalance* when political instability occurs.

Political-administrative relations are complicated, complex, and they also raise a problem: ensuring the loyalty of public administration to political leaders in accordance with democratic principles, but also to have public administration autonomy from the political environment, in order to preserve its neutrality, impartiality towards any citizen, whether partisan or not. The existence of an autonomous administrative domain in relation to politics as Woodrow Wilson claimed (Stid, 1994) is difficult to imagine in the current Romanian codifications. However, an increase in the degree of professionalisation and efficiency of services is an achievable, feasible goal involving political will and organisation.

(DE)POLITICIZATION OF THE ADMINISTRATIVE AND THE GAME OF THE AUTHORITY

The changes brought about by modernity are also reflected in the relationship between the chosen one and the one appointed to administer. Who has greater power? Who, to whom must obey? If the modern state works through the presence of bureaucrats, the administrative body, does political power still have the same authority? These just a few questions reaffirm the importance of identifying a balanced and effective relationship between political and administrative.

If the legitimacy of the politician is given by the citizens' vote, the legitimacy of the bureaucrat is built on their expertise, but also on the relationship with the citizens. In reality, the legitimacy and authority of the bureaucrat moves along an axis between the formalism and rigidity attributed to him by M. Croisier (1964) and the ideal-type weberian (Weber, 1978) in which efficiency and progress are the ends of the bureaucratic act. The legitimacy of the bureaucrat is, in Weber's view, rational-legal, which implies the existence of a system of rules and procedures that regulate the activity and power of the administrative in relation to political power. In *Economics and Society (Weber,* 1978*)* the German sociologist develops this aspect on several pages, being deemed characteristic for modern Western societies.

However, it cannot be ruled out that in certain situations the authority of the bureaucrat should expand and manifest with greater power than that of politics. Following Weber's reasoning, this would be possible in two situations: either when it comes to a charismatic personality in the administration who can eclipse political power, or when we witness a process of developing and valuing administrative resources and skills in the field of power tending towards the technocratic model. It is not by

chance that bureaucracy has been associated with a rational model of society's organisation. In practical terms, a phenomenon is acutely rationalising decision and power. This may diminish the importance of the political game and ideological directions that could influence decision-making and political action. Moreover, J. Chevalier calls technocracy "the system in which the preponderance in the direction of public affairs belongs to the technicians"(Chevalier, 1974). However, the technocratic system also manifests a number of limitations, as R.K. Merton observed (2015). They reside in the very characteristics that give it efficiency and prestige.

□ *Supraspecialization* – manifests itself in the form of continuous professionalization in limited directions, which limits knowledge and adaptation to new situations. Thorstein Veblen (1904) calls this the training of incapacity.

□ *Rigidity and formalism* – the routine of bureaucratic activities, the environment in which they take place and the conventional regulations can decrease the performance of the bureaucrat, predisposing him to all kinds of occupational psychosis. In addition, this rigidity can affect the relationship with citizens who want help and quickly solve problems.

□ *Sacralisation of rules* – rules end up being perceived as capitals for the functioning of the organisation and not just simple tools for achieving goals. In such a context, actions are cumbersome, endless procedures and deadlines follow.

□ *Autonomy and body spirit* – are given by a sense of belonging to a caste in which hierarchies, rules and mode of operation develop systems of relationships, dependencies and forms of protection from the outside.

In this context given by the advantages and limitations of a technocratic administrative service, the issue of politicization or depoliticization of local or national public administration does not depend solely on the capacities of the bureaucratic body or on the level of rationalisation of social life. Existing studies (Guy, 2004) show the presence of several factors (Manda, 2008) that influence the level of politicization of public administration:

□ the characteristics specific to the administrative service;

□ the strategies that politicians have - to maintain power and increase electoral capital;

□ political parties - through the mechanisms of using public administration to gain power;

□ influence groups – also called *the Third Chamber* or Invisible *Government* (Delanu, 2001) can intervene to maximise their chances of winning in a particular area;

□ *the financial factor* which may lead to certain compromises on the part of the official;

□ social and economic factors that may influence the reality between public administration, political aspects and the business environment (Anton & Onofrei, 2016).

Given this, it is impossible to discuss a pure technocratic administrative body that is not contaminated in any way by the political factor. In fact, the question is that of dosage and limits within which political influence is allowed for better and more efficient administration activity.

The concept of new public management (NMP) was first used by Christopher Hood (1995), he compared management styles in public administrations. At the level of human resources, the clear advantage of the NMP is that it is based on the internal motivation of civil servants. The new Public Management proposes a distancing from the traditional-bureaucratic way of organizing by making staff policies more flexible, terms

and conditions of employment, measuring performance, a top management devoted to political parties, reducing expenses through privatization or externalization of services. The new wave of public management (NMP) was based on themes of disaggregation, competition and incentives (Pollitt, 2007). NMP could thus be interpreted in one state as an opportunity for public managers to be 'professional' and 'modern', while in another country it can be regarded as anything connected with the services of citizens-customers. In both cases, Romania has received support through training programmes on public managers and the improvement of services offered in relation to citizens.

Contemporary developments and the development of new technologies place the problem of administration in a completely different context. Governance in the Digital Age (DEG) is a new concept involving changes in substance in management and public administration, a rethink of policy in relation to the administration, and another reconfiguration of the relationship between the administration and citizens (Aikins & Kwamena, 2012).

At least from a functional perspective, the digitisation of the administration would lead to excessive autonomy of the service in relation to politics, but also to citizens, relations becoming impersonal and actions logarithmed and encrypted into a digital system. In fact, the digitisation of the administration may be the invisible hand of politics in the administrative space, which, this time, acts directly, without intermediaries. May this be a first step towards the full expression of political authority, or is it just the technological expression of political rationalization? Hard to say how things will evolve further and the forms that the administration will take in regards to (de)politicization.

If the classic, bureaucratic model gives the image of a neutral, impersonal civil servant, attached to his office and the function he has, the new management emphasizes the training of the official, his delimitation from the political and the efficiency of his actions, and the electronic government sees in the civil servant the man with expertise, an interface between the citizen and the public administration, many of his tasks being taken by the government through electronic systems.

THE POLICY AND INSTITUTION OF THE PREFECT IN ROMANIA. CASE STUDY.

Our research aims to map the situation of (de)politicisation of the administrative apparatus in Romania, with direct focus on the Institution of Prefect. The analysis was based on the documentation technique and involved a secondary data analysis over a 14-year period (2006-2020). The motivation for 2006 is the entry into force of Law No. 340 of 12 July 2004 on the Prefect and the Institution of Prefect, by which they are senior civil servants and are not eligible for a political formation.

Social reality and even theory will make it difficult for us to draw a clear border between politics and administration, because of the politicisation of human resources in public administration. In our view, the relationship between politics and civil servant will always exist in one form or another, the differences being given by context and circumstances. We will also try to respond in the course of this paper if politicisation has advantages or disadvantages in the current context, bearing in mind that it is opting for a delimitation of the official from the political, but at the same time it is chosen to have

control over it, for the successful implementation of government policies through efficiency and for the benefit of citizens.

It should be noted that for the period analysed by us (1990 - 2020) there is a number of regulations, which directly concern the status of the prefect. They also express the policy's view of the administrative service. This is how we say:

□ Law No.5 of 1990, from 9 July stipulates the re-establishment within the administration of the Prefecture, an appointed county body, which will be able to coordinate the activity in the territory until the promulgation of the new Constitution. According to this law in the counties, the Prefecture Institution consisted of the prefect, two subprefects, a secretary and members. Law No. 5 of 19 July 1990 on the administration of counties, municipalities, towns and municipalities until local elections are held is approved on 20 July 1990 and certifies by political consensus the emergence of the Institution of Prefect, defined as a "local body of state administration with general competence".

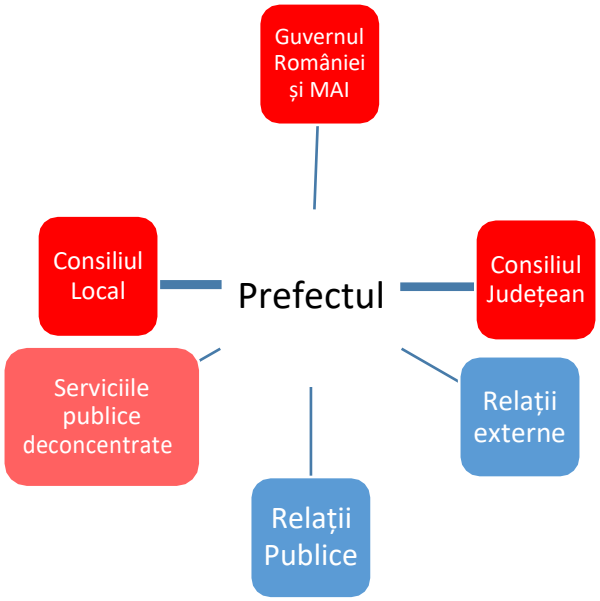
□ Law No.340/2004 - The Law of the Prefect, followed by the amendment of 2005 by OUG no.179/2005 to amend Law 340/2004, points out that: 'the prefect and the sub-prefect belong to the category of senior civil servants'. As of July 21, 2004 the Prefect becomes "the representative of the Government at the local level", being appointed by the Government on the proposal of the Ministry of Interior as well as administrative reform. By political consensus, Law No 340/2004 enters into force on 1 January 2006, which has two essential elements: the prefect and the sub-prefect cannot be members of a political party or political party and are appointed following the promotion of an examination of attestation by post.

□ The Administrative Code approved by Emergency Ordinance No.57 of 3 July 2019 and published in Official Gazette No. Article 250 of the new Code provides that *'Prefect and subprefect functions are functions of senior civil servants'*. Article 396 specifies the method of promotion for the occupation of public functions. The senior civil servant shall participate in a competition managed by a permanent and independent committee and shall not be part of a 'political party or organisation to which the same legal regime applies as to political parties' (Article 5(e)).

In the legislative reality it appears as an administrative function, but in practice the prefect is supported by a political party, comes from the members of a political party and/or has direct links with partisan persons and management functions in the party. The method of appointment of prefects meets the legal criterion at the limit.

In Romania, research into the relations between the Institution of Prefect and the other institutions can be an indicator of political influence in the administrative sector. When we try to define the politicisation of the prefect's function, things are also viewed in relation to those involved in this whole system. We have a subordinate relationship between an institutional partner with political or politically assumed leadership and a collaboration and control relationship with the most important executive apparatus, the local council and the county council. Inevitably, the influence of politics will also be felt in the sphere of the prefecture, in the light of the relations shown in Figure 1.

Figure 1. Prefect's relations with partner institutions

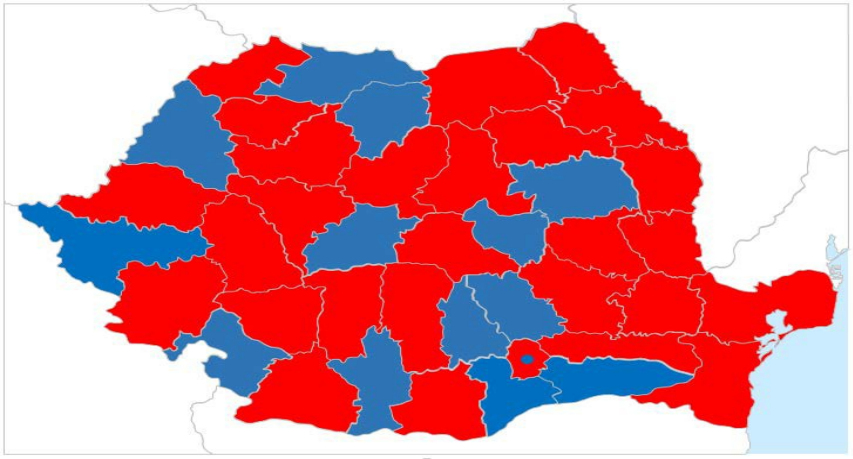


Source: Database Analysis

Caption:
-have in the decision-making apparatus appointed/elected politicians (red)
-may have appointed/elected politicians in their decision-making (pink)
- are not covered by any of the above situations (blue)

In Figure No.2 we can identify that 69% of the Prefects' Institutions in Romania are managed by persons who have presented and maintained direct links with the governing party, by the presence of the membership card or by maintaining socio-professional relations before their appointment. Looking at the 42 institutions, we note that we do not find at any appointment an activity report of the person in the function of the institution, or certain elements attesting to the expertise in the field of that person named or the training. These elements can only be found in the application resume without having a management plan for the period immediately following.

Figure 1. Situation of Romanian Prefectures for each county, including Bucharest. Analysis for 2019-March.



Source: *Database Processing*
Legend*: County where the Prefect's Institution is headed by a representative who was a party member before taking office as Prefect (red). County where the Prefect's Institution is headed by a representative who had direct links to the party/members but was not a party member before taking up the office of Prefect (blue)*

In order to understand better the appointment process and the connection of the civil servant with a political party, we present to you a thorough analysis from 2006 until 2020, when Law No. 340/2004 was established by political consensus, whereby the prefect and the sub-prefect cannot be members of a political party or political party. Even if at the time of the appointment of the prefect he met this criterion, I shall note in Table No. 1 that many of them were former party members or supported by certain political formations.

Table 1 Relationship between the Institution of Prefect and the political institution in Romania in the period 2006-2020

Crt. No.	Counties	Total number of prefects analysed (cv+press magazine)	Prefects - former party members/or with political party implications before or at the time of validating the post	Prefects - no publicly declared political affiliation prior to appointment.
1.	Alba	5	80%	20%
2.	Arad	3	66,66%	33,34%
3.	Arges	8	75%	25%
4.	Bacau	6	66,66%	33,34%
5.	Bihor	4	50%	50%
6.	Bistrița-Năsăud	5	80%	20%
7.	Botoșani	4	100%	-
8.	Brașov	6	66,66%	33,34%
9.	Brăila	5	80%	20%
10.	Buzău	6	83,33%	16,67%
11.	Caraș -Severin	6	50%	50%
12.	Călărași	5	60%	40%

13.	Cluj	5	40%	60%
14.	Constanța	5	80%	20%
15.	Covasna	5	60%	40%
16.	Dâmbovița	6	66,66%	33,34%
17.	Dolj	3	100%	-
18.	Galați	5	80%	20%
19.	Giurgiu	4	100%	-
20.	Gorj	3	66,66%	33,34%
21.	Harghita	-	-	-
22.	Hunedoara	2	50%	50%
23	Ialomita	1	100%	-
24.	Iasi	9	88,88%	11,12%
25.	Ilfov	10	70%	30%
26.	Maramureș	4	50%	50%
27.	Mehedinți	3	66,66%	33,34%
28.	Mureș	2	100%	-
29.	Neamț	1	100%	-
30.	Olt	5	40%	60%
31.	Prahova	6	66,66%	33,34%
32.	Satu Mare	2	100%	-
33.	Salaj	2	50%	50%
34.	Sibiu	4	75%	25%
35.	Suceava	8	87,50%	12,5%
36.	Teleorman	4	100%	-
37.	Timis	2	-	100%
38.	Tulcea	4	75%	25%
39.	Vaslui	4	75%	25%
40.	Vâlcea	4	100%	-
41.	Vrancea	4	75%	25%
42.	București	12	100%	-
TOTAL		193	74,09%	25,91%

Source: Database Processing

The CVs officially presented on the websites of the Romanian Prefectures of the persons who held the position of prefect were initially analyzed, but it was found that the political functions or membership of a political party was not specified. In this respect, in order to complete the data, a thorough investigation of the local press has been carried out to identify statements or articles, which may lead to the establishment of membership of a political party or not of that official. The risk of pertaining to this research is the lack of national databases from which we can retrieve public information.

193 prefects have been identified and analysed since 2006 and the following aspects can be identified because of the analysis:

1. Most of them have held positions in the local/county/national public administration prior to taking up the prefect's post, which certifies the need to know some professional aspects of the field.
2. Prefects in Romania have almost always had the support of political parties and local branches.
3. Even if by law they are considered apolitical, after the end of the term of prefect, the occupation of political public positions is observed: councillor, local, county or deputy.

4. For 74% of the 193 prefects analysed, elements are found in the CV or in public statements attesting their involvement in politics before obtaining that position: they were party members, collaborations, kinship relations and so on and so forth.
5. The presence of prefects without publicly declared political affiliation before the appointment is found especially in the period 2016-2017, when in Romania there was a technocratic government.

PREFECTURES BETWEEN CIVIL SERVANTS AND POLITICAL INSTRUMENTS

The prefect is a highly functional public "de jure" and a true "de facto" politician. The politicisation of the office of prefect will have immediate consequences in the public administration plan: the lack of impartiality in its actions, the presence of corruption through abuses of the occupied office or public resource, political clientelism, the presence of staff without studies in the field corresponding to the function; the structuring of a strong and impartial body of officials was an indicator of administrative reform; fragmentation of public administration; lack of transparency of decision-making; lack of stability of public institutions; presence of political compromise; implementation of policies in support of the party as well as the programme of government; decreased confidence in the administration.

The Phare 2004 Programme - Strengthening Civil Society in Romania financed by the European Union was carried out between October 2006, 10 months after the introduction of a new law of prefects for their depoliticization and until September 2007, a research study aimed at observing the effects of this law. The counties of Arad, Constanta, Iaşi, Harghita and Bucharest took part in this study, where the following were found:
1. 59% of respondents said that nothing had changed at the level of the Institution of Prefect after the implementation of the law;
2. 37% replied that the prefect complies with the political guidelines;
3. 66% specified that the Institution of Prefect must verify the legality of acts issued by local public institutions, but without the intervention of political interests.

After 1989, after the communist system collapsed, a period of unrest and turmoil followed in the regulation of this office of prefect. The way in which prefects and subprefects were appointed made it easier throughout the post-December period to systematically appoint people with different partisan sympathies or even party members. The current changes are found in the formal-legal model as representing the metaphorical model called "yes, Minister", through which the main role in decision-making will always be positioned in the upper hierarchical area, the prefect being a mere executor, according to the needs of the ministry or government concerned. In this case the prefect will always be prone to constraints by contract with the elected Government, and the predisposition to political compromises may arise at any time.

The reform process in public administration must meet certain objectives: deep restructuring of central and local public administration; proximity of administration to the citizen; decentralisation of public services and strengthening of local autonomy; efficiency of public office; professionalisation of public office (Abaluta, 2018).

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GODFATHERISM AND ITS THREAT TO THE NIGERIA'S NASCENT DEMOCRACY

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Abstract: *Democracy has promoted political and socio-economic development far more effectively than any other political system across many countries and centuries of history. In Nigeria, it has been characterized with political corruption, ethnic politics, politicking of core government policies and programmes and politics of godfatherism. Since the return of democratic rule in 1999 to date, the country witnessed a heightened tempo in the politics of godfatherism, which has not only retards the process of democratic consolidation but also undermines effective state governance and restricts rather than broadens democratic representation. Godfatherism is one of the greatest glitches facing the Nigerian political system. This paper therefore, attempts a reflection on the nature, causes and effect of godfatherism on Nigeria's nascent democracy. We anchored our investigation on some basic propositions arising from the elite theory and argue that politics of godfatherism negates peaceful coexistence, law and order and poses a threat to the Nigeria's nascent democracy. This paper which is theoretical in nature draws its argument basically from secondary data which include journal articles, textbooks and internet sources. Requisite conclusion and recommendations were provided in the light of the theoretical findings.*
Keywords: *democracy, godfatherism, politics, corruption, development*

INTRODUCTION

Nigeria's democracy has remained grossly unstable since the country returned to democratic rule in 1999, politics becomes personalized and patronage becomes essential to maintain power. Democracy as the moral and legitimate way through which a society can be administered has spreads to many parts of the world and it has hardly taken root, especially in Africa and particularly in Nigeria. The introduction of what would otherwise be considered irreducible minimum conditions for democratic rule, namely, multiple political parties, periodic and competitive elections have not led to a corresponding flourishing of basic liberal values that are critical to the survival of democracy. If anything, it has brought about a transmutation of authoritarianism instead of democratic consolidation in Nigeria due to the politics of godfatherism, which negates peaceful coexistence, law and order, and all tenets of democratic process by obstructing candidate selection and even executive selection once government is installed.

Politics of godfatherism is not a new phenomenon in the political movements of Nigeria, but since the return to democratic rule, the country witnessed a heightened

tempo in the politics of godfatherism that continues to reduce the legitimacy of government and void the electoral value of the citizens (1-2). Godfatherism according to Oke (1:36), "has come to assume a dangerous dimension as a consequence of the monetization of politics. Godfatherism is one of the biggest dangers to democracy today and paradoxically, it only survives with government support and produces an unresponsive leadership". Ohiole and Ojo (3:11) averred "democracy in Nigeria has not been fully established and the phenomenon of godfatherism has endangered democratic process and the socio-economic lives of the citizens". This is the hiatus that this paper aspired to fill. The paper therefore, attempts a reflection on the nature, causes and effect of godfatherism on Nigeria's nascent democracy.

METHODOLOGY

This paper adopts qualitative research design. The researchers used descriptive analysis to examine the issues of godfatherism and democracy in Nigeria. The paper, which is theoretical in lnature, draws its argument basically from secondary data which include journal articles, textbooks and internet sources.

CONCEPTUAL AND THEORETICAL DISCOURSE

Like any other terminology employed by social scientists, the concept of godfatherism is a term that does not lend itself to easy definition. To fully understand this, some related concepts like godfather and godson need to be defined. Godfather is a kingmaker, boss, mentor and principal. A godfather is "someone who has built unimaginable respect and followers (voters) in the community and possessed a well-organized political platform and general acceptance from electorate that could secure victory for candidates of his choice" (4:269). The Hausa's as 'Maigida' (master of the house) popularly knows a godfather. The word Maigida goes beyond it literal meaning. Polly, 1966; Abner, 1971 and Pally, 2004 cited in Attah, Audu and Haruna (5) used the term in their works to refer to those who provided brokerage services to Hausa traders in transit in different parts of West Africa. Theses traders, at the various transit centres where they have to stop to do business rely on a maigida to facilitate their economics activities. The maigida provides them with accommodation, storage and brokerage services. In the Yoruba society, godfather is referred to as 'Baba Kekere' (the small great father), 'Baba Isale' (the father of the underground world) or 'Baba Nigbejo'(a great helper in time of trouble). Historical of these terms is 'Baba Kekere'. It was used to depict community leaders with whom people of less social status identified as a way of providing physical, social, political and economic security for themselves. For example, most of the Yoruba refugees who came to settle in Ibadan in the early nineteenth century settled with the 'baba kekere'. Dickson (6) also noted that the philosophy of godfather is grounded in the sociology of traditional Igbo society. He further showed evidence to the popular relationship between 'Nnam-ukwu' (my master) and 'Odibo' (the servant) in the Igbo traditional concept. A younger person is entrusted to a more mature and experienced person for training in social, economic and moral adulthood. The role played by the man in this kind of relationship is akin to that of a godfather. Thus, the triple cases showcases above shows those persons of lesser social status attaches themselves to another person of

higher social integrity usually for economic benefits. Though, this practice is not alien to Nigeria but is strange in the replication of this practice into our political system (5).

Politics of godfathers involve the 'anointing' of a godson who is expected to win an election by using the influence, wealth, political structure and political experience of the godfather. Olawale (7) observed that politics of godfather has far-reaching negative effects on the democratization process in Nigeria. This argument is still plausible today. Therefore, godfathers in the context of this paper are powerful individuals in the society who determine 'who, what, when and how' in the corridors of power. Many godfathers in the present day Nigeria operates like mafia by displaying violent scheming and aggressive 'politicking', coupled with manipulating devices of having their way by any means possible. They rely on Machiavelli's slogan, 'the ends justify the means'. They reign across all spheres of the society: academics, legal, political and religion environment (4). Godson on the other hand referred to the beneficiary and recipient of the legacy of a godfather.

The term godfatherism have been defined by several academic scholars based on their perception and understanding of the concept. According to Abioye, 2007 cited in Eke and Osaghae (8:65-66), godfatherism is "a term used to describe the relationship between a godfather and a chosen godson. It is a kind of politics whereby influential person in a popular or ruling party will assists someone usually godson to emerge as the candidate for the party by all cost either by hook or crook. He will assist him to emerge victorious in the election irrespective of whether he is a popular candidate or not". In the view of Scott (9:92), godfatherism is "a special case of dyadic (two persons) ties involving a largely instrumental friendship in which an individual of higher socio-economic status (patron or godfather) uses his own influence and resources to provide protection or benefits or both for a person of lower status (client or godson) who for his part, reciprocates by offering general support and assistance, including personal services to the patron or godfather". Olawale (7) noted that the present-day godfatherism is a primordial tradition taken to a criminal extent. However, Ajayi(10) observed that godfatherism thrives across the globe. There is hardly any state devoid of the existence and influence of godfathers, though the level of such influence varies. In America, the political candidates wiggle around, seeking group and individual endorsements for their candidacy. In addition, in other advanced societies, group influence and endorsement could be more valuable than a powerful individual could. The fact remains that prominent member of the society still influence the society in their voting behaviour. Notwithstanding, the features of patron-client politics remain constant. It is based on imbalance of power, existing in the context of face-to-face personal relationship, incorporation of wide range socio-political and economic forms of exchange, display of kickbacks and consideration of cost-benefit theory and availability of vote-giver and vote-accepter (4). The relationship between godfather and godson is not free floating, it is contractual and the contract is sometimes written and even sealed spiritually with an oath, or at the extreme, in a 'shrine' in Nigeria (11).

At this point, it is necessary to give a brief insight into the concept of democracy. Democracy just like godfatherism, is a concept that is not amenable to definitional unanimity, more so as there exist several versions of it. Common among the versions are the Athenian classical democracy, Marxists-Leninist democracy, Liberal democracy, and lately, Radical democratic conception to mention a few. Democratic discussion is often

embroiled in controversies, over which ideally is true democracy, given scholars' divergence of views on the concept and practice of democracy. For the sake of this paper however, we are concerned with liberal democracy otherwise known as representative democracy and how it is impeded by politics of godfatherism in Nigeria. Democracy, in liberal perspective, is "government by popular representation; a form of government in which the supreme power is retained by the people, but is indirectly exercised through a system of representation and delegated authority periodically renewed; a constitutional representative government" (12:29). Therefore, democracy is good of the people by the people and for the people. It is accepted that liberal democracy has some universal values such as, free press, openness and transparency of government, respect for the rule of law and constitutionalism, accountability, equity and inclusiveness, participation, consensus-orientation and effective and efficient service delivery. In Nigeria, the concept of democracy has been misconstrued with mere civil rule because the practice has not witness freedom of choice, constituted authority, respected for the rule of law, sagacity and service delivery (13).

El-Rufai, 2003 cited in Eke and Osaghae (8), noted that the central concern of Liberal democracy is to provide the framework for the aggregation of long-term interest of the majority and the channeling of public resources in the pursuit of that interest. However, where corruption by the custodians of the aggregate interest exists and persists, the chances are that development targets will be missed and the 'Hobessian' society would emerge. Consequently, societies that have adhered to minimum liberal democratic principles have raised guaranteed living standards by observing and complying with simple rules, which include private sector led growth, macro-economic stability and fiscal discipline, investment promotion, deregulation of financial markets and anti-corruption measures, especially when these are backed by a stable and predictable judicial system and internal security.

POLITICS OF GODFATHERISM IN NIGERIA: A REVIEW

The political godfathers consist of some rich Nigerians who see sponsorship of political candidates as a source of upward social and economic mobility. Every political transition programme in Nigeria is started with the formation of new parties. The founders of many of these political parties often have agendas, positions, interests and needs that are in most cases kept secret. Those who later come to join the parties thus have to depend on what the 'godfathers' in the party say or do. Those who want to do well in the parties thus have to attend secret meetings in the house of their godfathers. This provides them with access to privileged information about party processes and how to navigate them. To enhance their own positions in the party, the godfathers ensure that party officials are over-regulated. The regulations in the system are themselves devices for making the political process become easier for manipulation of both state and party officials. This goal becomes easier to achieve in a society that contains an army of unemployed youths willing to be used to attain criminal objectives. Things work better where the political environment in which all these are taking place consists of a docile 'anything-goes' society. The last but not the least important factor for godfatherism to flourish in Nigeria is a malleable criminal and social justice system (7). Thus, for godfatherism to flourish as witnessed in today's Nigerian polity, a number of factors are

responsible. The first is a profit-motivated political patron, a pliable political process that serves the interest of just a few in the society, a weak civil society and electoral system, some do-or-die office seekers and a greedy mass media willing to serve the interest of the highest bidder in the society.

Historically, the operationalization and the attendant dynamics of political godfatherism in Nigeria predate the political independence of Nigeria. This is because, the social and political features of pre-colonial Nigeria has always resembled the phenomena of what Richards (14) defined as prebendalism, clientelism and patron-client transactional relationship. In his description of this pre-colonial patron-client prebendal relationships in Nigeria, Olawale (7:85) did posits that the word "godfather" appears in parenthesis in many western political studies. The situation is different in Nigeria; the patron-client relations that popularized the term in Nigerian politics have cultural roots among many Nigerian peoples. It is not a totally new experience in the sociology of the Hausa, Yoruba and Igbos, for the people to have one or other type of "godfather", for example, the word "godfather" has a local equivalence in Hausa, Yoruba and Igbo languages and these words have been in use since the pre-colonial era". However, the pre-colonial patron-client prebendalism was easily carried over to the post-colonial political arrangements in Nigeria. Olawale (7:87) in support of this claim affirms that "the founding fathers of party politics in Nigeria were godfathers of a sort. They were preceded by the first generational Nigerian elites who establish contact with the Europeans in late 1800s. The leading figures were the traditional rulers who later became the hub of the indirect rule policy of the British in the country".

As the colonial administration was coming to an end in the 1950s, with nationalist activities holding sway, the few educated elites of just about six percent of the Nigerian population (Jame Coleman, 1963) became the vanguard for the struggle for independence. Political parties that were regionally based were formed in the categories of Northern People's Congress (NPC) for the North, the Action Group (AG) for the Yoruba-dominated South-West and the National Council of Nigeria and the Cameroun (NCNC) for the Igbo-dominated eastern Nigeria. The role of the godfathers at this time was to show the way for the other Nigerians in a colonial system. Olawale (7:87) in reporting on the political patrons of this period did maintain that "the political godfathers of this era included the then Sarduna of Sokoto, Sir Ahmadu Bello, who led the NPC, Chief Obafemi Awolowo, who led the AG and Nnamdi Azikiwe of the NCNC leader. The other elder statesmen that fell into this category in Nigeria politics include Mallam Aminu Kano and Alhaji Waziri Ibrahim. These political leaders up to the point of their death dictated who could occupy political offices in the geo-political regions they led. They are clearing houses for political opportunities".

Ugwu, Izueke and Obasi (15) noted that the above stated political godfathers of the three major regions of Nigeria produced enormous political godsons in the later political dispensation who occupied various political positions. Some of these are Sir Ahmadu Bello's political godsons known in Nigeria as the 'Kaduna Mafia', the chief Awolowo's political godsons known in the South-West as the 'Afenifere' (those who wish others well) among whom are Chief Bola Ige, Alhaji Lateef Jakande and Chief Bisi Onabanjo (all former state governors, 1979-1983) and Nnamdi Azikiwe's political godsons in the Eastern Igbo region of Nigeria like Chief Nwobodo and Chief Sam Mbakwe (both former governors of states). All these godsons of the first generation

patrons later became godfathers in subsequent Nigerian politics. However, politics of godfatherism became widespread in the Nigerian polity from 1999 to date, when those in power became the political godfathers in states politics. Godfatherism, which is a phenomenon that allows political heavy-weights unlimited powers to dominate the political scene, influence the victory of candidates (the godsons/daughters) and dictate the direction of policies and programmes, remained a major factor of the political culture of Nigeria. In addition, discussing the dynamics of godfatherism in Nigeria, Adeoye (4:270) argued that "it got so bad under the watchful eyes of Obasanjo-led government that godfathers assumed different names: gangsters, mafia and criminal. The worse manifestations of godfatherism in Nigerian history came to life under president Obasanjo's democratic rule for one simple reason, he promoted and allowed it. Some of the godfathers truly possessed all characteristics of mafianism, many of them behaving like 'Al capone' in a criminal world; but these set of godfathers perpetuated their criminality in endearing political environment". For example, in Lagos State, former governor Ambode is the victim and Jide Sanwo-Olu is the beneficiary of politics of godfatherism. Thus, the contemporary godfatherism in the country is one of the ruinous legacies of the Babangida (1985-1993), Abacha (1993-1998) and Obasanjo (1999-2007) regimes.

CAUSES OF POLITICS OF GODFATHERISM IN NIGERIA

The cause of politics of godfatherism in Nigeria is not far-fetched. Former governor Chimaroke Nnamani, 2003 cited in Adeoye (4:82) affirms that godfather is "an impervious guardian figure who provided the lifeline and direction to the godson, perceived to live a life of total submission, subservience and protection of the oracular personality located in the large, material frame of opulence, affluence and decisiveness, that is, if not ruthless…strictly, the godfather is simply a self-seeking individual out there to use the government for his own purposes". The political godfathers in Nigeria build an array of loyalists around them and use their influence which is often tied to monetary considerations to manipulate the rest of the society. Ahmed and Ali (2) posit that there are numerous factors that led to the politics of godfatherism in Nigeria, among which are the power of incumbency, influence, political thugs, money politics, lack of political awareness, selfishness, greediness, lack of exposure, over-ambition, nepotism and politics of regionalism, etc. It is understood that corruptive tendencies intensify the economic base of the godfathers by making a wide diversity of difficulties in the politics and rule because the godfathers use their influence and money to place their godsons and wards in several position of power. So also, those in power use their position to decide the next to represent the interest of the citizens at all cost (16). For example, Governor Ifeanyi Okowa turns Delta state to family business and gives four hundred million naira (₦400, 000,000) to daughter's office at the expense of the people. Also, the military incursion into politics aided the consolidation of godfatherism in Nigeria. High on the list of their misrule was the promotion of political and economic centralization, corruption; concentration of wealth in the hands of a few, allocation of much power to chief executive at all levels, making the position more attractive.

GODFATHER AND GODSON CRISIS IN NIGERIAN POLITICS

Godfatherism is an ideology which is constructed on the belief that certain individuals possesses considerable means to unilaterally determine who gets party ticket to run for an election and who wins in the electoral contest. However, it is the intention of the godfathers to rule by proxy. Thus, they dispense violence freely and fully to those who stand in their way including their godsons. Godfathers are merchants of fear and power brokers in Nigerian politics. People throng into and out of their houses on a daily basis, running errands or seeking one favour or another. Olawale (9:76) noted that "the relationship between political godfatherism and their adopted sons is usually transactional in nature; it is a case of 'you rub my back, and I rub your back', as Nigerians say. Like every businesspersons, godfathers invest in their 'godsons' and expect returns after elections. This is often through juicy ministerial appointments, contracts, land allocations, sharing of political influence and power with incumbents, and if the accusations against some of them are to be taken seriously, unjustified demands for allocation of state financial resources". The favours a godfather demands and get from his godson are for strategic reasons. In most cases, he asks the right to nominate about eight (8) percent of those to serve in the cabinet of his godson. Many godfathers also ensure that they control the majority of the members of state houses of assembly in Nigeria and they readily use these people to threaten the governors with impeachment any time there is a disagreement. Nigerian political godfathers make more money from the political process than any other persons. As the principal godsons bring monthly 'kola' (ransom fees) to their godfathers, those they imposed as commissioners, permanent secretaries, board chairmen, etc., make similar monthly payments.

However, most godfather-godson conflicts in Nigeria surface immediately after elections. This is when the 'arrange governor' is expected to begin to implement the agreement reached with his godfather. The crisis starts when the godfather becomes overbearing that the godson is unable to fulfill his mandate to the people. The godson becomes rebellious when it becomes obvious to him that the godfather would not allow him to enjoy anything from the instrumental relationship. The godfather on the other hand becomes apprehensive when he realizes that the godson does not want him to have all he wants from the government, such as jobs and contracts. Commenting on the difficulties godsons soon find themselves in after getting into office, former governor Chimaroke Nnamani, 2003 cited in Olawale (7:96) observed that "the godfather wouldn't take please on leanness of resources nor would he take the prayer of the godson for alternative personnel in recruitment in the high level and strategic positions in government because he must extort his 'pound of flesh', or power of influence in all cases".

The Nigerian styled godfather-godson relationship nearly truncated Nigerian puerile democracy in June 10th, 2003. A self-confessed godfather, Chris Uba employed thugs and Nigerian police to abduct his godson, Chris Ngige, who was the elected governor of Anambra State. Ngige'sin was his refusal to allow Chris Uba, his godfather to nominate all political appointees, take the largest share of state's allocation and instantly pay him a sum of N2.5billion the claimed cost of installing Ngige as the governor. Their loyalties embarked in a battle of 'iron' and 'steel', the state became a war zone, innocent lives were lost, houses were set ablaze and Anambra state became

ungovernable for weeks. The only solution the federal government proffered was the threat to declare a state of emergency in the state (17). The dust had nearly settled, when the self-declared 'strongman of Ibadan politics', Adedibu formally declared war against his godson, Ladoja, former governor of Oyo state (the Punch, April 15th, 2007:16). The cause of disagreement has always been disagreement over allocation of money, political appointments, and the resulting consequences were similar with the Anambra state saga. Similarly, in Ilorin, the 'institutionalized' godfather of Kwara state politics, Olusola Saraki confronted his godson, Lawal Mohammed who he installed as the governor of Kwara state in 1999. In a similar vein, Sale, 2018 cited in Ahmed and Ali (2) disclosed that same thing applied to Yobe North Senatorial District where the godfather of the ruling party in the state fielded the longest-serving senator in the state, Senator Ahmed Lawan, the Senate President. Presently, there was a serious political crisis between the present Senate President and his godfathers, Adamu Maina Waziri.

GODFATHERISM AND ITS THREAT TO THE NIGERIA'S NASCENT DEMOCRACY

Godfatherism in Nigerian politics is a contest between elitism and democracy (7). Elitism, as Welsh (18:10) argued, is "a system in which the exercise of political control by a few persons institutionalized in the structure of government and political activity. The typical godfather in Nigerian politics seeks to manipulate state officials and institutions for his own interests. Godfatherism led to the collapse of the second republic in Nigeria. The problem also led to the demise of the third republic. If care is not taken, it is going to lead to the collapse of the present democratization process in Nigeria (19). Godfather-godson relationship has become a pestilence to nascent democracy in Nigeria. Ogundiya (20:237) posits that godfatherism is "both a symptom and a cause of the violence and corruption that together permeates the political process in Nigeria. Public officials who owe their positions to the efforts of a political godfather incur a debt they are expected to repay without end throughout their tenure in office. They control state resources and polities not minding the corporate existence of the state". In fact, their activities help frustrate the basic democratic values in society and block the democratic process by obstructing selection of good and qualified candidates for elective posts thereby making the rise of the true democracy a hard nut (21).

Politics of godfatherism has a negative implication on the political arrangement of Nigeria and the citizenry. Certainly, the right to select an aspirant of their choice to rule them is run-down given the conditions in which godfathers decides who is to contest or imposed candidates of their desire on the citizens in the society. This is, to say the smallest and actual aggression to the faiths of democratic rule (22). Godfatherism is one of the most essential factors responsible for electoral malpractice in Nigeria. The godfathers assure their godsons of electoral success only to advance their social, political and economic influence. As a result, elections, especially in Nigeria's fourth republic, have become a tool for promoting the interest of the aristocrat rather than the electorates. The philosophical basis and fundamental ethos of democracy are being swept under the carpet making the Nigerian electorates to lose faith in the electoral process and the government (21). Analytically, the 2003, 2007 and 2019 general elections were adjudged to be worst elections in the history of fourth republic. This is because, the elections were

characterized by massive rigging, monetization factor, corrupt practices of electoral officers and security personnel, judicial injustice, assassination of political opponents, political thuggery, deliberate disfranchisement of the populace, outright disregard for the rule of law, political inivierar, hate speech, mobilization of religious sentiments, youth restiveness, political propaganda, multiple voting, under-aged voting, addition of unofficial ballot boxes to official ones containing already thumb printed ballot papers, chasing of voters away from constituencies where their candidates are likely to have few votes, falsification of results and forgery of figure both at polling units and collation centres, forcing some party agents at gunpoint to sign forged election results among others. What this implies is that the legitimacy of democracy as the best form of governance has been corroded.

In a democracy, the governed do not only come out to exercise their voting rights, they also have the right to be voted for. Political godfathers use their influence to block the participation of others in Nigerian politics, they are political gatekeepers: they dictate who participate in politics and under what conditions. This kind of situation promotes mediocrity and financial corruption as 'the incumbent godson is at pains to satisfy the whims and caprices of the godfather among other competing demands on the scarce resources of the government, the interest of the larger number is savagely undermined (23). In addition, Ugwu, Izueke and Obasi (15), observe that the politics of godfatherism has made development elusive to the generality of the populace. Thus, politics of godfatherism is one of the major factors orchestrating socio-economic and political crises in Nigeria's fourth republic. In Nigeria today, politics of godfatherism has affected negatively on the state democracy and democratic development (24-25). In Nigeria today, the people are progressively marginalized from decision – making because of a heavily monetized and militarized polity dominated largely by godfathers and their private militia and thugs.

THEORETICAL FRAMEWORK

This paper adopts elite theory in examining the overbearing influence of godfatherism on Nigerian nascent democratic experiences. Vilfredo Pareto developed the theory in 1935. The supposition of the theory is that power is rotated among the elites at the expense of the masses or electorates. As Pareto (26) argued, the political elites insulate and isolate themselves from their society and try as much as possible to reproduce themselves from within. They do all possible within their reach to ensure that non-elites do not join their membership. To ensure this, the political elites maintain a safe, functional distance from the rest of the society. They reproduce themselves on an individual and selective basis in a process, which Pareto specifically referred to as the 'circulation of elites'. The criteria for such elite recruitment are often parochial and the process is usually done in a manner that does not in any way compromise the traditional integrity of the dominant elite class. Pareto further argued that the dominant class often tries to frustrate any efforts at the 'collective circulation of elites' and would rather support individual recruitment.

However, Mosca (27) disagrees with Pareto that elite recruitment is only possible on an individual basis. He believes in the possibility of one social class replacing another and posited that it is possible for a non-elite member to join the elite class through

'collective social mobility'. This refers to the status that people attain because of their social, economic and professional efforts. Mosca also believes that there exists already in many societies of the world a group of people that could be referred to as 'sub-elite'. These people facilitate communication between the elite and the non-elite and are thus potential tools for relatively large-scale elite recruitment. This argument makes it possible for both sub-elite and non-elite to become recruited into the political elite class in Nigeria. The elite theory sees elites as players governing the state and national resources, and occupying key positions related to power networks (28). Thus, the perception of elite class is more carefully connected to "the Weberian knowledge of power, understood as the competence of executing one's will, even against the will of the general populous" (29:696). Godfatherism serves as a medium for such selective elite recruitment in Nigeria (7). The resultant effects of the above in Nigeria polity are under-development, abject poverty, acute youth unemployment, poor health prospects and misinterpretation of what politics ought to be.

The relevance of the elite theory to this paper is based on its ability to justify how the transition of people into the political elite class is facilitated by politics of godfatherism. Liberalism, as we have experienced in Nigeria, promotes extreme elitist democracy and money-inspired electioneering system, leaving the masses as 'onlooker' and keep denying Nigerians the much-needed institutional, socio-economic and political advancement (4). The elite theory is very much concerned with structures, especially authority structure. It is based on the assumption that elite action has a causal effect on the relationship between the state and society since the elites have greater influence/control of the state than the masses. According to Mosca (27), elite theory points to the concentration of power in the hands of a minority group which 'perform all political functions, monopolizes power and enjoys the advantages that power brings'. Thus public policy may be viewed as the value and preferences of governing elites. The Nigerian polity represents a situation where the welfare of the citizenry is grossly mortgaged for the interests of a few politicians and their mentors (godfathers). The electorates are impoverished the more, and the corrupt rich-godfathers are enriching themselves the more.

DISCUSSION

The introduction of money politics into Nigeria political system gave birth to the politics of godfatherism. Godfathers defend their adopted godsons when they run into problems, with either law enforcement agents or members of other gangs. Godfatherism sometimes manifests itself in the politics of developed countries of the world and Latin American countries in terms of some criminal underworld groups sponsoring politician during elections in return for the protection of contracts. This kind of situation is euphemistically referred to as 'party machine' politics in the American political science literature (30). Every society has a set of individuals who command respect among the people. Such individuals might not be interest in electoral contests, but somehow determines who represents the people. The acts of forceful compliance and loyalty by threat and blackmail is not involved, rather, the public accords the godson full respect and support. Godfatherism has no doubt stunted political development in Nigeria. It held governance at ransom; yet, we could not neglect the inevitability of godfathers in politics

(4). Godfather-godson relationship has become a threat to Nigeria's nascent democracy. According to Adedeji (31), democracy is a means to an end: the need is greater happiness for the people. However, in Nigeria today, very few political elites, godfathers and their thugs enjoyed the dividends of democracy, while the downwardly mobile masses was kept gaping and scrambling for survival in the midst of enormous Nigeria's wealth (4).

In Nigeria today, patron-client relationship take the primacy over the formal aspects of politics such as the rule of law, well-functioning political parties and a credible electoral system. Corroborating this view, Soyinka (32) argued that the greatest disservice former President Olusengu Obasanjo has done to the nation was to have promoted the cult of godfatherism, its illegalities, its naked violence and its corruption. Today, the Nigerian political parties neither seeks to win election nor form government but is used as platforms for the pursuit of narrow pecuniary interest of the party leadership (the godfathers). It is also imperative to accentuate that political party's manifest poor articulative and aggregative capacity, which has snowballed into cross carpeting by politicians or the formation of new political parties. Thus, a misguided proliferation of political parties has been instrumentalized by the dominant political party today to consolidate its hold on power. There is high tendency for the emergence of patron-client politics in an elitist democracy where the society is hierarchical patterned like a pyramid. Powerful political elites stand at the top and wield power in their different domain. The power flows from godfathers and they determine the power structure below them. This made politics to become riotous, difficult to manage with anarchic patterns of operations and flagrant abuse of power by both the godfathers and political parties. Godfathers were in charge of political parties and eventually constituted the monopolists that determine the outcomes of government (4).

The godfathers have successfully taken over the Nigerian political institutions, while the roles of electorates were fast diminishing. Patron-client relationship weakens political institutions, reduces economic growth and development and serves as impediments to political advancement. Godfatherism is therefore, a menace to democracy like a tick on a cow or the weed to the crops, like HIV virus in a bloodstream with a weak defense mechanism; it kills our hard-earned democracy and militates against its progress (33-34). This discussion is in line with the view of elite theory, which believes in power control within a certain group of people. In view of this, candidates that are desperate for power pledge alliance to the godfathers for a guaranteed winning ticket and as a result, the citizens experienced despair instead of hope, tragic and untimely death instead of long life, dictatorship instead of rule of law, political selection instead of credible election, insecurity instead of security and illusion instead of expectation.

CONCLUSION AND RECOMMENDATIONS

This paper has been able to reveal that politics of godfatherism is an impediment to Nigeria's nascent democracy. It has gained prominence and assumed dominant feature of electoral politics and governance in the country. Consequently, it encourages corruption, breeds acute unemployment, electoral malpractices, abject poverty and political instability. The patron-client relationship modeled a great threat to not only good governance but also the socio-economic and political development and stability of democratic governance. One of the most disturbing and damaging influences of

godfatherism in Nigeria's fourth republic was in the domain of making nonsense of a truly free, fair and credible electoral process in which the electorates by right are expected to freely elect candidates of their choice into public office to represent their interests. To achieve their goals, our political elites and their mentors (godfathers) manipulate the constitutive and regulative instrument for credible electoral contest. Credible elections are necessary to stem the tide for political decay and renewal in the country. This is because in the view of the apologists of liberal democracy, once elections are gotten right, democracy is on its way to bring consolidation and in consequences enduring peace and security will be instituted in the country. In essence, credible elections produce security, political stability and socio-economic development. Based on the foregoing, this paper therefore makes the following recommendations in order to minimize the effect of godfatherism on Nigeria's nascent democracy.

The country needs a purposeful leadership that has a vision of how to place its citizens at the centre of political project without recourse to patron-client relationship and sees acquisition of political power as not an end in itself but a means for serving the collective interest of its people regardless of their ethnic origin. In short, until a morally sound, committed and patriotic leadership emerge to lead the people honestly with the attribute of transparency, openness and people-oriented policies and programmes, Nigeria political and socio-economic development will continue to be a mirage.

Politics of godfatherism should be discouraged and our democratic institution should be reinforced to evade from the politics of godfatherism of central government policies and programmes.

Independent National Electoral Commission (INEC) should adopt the use of e-voting for all elections in the country to curtail electoral scam. This will go a long way to reduce the elections rigging and well as well encourage the interest aspirants to vie for any position of their choice without pledging alliance to the godfathers for guaranteed winning ticket.

The electoral laws in Nigeria should be reformed to mitigate the funding of political parties and their candidates by individuals and corporate organizations. This will go a long way in abrogating the phenomenon of godfatherism and democracy will thrive in the country.

Elections in Nigeria continue to suffer wanton abuses and gross violation of its sanctity. The illegal use of soldiers and the police personnel to harass citizens, to entrench anarchy, to enthrone chaos where there is order, and to intimidate and brutalize opposition political candidate and their supporters must be discouraged and outlawed.

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CORRELATING ORGANIZATIONAL WELL-BEING AND PERFORMANCE ASSESSMENT IN PUBLIC SECTOR ORGANIZATION: MANAGERIAL IMPLICATIONS FROM ITALY

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Abstract: *The concept of public value is related to different dimensions among which work and performance are of particular importance. In this work, we consider organizational well-being and the role of managerial support with reference to work, and citizens' satisfaction as a relevant factor in measuring and evaluating public performance. Using the data collected through 175 questionnaires administered to the employees of an Italian municipality, this study applies a Mediation Model to analyze the factors influencing the organizational well-being and the role of managerial support, and a Principal Component Analysis to investigate the relationship between organizational well-being and citizens' satisfaction. The results show that the lack of managerial support can induce civil servants to develop proactive behaviors, which, in turn, can lead to improve citizens' satisfaction. Consequently, we suggest the implementation of an adequate performance management system that allow managers the possibility of "remote" control which leads to civil servants' autonomy for a better perceived local governments performance by citizens.*
Keywords: *organizational well-being; performance management; managerial support; local government*

INTRODUCTION

The debate on public value is increasing during the last years, leading to the proliferation of academic publication on this subject (see, among the others, Stoker, 2006; Alford and O'Flynn, 2009; Moore, 2014; Benington, 2015). The concept of public value is related to those of public performance that involves both the organizational well-being (as a factor affecting the performance of an organization) and the citizens' satisfaction (as specific point of view in assessing public performance). In this study, we consider these two element as particularly relevant in public sector organization where the output is based on human intensive activity and, consequently, the well-being of human resources can have some impact on the citizens'satisfaction (considering that citizens are the public services users).

Despite this considerable scientific production, it is mainly oriented towards theoretical aspects, while empirical research is less developed (Hartley et al., 2017). Therefore, this work participates in the scientific debate through empirical research, trying to contribute in bridging the gap highlighted by the literature. Particularly, the goal of this work is:

- to analyze the factors impacting the organizational well-being in a public sector organization and the role of managerial support;
- to investigate if the well-being factors of civil servants can be related to the citizens' (dis)satisfaction using public services.

To this end, on the basis of the theoretical framework related to the process of public value creation (Moore, 1995; Meynhardt, 2009), we consider two aspects related to it: organizational well-being, with a specific focus on the role of the public management, and citizens' satisfaction. Employees of an Italian municipality consider the first aspect through the analysis of n.175 questionnaires filled in, in order to highlight the role of managerial support in defining civil servants' performance. Furthermore, applying the explorative methodology of principal component analysis, we investigate the relationship between factors affecting civil servants' well-being and citizens' satisfaction.

This paper is structured as follows. Section 2 contains a literature review helpful to define the research questions that guide this work. Section 3 concerns the data and measures used in the study and section 4 explains methodology applied and the results obtained. Finally, section 6 proposes some final remarks.

THEORETICAL FRAMEWORK AND RESEARCH QUESTIONS

During the last 25 years, literature has provided many contributions on public value, public values and creating public value (see, among the others, Bozeman, 2002; Jorgenson et al., 2007; Alford and Hughes, 2008). Moore (1995) initially defined public value as the public management equivalent of shareholder value. More recently, Moore (2014) elaborates the philosophical bases of his approach to public value, which represent the premises for what he defines as "public value accounting".

Among the different dimensions related to public value, it is useful to highlight the relevance of work in development processes of public value (Boyte and Kari, 1996). The work activity can be declined into several meanings: as a source of personal fulfillment and psychological well-being, as a way through which to serve others and as a means to build and support basic public goods and resources, becoming an essential component of citizenship (Budd, 2014). Typically, the vision of work as a merely private affair, that private marketplace can govern better, is too narrow. In fact, work could be seen as a public activity that is the object of public values, especially in nonmarket institutions that are able to create publicly valuable outcomes related to work. A particular element that can affect job performance and satisfaction is represented by the supervisor's role. Managerial support can play a significant role both on organizational well-being and on civil servants' satisfaction on the job (Jin et al., 2016).

The concept of value is strictly related to that of performance (Kroll and Moynihan, 2015). According to Moore (1995), public value primarily results from government performance, since citizens expect from their governments a combination of

a set of public value determinants as high-performing, service-oriented public bureaucracies, efficiency and effectiveness, etc. Consequently, the level of satisfaction of citizens' expectations has taken on an increasingly important role as a factor in measuring and evaluating public performance and value.

These brief references to literature contributions on public value theory, highlight the relevance of two aspects:

1 – the role of managerial support in determining workers' performance in public administrations and how proactive behaviors shape this relation;

2 – the relation between the civil servants' well-being and the citizens' point of view in performance assessment process (as peculiar point of view on the creation of public value).

With regard to the first point (the role of managerial support on workers' performance, as sources of public value), especially in the Public Sector where the output is mainly represented by public services (thus based on human intensive activities), the contribution of public employees' motivation/satisfaction (De Simone et al., 2016) to the public value creation process is clear. With specific reference to managerial support, it occurs when employees perceive their manager as a support to do their job well or implement the development of resources in the individual (Tymon, Stumpf, Smith, 2011). Mitchell et al. (2001) showed the importance of manager-employee relationships in engaging workers in the organization. Gomez and Rosen (2001) found that a good relationship between employees and superior is associated with higher levels of psychological empowerment. The relationship between employee and employer can be considered as an exchange between employee efforts for socio-emotional benefits (for example, estimate and approval) and economic benefits (for example, salary increase) (Rousseau, 1989; Schein, 1980). The norm of reciprocity requires employees receiving increased benefits from their work organizations to compensate their employer with higher work performance (Eisenberg et al., 1986). In fact, providing large amounts of support can be considered as an investment based on the expectation that the other partner can reciprocate generously (Gouldner, 1960). Support has also been shown to strengthen the positive relationship between social skills and job performance (Hochwarter, Witt, Treadway, & Ferris, 2006) and trust and helping behavior (Choi, 2006). Furthermore, if the support is perceived as high, it is possible that cyclical interactions will occur such that the employees engage in mutually beneficial actions within the group (Wallace et al.2009). Employees provide their skills and motivations with the aim of earning something in return. More specifically, the workplace can be considered a market in which people engage in different performance in order to obtain a favorable return on investment (Rusbult and Farrell, 1983; Rusbult, Farrell, Rogers and Mainous, 1988). In addition, managerial support was also considered as an antecedent to an intrinsic reward (Tymon et al. 2010). This return would include pay, of course, but also includes more intangible rewards, such as esteem, dignity, and personal power (Cropanzano and Schminke, 2000). For this reason, individuals should be especially attentive to the interpersonal climate at work.

From these literature premises, the first research question arises:

RQ1: What is the role of managerial support in determining workers' performance in public administrations and how proactive behaviors shape this relation?

With reference to the second point (the relation between the civil servants' well-being and the citizens' satisfaction), well-being plays a very important role in workers' health (Di Fabio et al., 2016). Avallone (2005) defines organizational well-being as "*the set of cultural core, processes and organizational practices that animate the dynamics of coexistence in work contexts by promoting, maintaining and improving the quality of life and the degree of physical, psychological well-being and social of working communities*" (Avallone, 2005). However, when can an organization be considered healthy? Different studies showed that a healthy organization should have diverse features: healthy and welcoming workplace, clear and consistent objectives with operational practices, collaborative work environment, and fair treatment both in terms of remuneration and in terms of responsibilities. The variables that influence well-being in the public administration are different and can help to understand how well-being - uneasiness is produced "*objectively*" within them (Galluccio, 2009). An example of variables that influence the well-being in organizations can be the comfort of the working environment (therefore also the prevention of accidents and work risks), the clarity and consistency of the objectives, the enhancement of skills, access to information, work-life balance, workload, factors that fuel possible psychosocial distress, workers' status, time and organization of work, training and career development, etc. In organizations' context, the theme of well-being within working contexts and workers is widespread: work is intended as a mean that allows the worker to achieve psycho-social well-being (Gregori, et al., 2012). In 1997, Mitchell demonstrated how satisfied worker and a comfortable and participatory atmosphere were essential characteristics of efficient organizational structures. Over the years, organizational well-being has been measured according to the variables of physical, mental and job satisfaction.

In relation to the citizens' point of view in performance assessment process, citizens and citizenship are becoming a central aspect in public management (Osborne, 2010) as well as the attention posed to the performance measurement can be considered a significant element that contributes to developing public value (Alford and O'Flynn, 2009). Measuring a contribution to public value creation implies assessing if that contribution has an impact on individual expectation (Meynhardt, 2009). From this derives the relevance of considering the satisfaction level of the users of public services. Furthermore, the citizens' role is expanding from voters to customer, event to problem-solvers and co-creators that are directly involved in public value creation process (Denhardt and Denhardt, 2011). According to Denhardt and Denhardt (2015), citizens' involvement in public processes to improve service quality is an indispensable element in creating public value, also arguing about the opportunity of individuals judging on their own interests. Furthermore, the little or no consideration towards the priority that public managers should give to citizen satisfaction leads to generate public disvalue (Esposito and Ricci, 2015). Therefore, performance measurement and management approaches should consider citizens' contribution (Kroll and Moynihan, 2015) in terms of correlation between performance measurement and citizen satisfaction (Kelly and Swindell, 2002). This also derives from the pressure that public managers must face to be more accountable and that implies to measure customer satisfaction with public services to assess performance. In order to use correctly performance information deriving from public services' recipients, public managers should differentiate among the types of

interactions that citizens have with public service providers: citizens who have direct interaction with a public service provider probably express a service quality evaluation different from citizens that consume the services through an indirect interaction (Brown, 2007).

Considering both the recalled literature on workers' well-being and on citizens' satisfaction and the RQ1, we develop the following second research question:

RQ2: "Is there a relationship between organizational well-being of civil servants and citizens' satisfaction?"

DATA AND MEASURES

Data. Data were collected through a cross-sectional study. The questionnaire for data collection was administered to all civil servants (no. 453) of a municipality in southern Italy (95.269 inhabitants) during the year 2018. The final sample was composed by 175 individuals (response rate 39%). Analyses were performed by deleting rows with missing data and employees that did not explicate the organizational field. Socio-demographic and employment features of the sample are presented in the following figures (the missing answers have not been counted and represented).

Figure 1 Sample characteristic: gender

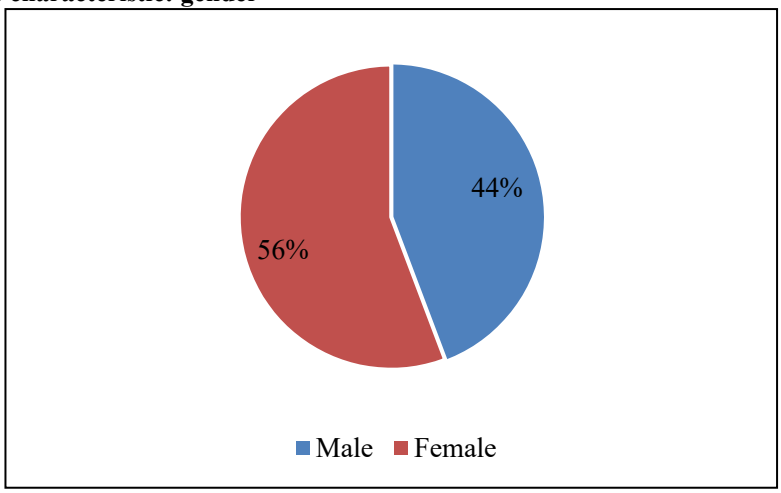


Figure 2 Sample characteristic: education

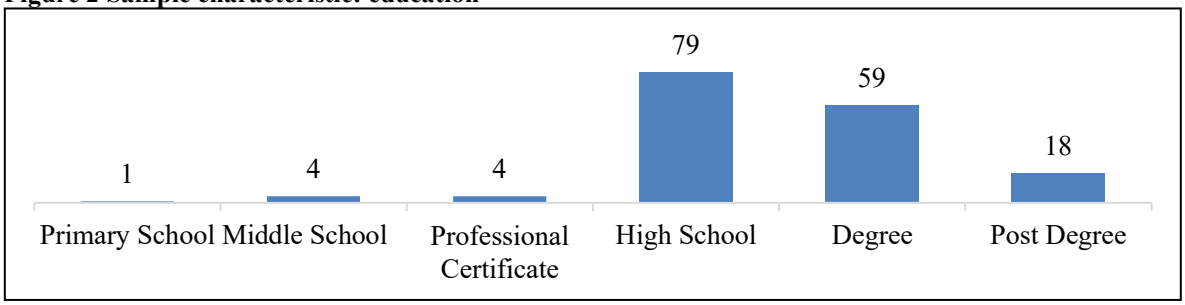


Figure 3 Sample characteristic: marital status

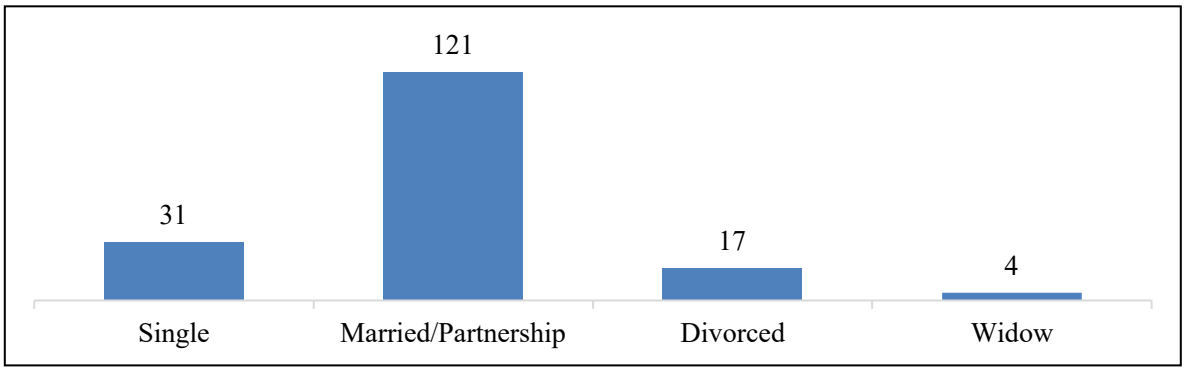


Figure 4 Sample characteristic: occupation term

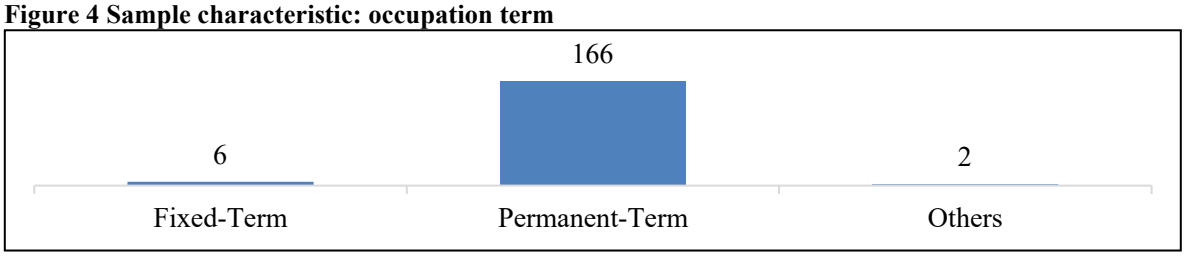


Figure 5 Sample characteristic: occupational role

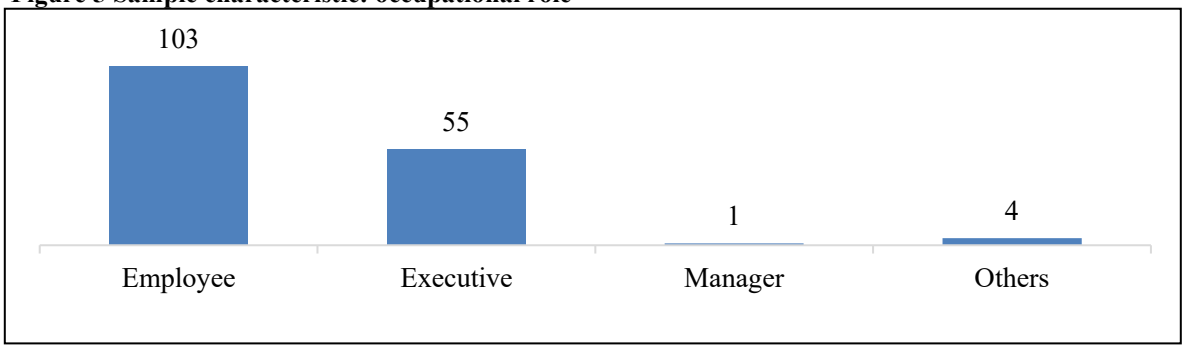
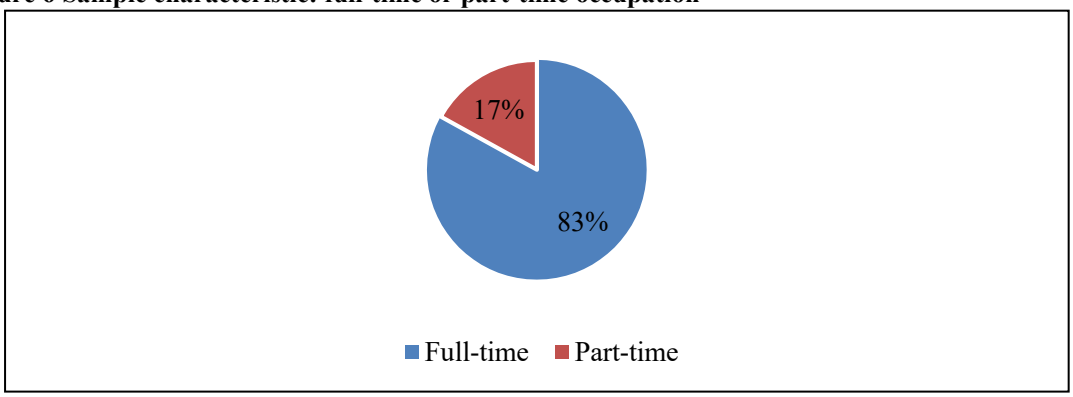


Figure 6 Sample characteristic: full-time or part-time occupation



As highlighted in *Figure 1*, 56% of the sample was male. In terms of education, the most frequent levels were High-School Diploma (47,9%), Degree (35,8%) and Post-Degree (10,9%). The majority of the sample was married or in a partnership (69,9%) and had a long-term contract (95,4%). Furthermore, 62% were employee, 33,1% executive and had a full-time working time (83%). The mean of age was 50,73%, while the seniority average was almost 21 years.

Analyses were performed by considering the whole dataset for the mediation model, while for the PCA data were splitted by the different work sector. More specifically:

- 29 individuals for CDR 1 – General and institutional affairs and Litigation;
- 13 individuals for CDR 4 - Tributes and Local Taxation;
- 8 individuals for CDR 7 - Demographic and Statistical Services and Cemetery Services;
- 47 individuals for CDR 9 - Local police;
- 32 individuals for CDR 10 - Welfare, Social housing and Public Education;
- 27 individuals for CDR 14 - Land Planning and Development, Procurement and contracts;
- 10 individuals for CDR 16 - Cultural Policies, Economic Development, Sport and Tourism;
- 8 individuals for CDR 20 - Environment, Hygiene and Health and Public Greenery.

Measures. All the respondents answered to a questionnaire characterized by different variables, in order to study the connection between public sector and organizational well-being. Variables were organized in different section based on item taken from validated scales. More specifically, item comprised the following constructs:

Job Crafting, through items from questionnaire of Tims, Bakker and Derks (2012). The questionnaire is composed by 13 items rated on a 5-point Likert scale: the range is from 1 (never) to 5 (always). The items are divided into 3 sub-dimensions: *seeking resources* (from 1 to 6), *seeking challenges* (7-8) and reducing *hindering demands* (from 10 to 13).

HSE Questionnaire, consisting of 35 items divided into the following constructs: *demands* (items 3-6-9-12-16-18-22), *control* (items 2-10-15-19-25-30), *managerial support* (items 8-23-29-33-35), *peer support* (7-24-27-31), *relationships* (items 5-14-21-34), *role* (items 1-4-11-13-17), *change* (items 26-28-32). The answer scale is a 5-point Likert scale, where 1 represents “never” and 5 represent “always”.

Individual Work Performance, through items from questionnaire of Koopmans (2014). The questionnaire is composed by 13 items that survey the construct "*task performance*" (from 1 to 5 items) and "*contextual performance*" (from 6 to 13 items). There is a 5-point Likert scale, where 1 is “strongly disagree” and 5 is “strongly agree”.

Job satisfaction is investigated by an item whose response scale goes from a minimum which is 1 to a maximum which is 7.

Positive Work Behaviours, developed by Griffin, Neal and Parker (2007) and composed by 3 items rated on a 5-point Likert scale (1 = “completely agree”; 5= “completely disagree”) that concern a sub-dimension of “*individual task adaptivity*” and the other 3 items rated on a 5-point Likert scale (1 = “strongly agree”; 5= “strongly disagree”) that concern a sub-dimension of “*individual task proactivity*”.

Managerial support, through questionnaire by Hammer et al. (2009). The items are divided into 4 sub-dimensions: *emotional support* (from item 1 to item 4), *instrumental support* (from item 5 to item 7), *role model* (from item 8 to item 10) and *creative work-family management* (item 11). The answers are evaluated on a 7-point Likert scale, where 1 represent "strongly disagree" and 7 "strongly agree". Total managerial support is the sum of the four dimensions.
Psychological well-being that is investigated through 14 items that have a response scale ranging from 0 to 5 (0 = "never", 1= "once or twice", 2= "about once a week", 3= "about once or twice a week", 4= "almost every day", 5= "every day").

The questionnaire ended with a demographical section with information about gender, age, educational level, working sector, civil status, contract type, professional category, seniority.

Table 1 Variables of the study

Variables	Construct	Definition
Seeking resources	Job Crafting	Way to meet the workplace demands in order to achieve the objectives of the work. Examples are seeking feedback from colleagues and superiors, seeking social support.
Seeking challenges	Job Crafting	Behaviors (e.g. looking for new challenging activities or take on assignment or responsibilities) that increase motivation promote autonomy and facilitate learning.
Reducing demands	Job Crafting	Reducing demands is a health protection mechanism when job demands become excessive. This behavior has negative effect on motivation and work commitment.
Demands	HSE	Workplace problems such as workload, work rates, work patterns and working environment.
Control	HSE	Individual autonomy in the work (e.g. to have a say in what to do or be able to take a break).
Managerial support	HSE	Encouragement or resources provided by the organization's managerial line.
Peer support	HSE	Encouragement or emotional support provided by colleagues.
Relationship	HSE	Promoting positive working practices aimed at avoid conflict or dealing with unpleasant behaviors.
Role	HSE	Individual clearness about the job role and how the organization makes sure there is no role conflict.
Change	HSE	Characteristics of the change within the organization (management, communication).
Task performance	Individual Work Performance	Proficiency through which individuals perform the core or technical task to job.
Contextual performance	Individual Work Performance	Behaviors and actions supporting the organizational, psychological and social environment in which the technical core operates.
Adaptivity	Positive Work Behaviours	Individual adaptation to organizational change or role changes.
Proactivity	Positive Work Behaviours	Individual autonomy action in order to anticipate or initiate change in the work system.

Emotional support	Managerial support	Perception superior, or perception of feeling comfortable in communication with the boss (when necessary) considers that one's feelings.
Instrumental support	Managerial support	Supervisor support, level of response to an individual employee's work and family needs in the form of day-to-day management transactions.
Creative work-family management	Managerial support	Set of actions implemented by the managerial line in order to modify the job to meet the employee's family needs. These actions include changing in working hours, places or ways of carrying out work activities.
Psychological well-being	Psychological well-being	Various aspects of the individual's life including: self-acceptance, attribution of meaning to life experience, environmental mastery, purpose in life, positive relationships with others, personal growth and autonomy.

METHODOLOGY AND RESULTS

Data were analysed using Process (version 3.0) and R-Studio (Version 1.1.463). In order to test the different research questions, we performed:

- A mediation model, to investigate the relation between managerial support and self-evaluated contextual performance and the role of proactivity behaviors in this relation within public administrations;
- A Principal Component Analysis, a multivariate technique which allow to estimate the loading of each variable in determining a common factor, linked with a specific customer satisfaction.

The Mediation Model

The first aim of this study (summarized by RQ1) focuses primarily on the relation between three variables: proactive workers' actions, or job constructing, as mediator, contextual work performance (as outcome) and managerial support (as predictor). Job constructing is defined as the ability to proactively model one's work and requires the worker to adapt to the challenges and demands of the job. In fact, the variable "Job Crafting" was conceptualized in different dimension, as "seeking resources", "seeking challenges" and "reducing demands" (Petrou et al., 2012). According to Demerouti et al. (2001), job demands refer to "*physical, psychological, social or organizational aspects of work*" that involve physical and psychological effort; while job resources are all those "*physical, psychological, social or organizational*" aspects such as reducing the workload and the physical and psychological costs required, stimulating personal growth and career development, etc.

In particular, the "seeking resources" includes all those proactive behaviors implemented to reach specific resources. An example of behavior that recalls this dimension is asking for information from associate or supervisor, looking for a learning space, etc. ("*I ask my colleagues for advice*"). Understanding positively the stressors leads to the perception of the challenge. Podsakoff, LePine and Le Pine (2007) identified "obstacle" and "challenge" stressors. The former has a negative impact on job satisfaction and contribute to increasing turnover; while the latter have positive effects on working well-being. When a job becomes too demanding, requests are considered obstacles and

efforts are made to implement strategies to protect one's health ("*I ask for additional work*"). Finally, the "reducing demands" includes behaviors that minimize aspects of work that are demanding from an emotional, physical and mental point of view or that reduce the workload ("*I make sure my job is not very intense emotionally*").

The second variable considered is the "Individual Work Performance" (IWP), intended as that set of behaviors implemented by the individual to achieve the organizational objectives. (Koopmans et al., 2012). Two dimensions characterize the IWP: the "contextual performance" and the "task performance". The contextual performance are actions aimed at supporting the organization ("*You have accepted demanding tasks when available*"); the task performance, on the other hand, is the competence with which a central activity is performed in the work ("*You have been able to distinguish the main issues from the less important ones*") (Koopmans et al., 2014). According to Koopmans (2014), two other dimensions determine the IWP: "adaptive performance", which refers to the ability of the worker to adapt to organizational changes, and "counterproductive work behaviors", which damage the well-being of the organization. An example of counterproductive behavior is absenteeism, the use of substances, theft, etc.

The third construct is managerial support, intended as a set of supervisor's behaviors towards worker. It is a construct characterized by four dimensions: "emotional support" ("*My supervisor takes time to get to know my personal needs*"), "instrumental support" ("*I can rely on my supervisor to help me with scheduling conflicts if I need it*"), role modeling behaviors ("*My supervisor is a good work-non-work balance model*") and creative work-family management, actions of the manager to structure the work so that employees and the organization benefit ("*My supervisor thinks about how work in my department can be organized to jointly benefit employees and the company*"). From different studies emerged how managerial support is related to family-work conflict and job satisfaction. Through this behaviors, the worker feels he is loved and appreciated and consequently organizational well-being increases.

In order to test the RQ1 firstly we conducted correlation analyses in order to investigate relations between the variables involved in our hypotheses.

Table 2 Correlation analysis between variables involved in the mediatingmodel

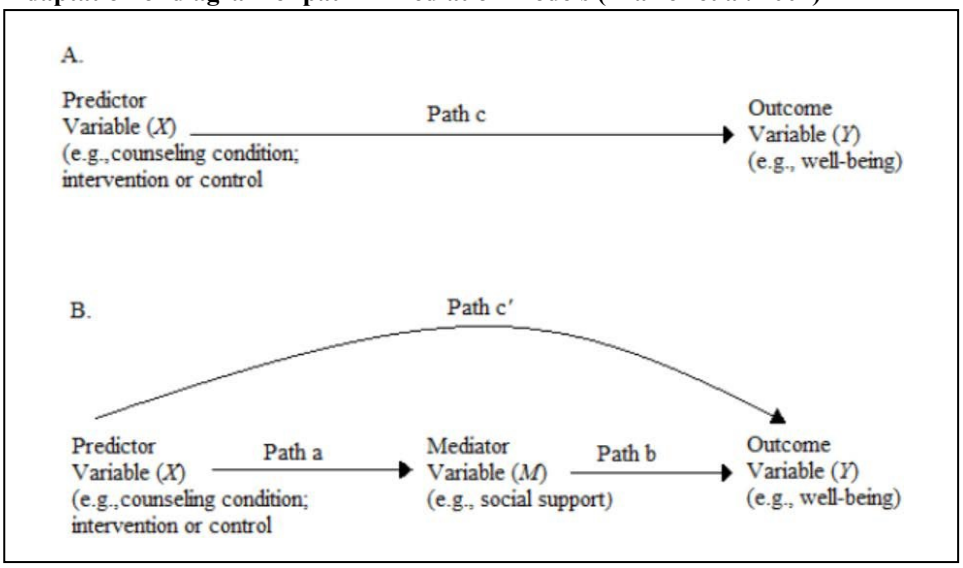
	1.	2.	3.
Contextual performance			
Managerial support	,034		
Seeking challenges	,195**	-,159*	

**. p.value < 0,01
*. p.value < 0,05

Table 2 highlights the significance of the correlation between the variables in the model. In particular, contextual performance is not correlated with managerial support (.034, not significant), while it is positively correlated with seeking challenges (.195, p.value < .001). Furthermore, managerial support showed a negative association with

seeking challenges (-.159, p.value <.05). Secondly, we tested the mediating effects of seeking challenges between manager support and contextual performance. Mediating effects can be measured three equation models, assuming that a variable can mediate the relation between a predictor and an outcome one.

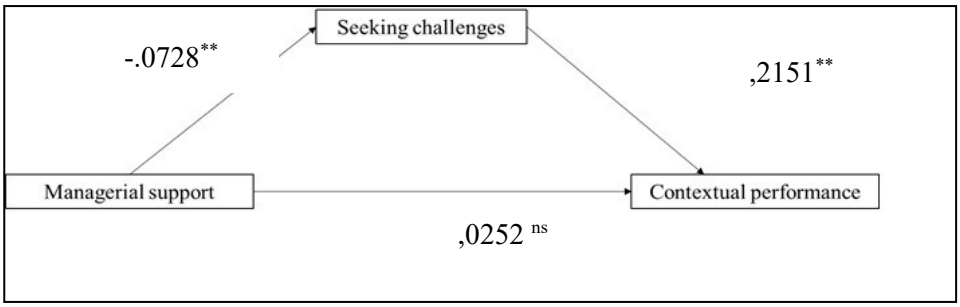
Figure 7 Adaptation of diagram of path in mediation models (Frazier et al. 2004)



In the first step, a simple regression model is performed between a predictor variable X and an outcome variable Y, assuming that the first has a significant effect on the second one. In the second step, the mediator variable is connected to the predictor variable (Path a, Figure 7). In the third step, the mediator variable is related with the outcome variable (Path b, Figure 7). In order to have a significant mediation, the intensity of the relation between the predictor and the outcome should be significantly reduced (or not significant) when the mediator is added to the model.

Mediation models were performed using Process and confirmed with R Studio. The model considers *managerial support* as X variable and *contextual performance* as Y variable. Mediator variable is job constructing, more specifically in the dimension of *seeking challenges* (challenging demands). In order to assess the mediation effect of seeking challenges, beta coefficients (β), Lower Confidence Interval (LLCI), Upper Confidence Interval (ULCI) and Goodness of Fit (R^2) were tested.

Figure 8 Mediation model



The results showed the existence of a *total mediation effect* of seeking challenges in the relation between managerial support and contextual performance. In fact, introduction of the mediator made significant the effect of managerial support on contextual performance through seeking challenges. In particular, the direct effect of managerial support (X) on contextual performance (Y) has a coefficient of .0252, but it is not significant because the confidence interval comprises the 0 as value.

The relation between managerial support and seeking challenges (a) is negative (β = -.0728) and has a p.value < .05. Moreover, the one between seeking challenges and contextual performance (b) has the same intensity (.2151) and p.value <.001. The goodness of fit of the model is about 20%. In order to make more solid the analysis performed, coefficients were estimated through bootstrap validation (bootstrap resamples = 5000).

Table 3 Estimation through bootstrap validation

Relations	Coefficient	p.value	LLCI	ULCI
Managerial support - Seeking challenges	-.0728	.0415	-.1427	-.0028
Seeking challenges - Contextual performance	.2151	.0181	.0372	.3929
Managerial support - Contextual performance (Direct effect, *c'*)	.0252	.5426	-.0563	.1066

PRINCIPAL COMPONENT ANALYSIS

In order to answer RQ2, the relationship between the factors of organizational well-being of civil servants and the level (%) of citizens' satisfaction of each sector considered, has been investigated. To this end, a Principal Component Analysis (PCA) has been developed. PCA is a multivariate and explorative analysis technique whose goal is to reduce the complexity of a phenomenon by trying to minimize lost information. PCA identifies new synthesis variables, factors or dimensions, which consist of a linear combination of the starting variables. Each new factor will be influenced by the starting variables through the absolute contributions, or loadings.

Table 4 shows the percentage of citizens' satisfaction for each sectors analyzed. This value has been supplied by the local government that obtained it through its customer satisfaction detection system. In particular, for the year 2018, this system was fed by 3.708 questionnaires submitted to the users of the services provided by the municipality to measure their level of satisfaction. The analysis of the answers collected through the questionnaires allowed the municipality to determine the level of citizens' satisfaction for each of its sectors (Table 4).

Table 4 Citizens' satisfaction level

Local Government Sector	Citizens' satisfaction
CDR 1 – General and institutional affairs and Litigation	88%
CDR 4 - Tributes and Local Taxation	77%
CDR 7 - Demographic and Statistical Services and Cemetery Services	98%
CDR 9 - Local police	73%

CDR 10 - Welfare, Social housing and Public Education	81%
CDR 14 - Land Planning and Development, Procurement and contracts	72%
CDR 16 - Cultural Policies, Economic Development, Sport and Tourism	78%
CDR 20 - Environment, Hygiene and Health and Public Greenery	78%

Tables from 5 to 12 show only the significant loadings, by considering as cut-off of absolute contributions the value 2. The starting variables of the technique are those explained in Table 1, or connected with the well-being in organization issue.

Table 5 CDR 1 (88%)

Variables	Loadings	p.value
Seeking job resources	12,16	< .001
Change (HSE)	11,91	< .001
Proactivity	9,74	< .001
Relationship (HSE)	9,65	< .001
Emotional support (Manager)	9,34	< .001

Table 6 CDR 4 (77%)

Variables	Loading	p.value
Proactivity	11,27	< .001
Adaptivity	8,99	<.05
Control (HSE)	8,94	<.05
Change (HSE)	8,76	<.05
Reducing job demands	8,7	<.05

Table 7 CDR 7 (98%)

Variables	Loading	p.value
Relationship (HSE)	8,54	<.001
Role (HSE)	8,26	<.05
Managerial support	8,14	<.05

Table 8 CDR 9 (73%)

Variables	Loading	p.value
Managerial support	13,04	<.001
Emotional support (Manager)	11,7	<.001
Adaptivity	10,44	<.001

Table 9 CDR 10 (81%)

Variables	Loading	p.value
Emotional support (Manager)	11,77	<.001
Managerial support (HSE)	11,14	<.001
Seeking resources	9,69	<.001
Change (HSE)	8,07	<.001

Table 10 CDR 14 (72%)

Variables	Loading	p.value
Managerial support (HSE)	11,44	<.001
Change (HSE)	9,57	<.001
Emotional support (Manager)	9,52	<.001
Seeking resources	9,47	<.001

Table 11 CDR 16 (78%)

Variables	Loading	p.value
Emotional support (Manager)	10,98	<.001
Relationship (HSE)	8,96	<.05
Managerial support	8,04	<.05

Table 12 CDR 20 (78%)

Variables	Loading	p.value
Change (HSE)	12,9	<.001
Managerial support (HSE)	11,21	<.05
Emotional support (Manager)	10,15	<.05

As showed in the Tables from 5 to 12, we performed one Principal Component Analysis for each sector composing the organization of the local government analyzed, in order to test the weight of the single variables in determining the only one factor chosen. We represented the variables with a significant p. value, less than .05 and less than .001. In order to facilitate the discussion of results, only variables with the biggest loading were interpreted (to see all the loadings, please consult the Appendix).

CDR 1 - General and institutional affairs and Litigation had a citizens' satisfaction of 88%. The results of PCA showed a fundamental importance in determining the dimension of variables as seeking resources, change, proactivity, relationship, and emotional support. The customer satisfaction, in this case, seems to be influenced by a general dimension with different polarities, as proactivity and crafting of own work, importance of the capacity of facing the change and emotional-relational aspects.

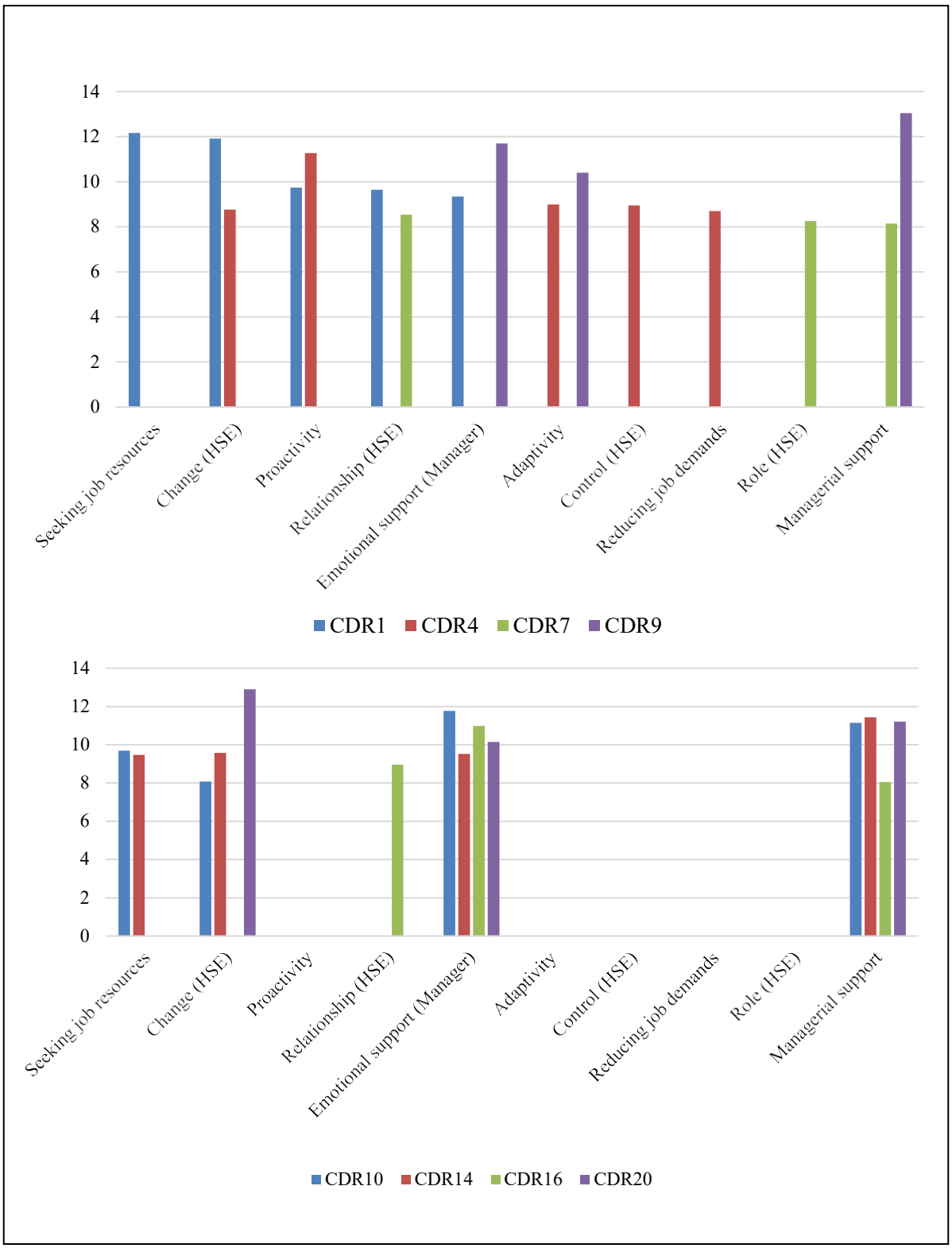
CDR 4 - Tributes and Local Taxation had a citizens' satisfaction of 77%. This sector is strongly influenced by proactivity, adaptivity, control, change and reducing demands. In terms of general dimension, customer satisfaction seems to be intensely determined by a proactivity-crafting polarity, and a tendency of adaptivity and facing change-personal autonomy in the work.

CDR 7 - Demographic and Statistical Services and Cemetery Services (citizens' satisfaction = 98%) is mainly characterized by relationship, role, and managerial support. This sector has the biggest customer satisfaction, and is influenced by a dimension apparently characterized by a social aspect and clearness of the tasks (role).

CDR 9 is the Local police sector, where the citizens' satisfaction is about 73%. The results show that it is strongly influenced by managerial and emotional support and adaptivity. The dimension is polarized on supportive relations by the manager and positive work behaviours, as the capacity of the worker to adapt himself/herself to different situations.

CDR 10 (Welfare, Social housing and Public Education sector, citizens' satisfaction = 81%) is mostly influenced by emotional and managerial support, seeking resources and change management. In this case the dimension performed through PCA has a component strongly based on supportive and emotive environment, search of social feedback and change coping strategies.
CDR 14 (Land Planning and Development, Procurement and contracts sector, citizens' satisfaction = 72%) seems to be influenced by managerial and emotional support, change and seeking resources. Even in this case the emerged dimension is characterized by a supportive and emotive environment, search of social feedback and change coping strategies.
CDR 16 - Cultural Policies, Economic Development, Sport and Tourism, with a customer satisfaction of 78%, showed higher loadings of emotional support, relationship and managerial support. The dimension appears to be characterized by a polarity mostly based on the social and emotive aspect.
Finally, CDR 20 (Environment, Hygiene and Health and Public Greenery sector, citizens' satisfaction = 78%) is influenced by change, managerial and emotional support. In this case, the dimension has two polarities: a supportive-emotional one and a change management one (*Figure 4*).

Figure 9 Variables influencing Principal Component Analysis Dimension in the investigation of the relationship between citizens' satisfaction and civil servants' well-being


14
12
10
8
6
4
2
0
Seeking job resources
Change (HSE)
Proactivity
Relationship (HSE)
Emotional support (Manager)
Adaptivity
Control (HSE)
Reducing job demands
Role (HSE)
Managerial support
CDR1
CDR4
CDR7
CDR9
14
12
10
8
6
4
2
0
Seeking job resources
Change (HSE)
Proactivity
Relationship (HSE)
Emotional support (Manager)
Adaptivity
Control (HSE)
Reducing job demands
Role (HSE)
Managerial support
CDR10
CDR14
CDR16
CDR20

CONCLUSION

The concept of public value is related to different dimensions among which work - as a tool for the development of public value - is of particular importance (Boyte and Kari, 1996) together with the supervisor's role that can affect job performance and satisfaction (Jin et al., 2016). The process of development of public value is also connected to that of performance (Kroll and Moynihan, 2015). In fact, according to Moore (1995), public value primarily results from government performance, since citizens expect from their governments a combination of a set of public value determinants. Consequently, the level of satisfaction of citizens' expectations has taken on an increasingly important role as a factor in measuring and evaluating public performance and value.

From these premises, the aims of this work arise: 1 – understanding the role of managerial support in determining civil servants' performance in public administrations and how proactive behaviors shape this relation; 2 – investigating the relation between the civil servants' well-being and the citizens' satisfaction.

With reference to point 1, managerial support and overall supportive supervision are generally considered predictors of proactive behaviors, as theory of planned behaviour suggested (Shin, Y., & Kim, M. J.; 2015). At the same time, different studies affirmed that supportive managers could influence the perception of being empowered by workers (Parker, L. E., & Price, R. H.; 1994).

In this study, we found an apparently counterintuitive outcome: managerial support had a negative impact on proactive action, more specifically on the capacity of a worker to seek more challenges, projects and collaborations. This result could propose an important new point of view to reflect on the situation of public administration. As proposed by Van der Wal, the 21st century can be considered, in terms of public administrations, as a VUCA world, or characterized by volatility, uncertainty, complexity and ambiguity (Van der Wal; 2017). In this kind of context, the role of employee become very crucial, especially in cases where manager support is low or not well perceived. In these cases, workers can develop new strategies to handle issues, to increase their coping strategies and promote new challenges. For this reason, the full mediation model analysed assume a key role: proactive behaviours do not depend on managerial support, but increase when supportive work conditions are not present. At the same time, we found that managerial support has no impact on contextual performance, but it is influenced by proactive behaviours (Ingusci, Spagnoli, Zito, Colombo, Cortese; 2019). This in an important implication, because in a public administration world characterized by volatility, uncertainty, complexity and ambiguity, the role of proactive and adaptive workers is the most important based on contextual performance (Ingusci, Callea, Cortese, Zito, Borgogni, Cenciotti, Signore, Ciavolino, Demerouti; 2019). In this sense, job-crafting interventions could positively afflict public organizational performance (Petrou, Demerouti, Schaufeli; 2018; Van den Heuvel, Demerouti, Peeters; 2015; Van Wingerden; 2017).

With reference to point 2, results provided by the investigation between citizens' satisfaction and organizational well-being of civil servants highlighted that variables, which mostly influence the principal component analysis dimension, are those connected with some tendency cluster, as:

- supportive and emotional relationship with manager;
- proactivity actions, in particular seeking resources (in terms of social relations) and reducing demands, or hindrance work behaviours;
- change management and adaptivity to the context;
- skills clearness and decisional autonomy.

The Mediation Model showed that managerial support had a negative impact on proactive action, while, in many sectors of the investigated local government, the CPA highlighted managerial support had a positive influence on citizens' satisfaction. This allows us to conclude that the lack of managerial support can induce civil servants to develop proactive behaviors, which, in turn, can lead to greater attention towards citizens, improving the satisfaction of the users of public services and thus increasing public value. In support of this conclusion, CPA also showed that proactivity actions and decisional autonomy of the respondents (civil servants) influenced citizens' satisfaction.

Ultimately, the results obtained show that public managers should define a support for civil servants, that promotes autonomy and, consequently, the assumption of responsibility by their subordinates, without loosing their possibility to check the process of public services providing. This could be assisted through the development of an adequate performance management system (Cepiku et al., 2017) with managerial tools to make the decision-making process effective and efficient (Di Vaio et al., 2019). This system should allow managers the possibility of "remote" control, which leaves civil servants a certain degree of autonomy. In this way, public managers should contribute to improve the perceived local governments performance by citizens and, consequently, to increase public value.

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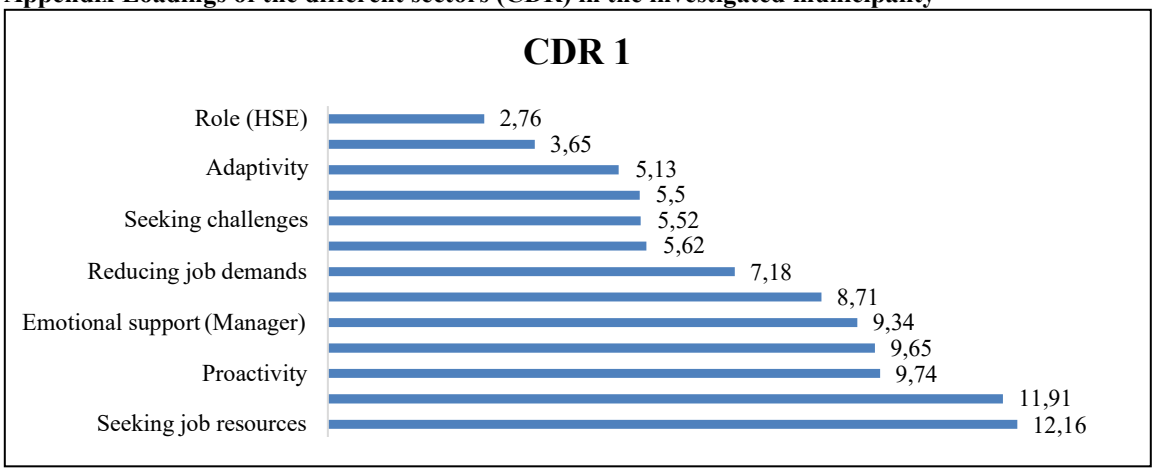
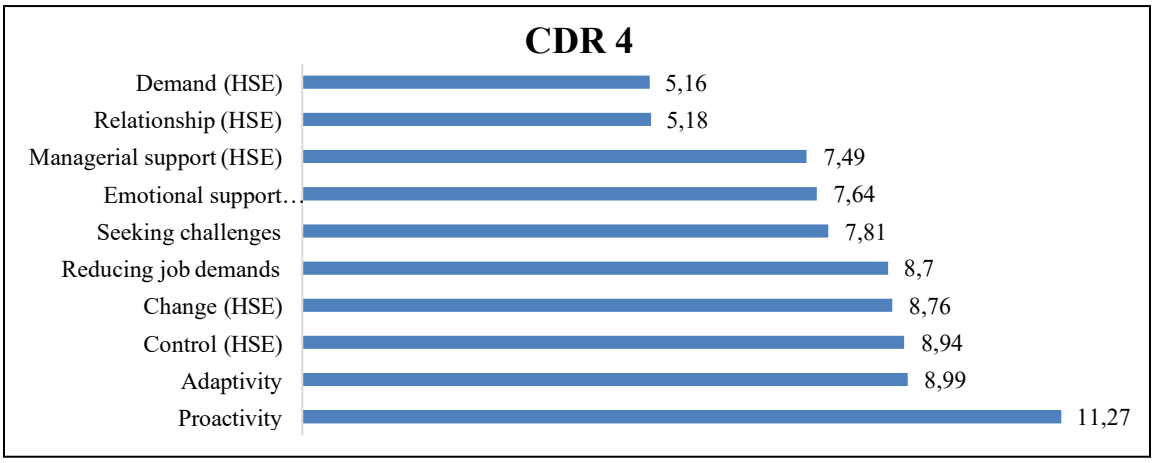
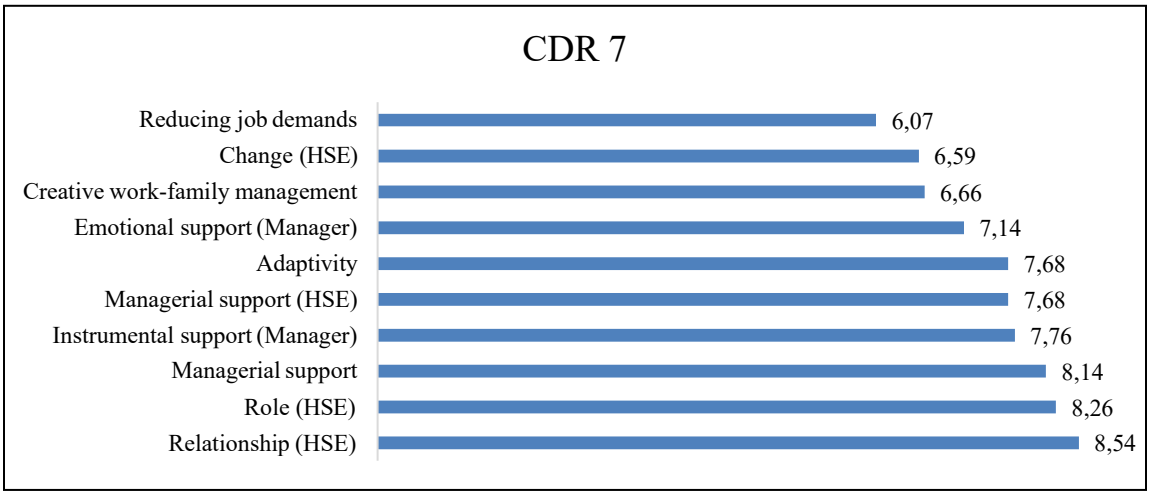
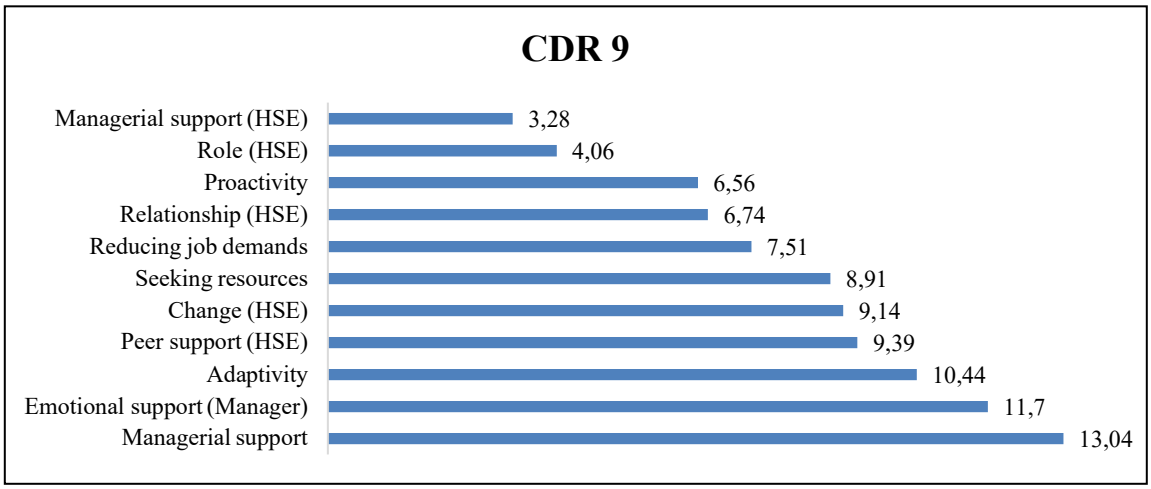
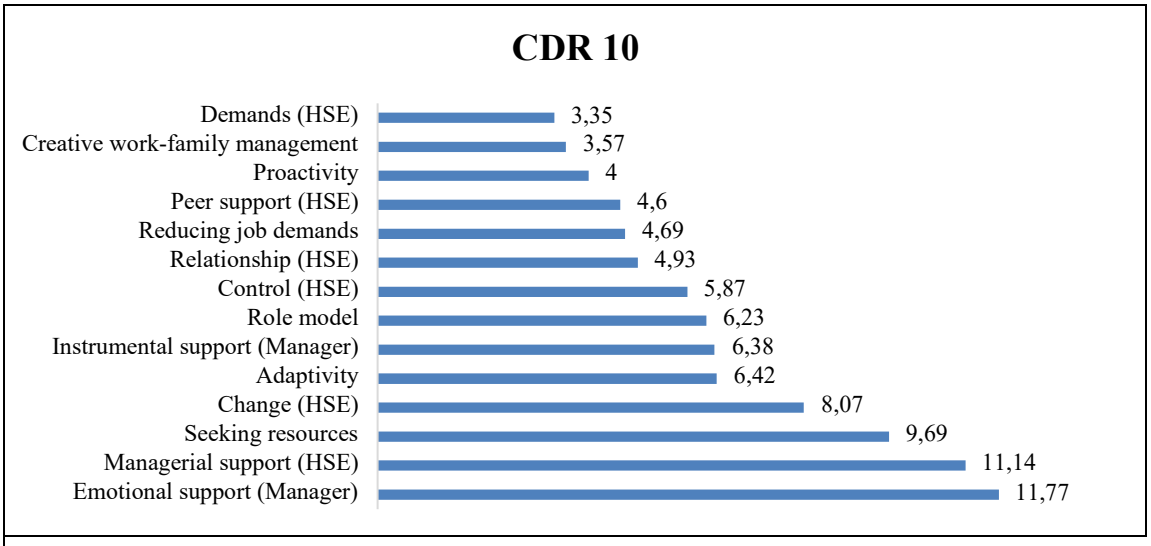
Appendix Loadings of the different sectors (CDR) in the investigated municipality

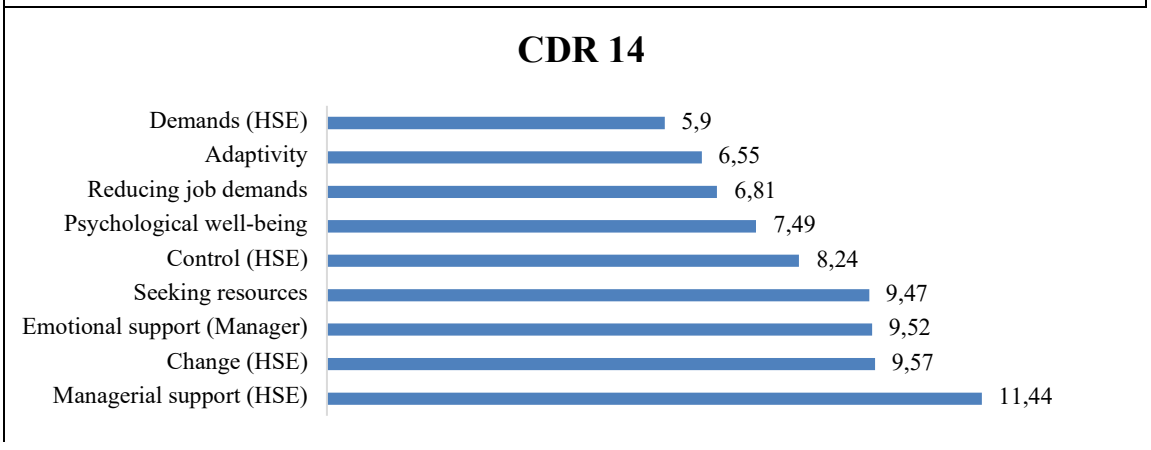


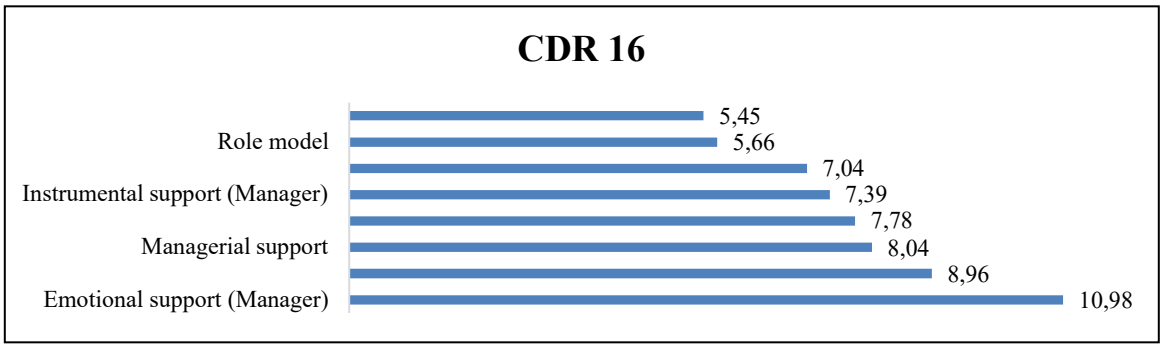


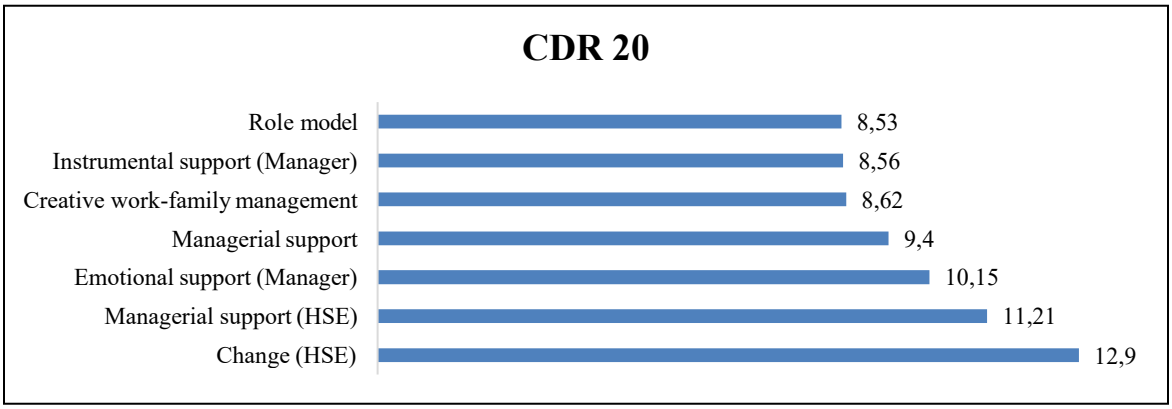



CDR 9
Managerial support (HSE) 3,28
Role (HSE) 4,06
Proactivity 6,56
Relationship (HSE) 6,74
Reducing job demands 7,51
Seeking resources 8,91
Change (HSE) 9,14
Peer support (HSE) 9,39
Adaptivity 10,44
Emotional support (Manager) 11,7
Managerial support 13,04


CDR 10
Demands (HSE) 3,35
Creative work-family management 3,57
Proactivity 4
Peer support (HSE) 4,6
Reducing job demands 4,69
Relationship (HSE) 4,93
Control (HSE) 5,87
Role model 6,23
Instrumental support (Manager) 6,38
Adaptivity 6,42
Change (HSE) 8,07
Seeking resources 9,69
Managerial support (HSE) 11,14
Emotional support (Manager) 11,77


CDR 14
Demands (HSE) 5,9
Adaptivity 6,55
Reducing job demands 6,81
Psychological well-being 7,49
Control (HSE) 8,24
Seeking resources 9,47
Emotional support (Manager) 9,52
Change (HSE) 9,57
Managerial support (HSE) 11,44





THE SOCIAL MEDIA PRESENCE OF ROMANIA'S MAIN MUNICIPALITIES

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Abstract: *The present paper is analysing the measure in which several municipalities from Romania are using social media networks to reach out to their constituents and inviting them to have a collaborative talk on local public administration. The way people are communicating has changed in the last years due to the mainstream use of social media. Municipalities are adapting and start using social media in order to engage citizens with messages because of the high number of users of these networks. One of the most popular such network is Facebook and we are going to concentrate our attention on the presence of municipalities in this network. Municipalities engaging citizens on social media brings additional transparency to governance while increasing the degree of interaction and information.*
Keywords: *social media in municipalities, public administration, Facebook*

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INTRODUCTION

The transmission of information over the Internet used to be unidirectional in most cases. This means that users would be provided information primarily via web pages with none or little ways of interacting with that content. Recent internet statistics are showing that in February 2019 there were 10.4 million Facebook users in Romania, which accounts for more than half the population, with the largest group of 2.7 million being aged 25 to 34 (NapoleonCat, 2019). Social media is offering municipalities the opportunity to create an agora where to meet with its constituents and engage in open dialogue but this proves to be a difficult task for most municipalities from reasons pertaining to both parties. Romania has a high Internet connectivity with over 5 million landline connections and 12 million 4g connections (Ancom, 2020) at a total population of over 19 million. This high connectivity makes Internet a desirable means of communications, as it is widespread in the public. Adding the context of the high usage of Facebook in Romania makes Facebook the social media of choice through which municipalities could connect with citizens.

Social media has been defined in multiple ways and we believe one of the most accepted definitions has been provided by the European Commission stating that social

media refers to the use of online and mobile technologies in order to transform communication into dialogue while being able to take many forms like forums, blogs, wiki's, podcasts, photos and videos or online surveys (European Commission, 2012).

The adoption of social media by the public sector is a gradual process that is highly dependent on whether a specific set of rules were established for social media communication (Mergel & Bretschneider, 2013). While initially municipalities would interact with social media at an informal level they will start establishing a set of rules and procedures in order to make communication formal and compartmentalized across the departments they have are given permission to interact via the social media page. The most usual channel for municipalities to post online information is via websites in a static manner. The technological advancement in website building started to offer features like building forums or online forms and questionnaires but there is the problem of the citizen getting to them and registering, while on social media the citizens are already registered in the network. The hierarchical structure of public administration and fixed reporting structures with predefined operating procedures has been an impediment for the widespread use of social media in municipalities.

The online presence of municipalities in a collaborative manner which can support debating ideas, feedback on projects or holding a bi-directional conversation with citizens can be accomplished in two ways: develop an in-house collaborative portal or use an existing social media network. Each of them comes with a series of advantages and disadvantages. For the in-house developed solution there is the advantage of the municipality to set the platform rules and have total control, but the downside is that a limited number of citizens would register in the platform. The benefit of trying to create an agora in a social network is that many citizens from the city already have an account in that platform, that they are usually highly active in the social network and they could easily become members of follow the municipality's online page, but this comes with the disadvantage of the municipality not being able to set the platform's rules.

The need for a defined set of rules and advice for municipalities engaging citizens on social media was addressed in a series of projects where the national agency of public workers was involved (Burcea & Hârțescu, 2014). The result of such projects provided guidance to local administration in starting their social media activity in the good spirit of communication and transparency. This guidebook also takes note of the lack of resources and the restrictive legislative framework in which data protection comes on top for reasons not to use social media in public administration. Another project focused on preparing the national e-administration system in Romania by offering public administration employees training in using social media and other software suited for public administration (E-Administratie, 2014). Communication strategies for public administration in Romania are address in a long-term digital diplomacy project, which promotes the integration of social media in public institutions (Digital Diplomacy, 2020). Goal achievement via social media was analyzed by Clarke (2011) who devised a series of governing principles for the use of social media in public administration: open information, open feedback, open innovation and open conversation. Open information is about the municipality providing information on public services in ways that are easy to find and use, open feedback states that the public should have the opportunity for a fair say about the public services, open conversation would support online consultation and

collaboration and lastly open innovation addresses the changing expectations and brings concepts into practice.

Previous studies on Romanian municipalities addressed the social media usage of two small province town halls from a number of posts perspective (Urs, 2015) while another looked at the way the National Institute of Statistics uses Facebook (Nicolescu & Mirică, 2015). The National Institute of Statistic has developed internally a strategy for online communication using social media tools starting in 2014, being one of Romania's top institutions with notable social media presence.

This present study aims to present the presence of local public administration on Facebook for Romania's top five municipalities while putting the numbers into context with the number of citizens living in the respective cities.

METHODOLOGY

When choosing the social network we looked at the most used networks in Romania and Facebook has the most users (NapoleonCat.com, 2019). With close to 10 million user accounts from Romania, Facebook is the undisputed leader of social network use in Romania. The second network is a professional one, LinkedIn, which has close to 2 million users. Still, the number of users was not the most relevant as we had to choose the network where municipalities are present too and in this case Facebook is still the network in which we find official pages for the biggest municipalities.

In this case study, we decided to analyze the Facebook activity of the ten biggest municipalities in Romania: Bucharest, Iasi, Timisoara, Cluj-Napoca, Constanta, Craiova, Galati, Brasov, Ploiesti and Oradea. The case study was conducted in June 2020.

Most of the data was obtained directly from the Facebook page of the municipality while in some cases we used additional data from facebrands.ro which is a enrollement based service for social media monitoring and also a software tool called FacePager(Facepager, 2020) which is a tool that is able to extract public Facebook information. Both qualitative and quantitative methods are being used to analyze the data. The use of the quantitative method has been used by collecting data on each municipality regarding the number of citizens, the existance of its own social media page and the correctness and accuracy of data, the existance of a municipalite website that links to the social media page of the municipality, the number of social media followers and the total number of likes, the number of check-ins of citizens on the municipalities page. The number of citizens is the population of the city, the number of followers is the number of Facebook user accounts who are following the municipalities page, the number of likes is the total number of likes the municipality received for its posts, the number of check-ins is the number of times citizens used geographical tagging to place themselves at the location of the city hall and the people talking about the page metric is the number of people sharing stories or posts of the municipalities page, mentioning the page, posting on the page wall or asnwering a posted question.

Amongst the specific objectives of this paper we mention the intent to support the use of social media as a means of communication between citizens and municipalities, to provide a measure of the reach the social media pages of municipalies have amongst its citizens and to increase awarenes over the importance of collaborative engagement between municipalities and citizens.

RESULTS

From the city sample, we see that Bucharest stands out regarding the total population number. By far, Bucharest is the biggest city in the country and is about six times bigger than the second city. With a population of over 2 million it has only 24k followers on Facebook which means about 1.1% of the city's populations is following or liking posts on the page, while just 0.015% of the population have checked in at the city hall and 0.005% are talking about the city hall. These are quite small numbers when reporting to the total number of residents.

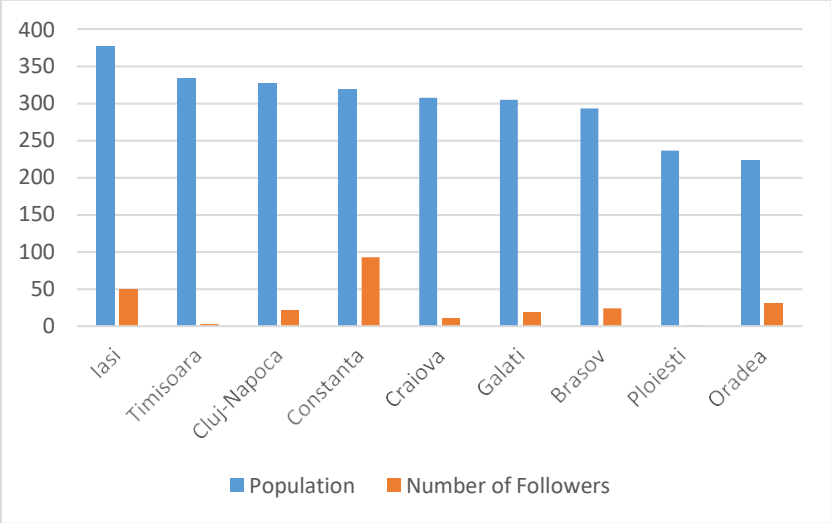
Table 1 Social media stats of municipalities

City Hall	Population	Number of Followers	Number of likes	Number of check-ins	People talking about the page
Bucharest	2.134.075	24.539	22.539	3.152	1.129
Iasi	377.132	50.442	45.495	8.797	2.240
Timisoara	333.587	2.956	2.999	204	106
Cluj-Napoca	327.563	21.811	19.695	2.128	947
Constanta	318.371	93.015	79.823	980	19.338
Craiova	307.638	10.802	10.191	3.284	-
Galati	305.177	18.596	17.778	482	658
Brasov	293.291	23.891	22.688	8.537	1.366
Ploiesti	236.649	1.071	976	-	15
Oradea	223.465	30.453	27.976	6.421	5.596

Source: data collection

There are a few cities that stand out when looking at the number of likes reported to the population size and they are Iasi, Constanta and Oradea. Iasi has about a number of followers which is almost 15% of the city's size, Constanta is by far the best with a little over 30% and Oradea falling just short of 30%. We can see that Constanta, which is a highly touristic city, has the most followers out of all the cities, which may partially be because of its touristic potential and many users from different region of the country might follow the city halls page. Oradea is a city known for smart city innovations and the use of digitalization in public administration, thus is no surprise that its social media stats are above average.

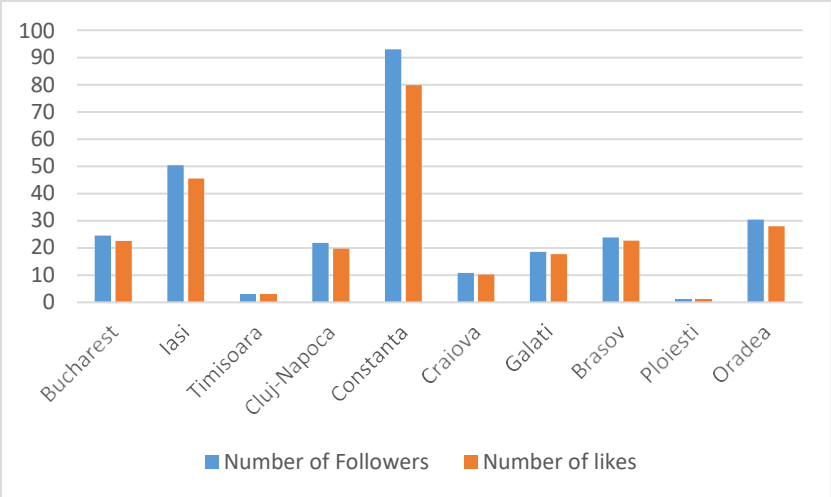
Figure 1 Population reported to number of followers (thousands)



The page with the most likes is also the page of the municipality of Constanta with close to 80k likes followed at a distance by Iasi with 45k and a few other cities in the 20k range. The number of check-ins shows the popularity of the page amongst citizens and their willingness to share with their network the fact that they are visiting the city hall. The most popular city halls are Iasi and Brasov with over 8k check-ins followed by Oradea with 6k and Craiova with 3k.

The number of people talking about the page shows the viral potential of the page. If the page posts or stories are being shared, they have the chance of being seen by a large network of people. By far the most popular page is the page of the municipality of Constanta, which has close to 20k such instances of shared content, followed by Oradea with over 5k while the other municipalities fall way behind.

Figure 2. Followers reported to likes (thousand)



Overall, we see great disparities amongst the social media activities or Romanian municipalities. We see better results for touristic cities and cities with good digitalization initiatives while other cities are falling short in social media presence and reach. Overall, we believe this is the result of the lack of a centralized process.

CONCLUSIONS

The results showed us a high presence of the main municipalities from Romania in Facebook social media pages as all of them had a page. We see great relative discrepancies between the numbers of followers some pages have reported to the number of citizens living in the city. As Bucharest is the largest city in number of people, it does not have a number of followers to match the average of the other cities. Although over 20k followers is not a bad number amongst our case study group, when reporting that to the population it falls amongst the last.

There is good social media gain in capitalizing on a city's strengths, like tourism in the case of Constanta. The touristic aspect of the city can be leveraged to incite users to talk online about the city or share posts from its page, while strong digitalization initiatives like in Oradea are lifting up even the social media presence aspect of digitalization.

There is room for great progress for the municipalities in this area as posts from the pages range over a variety of categories, from landscapes around the city to city council meeting to street cleaning schedules, which in most cases are posted as they happen. A clear social media strategy should be defined by the municipalities to include specific topics that the municipality engages citizens over social media. On the social aspect, none of the pages had a dedicated survey section where to gauge public opinion.

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FINANCE

THE WOMEN ENTREPRENEURS FAILURE FACTORS IN THE CASE OF GOJJAM ZONES

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Abstract: *This study was designed to assess the Women Entrepreneurs Failure Factors in the Case of Gojjam Zones. In particular, the study investigated how Individual reason, Competition, General environment and corporate policy affect women entrepreneurs in small businesses. Therefore, to understand and analyze business failure factors a case of Women Entrepreneurs in the case of Gojjam Zones, the researchers have adopted a quantitative research approach. The researcher collects data through questioner. Information from the participants was analyzed by using statistical package for social sciences. For this study the target populations are business companies operating in Gojjam Zones for the last five years (from 2006-2010 as of Ethiopian Calendar). Do you to data unavailability we failed to know exactly the number of women owned/managed business in the two zones/West Gojjam & East Gojjam/, the Sample Size of this study is determined using Infinite Population (where the population is greater than 50,000) sample size determination formula of Godden, (2004). Based on the formula a sample of 384 women entrepreneurs was chosen for the study. Both tables and frequency distributions were utilized to draw valid conclusions. From the study that individual characteristics/Motivations, managerial skills, knowledge & experience, and fear of failure/ of a woman were statistically significant at 5% level of significance. Hence, immediate environment factors are significant at 5% level of significance and thus these variables have an effect on women entrepreneurs' business failure. However, availability of infrastructure and government incentives were found to be statistically insignificant. Finally depicts existence of marketing strategy, financing strategy incentives to motivate employees, and cooperation among partners are statically significant at 5% level of significance thus they have an effect on business failure. However, withdrawal of a partner is not a significant variable.*
Keywords: *Ethiopian, Entrepreneurs, failure factors, Women, busines*

BACKGROUND OF THE STUDY

Entrepreneurship is increasingly recognized as an important driver of economic growth, productivity, innovation and employment, and it is widely accepted as a key aspect of economic dynamism. Transforming ideas into economic opportunities is the decisive issue of entrepreneurship**.** History shows that pragmatic people who are entrepreneurial and innovative, able to exploit opportunities and willing to take risks (Hisrich, 2005) have significantly advanced economic progress.

The role of entrepreneurship and an entrepreneurial culture in economic and social development has changed over years and it has become increasingly apparent that

entrepreneurship indeed contributes to economic development**.** Nevertheless, men (ILO, 2006) owned the significant numbers of enterprises. In other words, it was not common to see women-owned businesses worldwide especially in developing countries like Ethiopia. The idea and practice of women entrepreneurship is a recent phenomenon. Until the 1980 is little was known about women entrepreneurship in both practice and research, which made its focus entirely on men. Scientific discourse about women's entrepreneurship and women owned and run organizations is just the development of 1980s (ILO, 2006)

According to World Bank development indicators report as cited in Kipnis,2013 women in Ethiopia represent about half of the population, initiatives that support women's economic empowerment are critical to the country's economic development. The Ethiopian Government adopted a National Policy on Ethiopian Women in 1993 with the aim of eliminating gender and cultural biases that hinder women from participating equally in the economic development of the country. In 2000, Ethiopia took steps towards supporting women's economic activities by reforming its family law, eliminating a husband's ability to deny permission for his wife to work outside the home, and requiring both spouses to agree in administering family property. These changes have shifted women's economic activities toward occupations involving higher skills, longer work hours, and more options to work outside the home. Today, women represent 47 percent of the workforce, and 81 percent of women participate in the labor force, compared to 90 percent of men. The majority of women work in the informal sector, representing 60 percent of informal enterprise owners.

Most of women engaged in formal business (those recognized by trade and transport office) are currently engaged in Medium, Small and Micro Enterprises (MSME). MSME sector in Ethiopia provides livelihood to 49% of all employed women in Ethiopia. Thus, this sector requires critical support from government policies and regulations as they contribute significantly to the national economy in terms of job creation, skills development and the alleviation of abject poverty. In addition, owner's business skills, availability of finance, appropriate business trainings, and market matter most for their survival. (Eshetu and Zeleke, 2008)

STATEMENT OF THE PROBLEM

Surveys conducted by the World Bank (2005), the World Trade Organization (2002), the Ministry of Finance and Economic Development of Ethiopia (2002) as quoted by Eshetu and Zeleke(2008), women entrepreneurs in Ethiopia initiate new businesses and enterprises at a rate twice as fast as men, and that they find it harder at the outset to grow their business to the next higher level. Survival of a business firm is defined as the ability of the firm to continue its operation and remain in business during a certain period of time in a competitive market.

In addition, research findings of Eshetu and Zeleke (2008) on key determinants of survival between 1996 and 2001 shows that 22% of business had failed within five years, of which women (78%) operated the majority of businesses failed. Female-headed firms that ceased operation had an average lifetime of 3.2 years, while male-headed firms that ceased operation had an average lifetime of 3.9 years. They concluded that businesses operated by women were 2.52 times more likely to fail in comparison with businesses

operated by men. This will raise the question why female headed business easily fail as compared to male headed business while women are good at creating new business twice as fast as men. Thus knowing the root cause will increases women's role in the economy. Therefore, this study seeks to answer: what factors contribute to women Entrepreneurs/business to fail?

Research Questions

The following are the research questions:
What are the significant internal causes of business failure?
What are the significant external causes of business failure?
Do failure factors vary significantly between successful & failed business?
Do failure factors significantly vary among different sizes of companies?

Objectives of the Study

The main objective of this study is to identify Women Entrepreneurs failure factors in the case of Gojjam Zones
This study has the following specific objectives
To assess internal factors causing business to fail.
To identify significant external factors causing business to fail.
To identify factors which vary significantly between operational & failed business.
To investigate whether factors identified significantly vary among sizes of companies.

LITERATURE REVIEW

An overview to entrepreneurship

As globalization reshapes the international economic landscape and technological change creates greater uncertainty in the world economy, the dynamism of entrepreneurship is believed to be able to help to meet the new economic, social and environmental challenges. Governments increasingly consider entrepreneurship and innovation to be the cornerstones of a competitive national economy, and in most countries entrepreneurship policies are in fact closely connected to innovation policies, with which they share many characteristics and challenges. The dynamic process of new firm creation introduces and disperses innovative products, processes and organizational structures throughout the economy. Entrepreneurship objectives and policies nevertheless differ considerably among countries, owing to different policy needs and diverse perspectives on what is meant by entrepreneurship. In support of this, Schumpeter (2005) stated that:

> *In some countries, entrepreneurship is linked to regional development programs and the creation of new firms is stimulated to boost employment and output in depressed regions. In others, entrepreneurship is a key element of strategies designed to facilitate the participation of certain target groups, such as women or minorities, in the economy. Some countries simply seek to increase firm creation as such, while others set out to support high-growth firms. While many countries are making serious efforts to support entrepreneurship, results appear to vary. Countries want to understand the determinants of and obstacles to entrepreneurship, and they need to analyse the effectiveness of different policy approaches (pp.)*

The lack of internationally comparable empirical evidence has however constrained our understanding of entrepreneurship and many questions remain unanswered. Ultimately, policymaking must be guided, as far as possible, by evidence and facts.

According to Ponstadt (1998), Entrepreneurship is the dynamic process of creating incremental wealth. This wealth is created by individuals who assume the major risks in terms of equity, time and/or career commitments of providing values for some product or service. The product or service may/may not be new or unique but the entrepreneur must infuse value by securing and allocating the necessary skills and resources.

Furthermore, Timmons (1989) defined it in such a way that: Entrepreneurship is the process of creating and building something of value from practically nothing. That is, it is the process of creating or seizing an opportunity and pursuing it regardless of the resources currently controlled. It involves the definition, creation and distribution of values and benefits to individuals, groups, organizations and society. Entrepreneurship is very rarely a get rich-quick proposition (not short term); rather it is one of building long-term value and durable cash flow streams.

In addition, Hisrich (2005:) defined entrepreneurship as follows: Entrepreneurship is the process of creating something new with value by devoting the necessary time and effort, assuming the accompanying financial, psychic, and social risks, and receiving the resulting rewards of monetary and personal satisfaction and independence. From the definitions given above, it is possible to conclude that in almost all of the definitions of entrepreneurship, there is agreement that we are talking about a kind of behaviour that includes: (1) initiative taking, (2) the organizing and reorganizing of social and economic mechanisms to turn resources and situations to practical account, (3) the acceptance of risk or failure.

FACTORS AFFECTING ENTREPRENEURSHIP

Even though entrepreneurship has its own advantages, it is not free of problems. For this, there are a number of factors. Samiti (2006), Tan (2000) classified the basic factors that affect entrepreneurs in to two broad categories – economic and social.

The economic factors include competition in the market; lack of access to the market ,lack of access to raw material, lack of capital or finance, lack of marketing knowledge; lack of production/ storage space; poor infrastructure; inadequate power supply and lack of business training.

The social factors include lack of social acceptability; having limited contacts outside prejudice and class bias; society looks down upon; attitude of other employees; and relations with the work force.

Besides this, Gemechis (2007), Hisrich (2005), ILO (2009) added Social and cultural attitude towards youth entrepreneurship; entrepreneurship education; administrative and regulatory framework; and business assistance and support; barriers to access technology are crucial factors that affect entrepreneurial success.

Women entrepreneurship

Women's productive activities, particularly in industry, empower them economically and enable them to contribute more to overall development. Whether they are involved in small or medium scale production activities, or in the informal or formal sectors, women's entrepreneurial activities are not only a means for economic survival

but also have positive social repercussions for the women themselves and their environment.United Nations Industrial Development Organization (UNIDO, 2001).

In many societies, women do not enjoy the same opportunities as men. In many transitional economies, progress has been achieved in opening doors to education and health protection for women but political and economic opportunities for female entrepreneurs have remained limited. Concerted efforts are needed to enable female entrepreneurs to make better economic choices and to transform their businesses into competitive enterprises, generating income and employment through improved production (OECD, 1997).

FACTORS AFFECTING WOMEN ENTREPRENEURS' PERFORMANCE

Women Entrepreneurs have grown in large number across the globe over the last decade and increasingly the entrepreneurial potentials of women have changed the rural economies in many parts of the world. However, this does not mean that the problems are very resolved. In supportof this a review by Desta Solomon (2010), ILO (2006) and Yeshiareg Dejene identified the following factors that affect women entrepreneurs.

A. Access to finance

The average level of collateral required for a loan (173% in 2006) by banks is one of the highest in the developing world (WB 2009). It is more difficult to access finance for capital expenditure than for working capital. Access to finance is rated as one of the top three problems (60% of firms) by micro, small medium and large firms surveyed by the WB. Access to finance for MSEs is mediated through micro finance institutions since the collateral requirements of commercial banks exclude most MSEs from accessing finance from these sources. The majority of the need for business finance is met through individual savings and other informal sources and supplier credit. Access to financial services for vertical growth and diversification of activities is very limited. Micro Finance Institutions cater mainly for the lower ('economically active poor') echelon of clients while banks cater for medium and large enterprises. The growth-oriented micro and small enterprises on the one hand and the poorest on the other are not catered for. Sources of finance for women entrepreneurs are mainly informal (Equb, individual savings, borrowing from family and friends), micro finance institutions and banks.The main source of finance for starting up and expansion of women- owned enterprises is from the women's own savings (such as through Equb), loans, and contributions from family and friends.

Once in businesses women entrepreneurs' access to finance becomes a very severe constraint as individual savings are not enough for expansion and the profit generated is not large enough to allow for growth and expansion (Desta Solomon, 2010).

B. Access to markets

The ability to tap into new markets requires expertise, knowledge and contacts. Women often lack access to training, experience in on how to participate in the market place, and are therefore unable to market goods and services strategically. Thus, women-owned SMEs are often unable to take on both the production and marketing of their goods. In addition, they have often not been exposed to the international market, and therefore lack knowledge about what is internationally acceptable. The high cost of developing new business contacts and relationships in a new country or market is a big deterrent and obstacle for many SMEs, in particular women-owned businesses. Women

may also fear or face prejudice or sexual harassment, and may be restricted in their ability to travel to make contacts (UNECE, 2004).

C. Access to training

Studies have indicated that women generally are less educated than men in the micro enterprise sector are but their level of education is better in the small and medium enterprise sector. Access to training opportunities for MSEs is very limited despite the fact that several NGOs, donors and government bodies do provide training. Access to apprenticeship training and on-the-job experiences is also very limited while other services such as business extension services and counselling are generally unavailable for MSEs.The most important sources of information for MSEs are customers, suppliers, relatives and friends, non-competing similar businesses, and competitors. Information provided by institutions (such as government, chambers of commerce, etc.) is difficult to access or of little use to MSEs The training is not flexible in terms of the delivery schedule, location and language to accommodate the specific challenges that woman entrepreneurs face as mothers and carers and also training sessions are one-off events and the fact that many of the trainers are men is a major barrier for women entrepreneurs (because women prefer women trainers and husbands do not like women to be trained by men trainers); (Desta Solomon, 2010).

D. Access to networks

Women have fewer business contacts, less knowledge of how to deal with the governmental bureaucracy and less bargaining power, all of which further limit their growth. Since most women entrepreneurs operate on a small scale, and are generally not members of professional organizations or part of other networks, they often find it difficult to access information. Most existing networks are male dominated and sometimes not particularly welcoming to women but prefer to be exclusive. Even when a woman does venture into these networks, her task is often difficult because most network activities take place after regular working hours. There are hardly any women-only or women-majority networks where a woman could enter, gain confidence and move further.

E. Culture

Culture was a significant factor affecting the success of women entrepreneurs. As shown in Figure 1 above, 40% of the respondents indicated that as women they are expected to take up roles in the home rather than in the business world. Some male counterparts feel threatened if women engage in business and generate money and take up roles as breadwinners. It was established that male counterparts did not support women in their businesses. However 60% of the respondents indicated that such cultural aspects were outdated as their male counterparts needed help in generating funds for the up-keep of the family. According to Calas and Smirnich (1992) cited by Morris et al. (2006), culturally imposed attitudes regarding gender remain barriers to women in achieving higher financial rewards and status in the business world.

F. Risk taking

The total respondents 55% of women entrepreneurs cited that they were not able to assume a lot of risk because of their gender limitations. Thus, they could not venture into risky businesses. These results were consistent with those of Cliff (1998) cited by Yordanova (2011) and Adoram (2011) who found out that most women tended to be more risk averse. Morris et al (2006) found out that while generally confident, these

entrepreneurs were more risk averse and many felt a certain inadequacy in terms of their backgrounds.

RESEARCH METHODS

According to Creswell (2003), the problem that is going to be investigated in the study is used as a base for determining the research approach. If the problem is identifying factors that influence an outcome, the utility of an intervention or understanding the best predictors in outcomes, then a quantitative approach is best. Therefore, to understand and analyze business failure factors a case of Women Entrepreneurs in the case of Gojjam Zones, the researchers have adopted a quantitative research approach. Under this approach, analysis is made based on deductive reasoning, beginning with certain theory or hypotheses and drawing logical conclusions from it. Moreover, it is important to eliminate or minimize subjectivity of judgment; follow firmly the original set of research goals, arriving at more objective conclusions (Balsley, 1970).

Sampling Design

For this study the target populations are business companies operating in Gojjam Zones for the last five years (from 2006-2010 as of Ethiopian Calendar). Do you to data unavailability we failed to know exactly the number of women owned/managed business in the two zones/West Gojjam & East Gojjam/, the *Sample Size of this study is determined using Infinite Population* (where the population is greater than 50,000) sample size determination formula of Godden, (2004).

$$n = \frac{z^2 . P.q.}{e^2}$$

Where:
n = Size of Sample;
P = reasonable estimate for the key proportion to be studied;
q = 1-p;
z = standard deviation at 95% confidence level (z=1.96); and
e= acceptable error (e= ± 0.0464).

$$\text{Hence, } n = \frac{(1.96)^2 \times 0.5 \times 0.5}{(0.05)^2} = 384$$

Thus data is going to be collected from 384 randomly selected samples from six town administrations; three from each zones (namely; Debre Markos, Dejen, & Bichena from East Gojjam Zone and Dembecha, Fnote Selam & Bure from West Gojjam Zone.) The sample companies in each town would be prorated in proportion to the number of women owned/managed business.

So as to select each business company we have proposed to use snowball sampling technique for non-operational business owners and random sampling technique for business in operation.

Data Source, Collection and Method of Analysis

To meet the objective of the study the researchers primarily proposed to use primary data and secondary source of data is also to be used to some extent to get support findings. Primary data are to be gathered by questionnaires based on Ooghe and De Prijcker's (2008) model (in five-point Likert) which ask questions around four elements including general environment, immediate environment, manager/entrepreneur, and corporate policy. After checking the validity of the questionnaire to be used in this study using measurement of Cronbach's alpha , Data collected will be analyzed using descriptive statistics through the help of SPSS/Statistical Software Package for Social Science/. Open-ended questions will also be analyzed based on thematic areas. We used various statistical tests depending on the nature of data to identify significant business failure factors.

Variable Description and Measurement

Variables that explain business failure can be firm specific, industry specific, macro-economic specific and spatial or geographic factors (Maoh & Kanaroglou, 2007). Ooghe and De Prijcker (2008) classified causes of bankruptcy into four groups of factors:

- General environment (economic, technology, foreign countries, politics, and social factors),
- Immediate environment (customers, suppliers, competitors, banks and credit institutions, stockholders, and misadventure),
- Manager/entrepreneur (motivation, qualities, skills, and characteristics) and
- Corporate strategy (strategy and investments, operations, personnel, and administration).

For this research, we have proposed o use Ooghe and De Prijcker (2008) model and the variables used are described below in table:

Dimensions	**Variables**	**Explanations**
Individual	Lack of motivations	Motivation over time
	Lack of skills	Management marketing skills
	Lack of capabilities	Knowledge & Experience
	Inappropriate characteristics	Attitude, family & psychological pressures
Immediate environment	Customers issues	Customers preference, & related issues
	Suppliers issues	Accessibility & Suppliers power
	Intensity of competition	Level of sectoral competition
	Creditors issues	Accessibility & cost of credit
General environment	Economic situation	Stability of economy, inflation, interest rate
	Changing technology	Use & cost of new technology
	Inappropriate policies	Stability of rules, support of entrepreneurs
	Social factors issues	Role models, societal view on entrepreneurship, culture
Corporate policy	Strategy and investments	Sales model, pricing & business financing strategies,
	Staff issues	Staff motivation, skill & cost of labor
	Partnership issues	Exit of partner, cooperation's & rust among partners,

	Executive issues	Inappropriate financial management, marketing evaluation, assessment of duties, awareness about laws etc

After collecting all relevant data two independent sample chi-square test will be used to analyze the differences in viewpoints of operational versus failed entrepreneurs. Friedman test will also be used to compare mean ranking of two groups of entrepreneurs.

ANALYSIS OF DATA & PRESENTATION OF RESULTS

In this section findings collected from respondents has been presented using different stastical tools.

Demographic Characteristics of Respondents

As shows in table 4.1 Most of the respondents /89.8%/ were less than 30 years old and 68% of the respondents have completed secondary education. Only few number of the respondents (18%) completed technical and university education. About 64% of the respondents were married women respondents. Almost all /98%/ of women entrepreneurs were engaged in merchandising business in which majority of business owners have employed less than five employees. When the ownership structure is taken in to account all of the participants were sole proprietors and about 85% of the entrepreneurs' were earning an average annual income of less than ETB 30,000.

Table 1. Frequency Table for demographic characteristics of respondents

Age	Frequency	Percent	Valid Percent	Cumulative Percent
<30 Years	345	89.8	89.8	89.8
Valid 31-40 Years	23	6.1	6.1	95.9
41-50 Years	16	4.1	4.1	100.0
Total	384	100.0		
Educational Level	Frequency	Percent	Valid Percent	Cumulative Percent
Primary Education	54	14.0	14.0	14.0
Secondary Education	261	68.0	68.0	82.0
Valid Vocational Education	54	14.0	14.0	96.0
University Level	15	4.0	4.0	100.0
Total	384	100.0	100.0	
Marital status	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Unmarried	137	35.6	35.6	35.6
Married	247	64.4	64.4	100.0
Total	384	100.0		
Types of business	Frequency	Percent	Valid Percent	Cumulative Percent
Manufacturing	8	2.0	2.0	2.0
Valid Trade	376	98.0	98.0	100.0
Total	384	100.0	100.0	

Time engaged in the business		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	<5 Years	346	90.0	90.0	90.0
	5-7 Years	15	4.0	4.0	94.0
	7-9 Years	23	6.0	6.0	100.0
	Total	384	100.0	100.0	

No. of employees		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	<5	346	98	98	98
	5-10	8	2.0	2.0	100.0
Total		50	100.0		

Ownership status		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Sole	384	100.0	100.0	100.0

Annual revenue		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	<Br 20,000	79	20.4	20.4	20.4
	Br 21,000-30,000	251	65.3	65.3	85.7
	Br 31,000-40,000	23	6.1	6.1	91.8
	Br 41,000-50,000	23	6.1	6.1	98.0
	>Br 51,000	8	2.0	2.0	100.0
Total		50	100.0		

Source: Survey 2019

Test of Validity and Reliability

Content validity of the questionnaire on the causes of business failure was estimated by submitting the questionnaire to several academicians in the business disciplines, all of whom approved the content of the questionnaire. To test the reliability, the internal consistency of the questionnaire was assessed by Cronbach's alpha coefficient that was 0.891 for the questionnaire on the causes of business failure, and alpha equal to or greater than 0.70 was considered satisfactory.

Table 4.2: Reliability Test

Case Processing Summary

		N	%
Cases	Valid	323	84.0
	Excluded[a]	61	16.0
	Total	384	100.0

a. Listwise deletion based on all variables in the procedure.

Reliability Statistics

Cronbach's Alpha	N of Items
.891	27

T-Test Result

In addition, one sample mean t-test was used to identify those significant variables among the four variables used for the study. In each variable different likert type questions were developed. Respondents were required to provide their level of agreement through choosing one among the five options given from strongly disagree to Strongly Agree. 1 represents strongly disagree, 2 for disagree, 3 for neutral, 4 for agree

and 5 for strongly agree. Once the data were collected it have been organized and codded through the help of Stastical Software Package for Social Science /IBM SPSS Statistics 20/. The result of the study is presented as follows in line with the hypotheses proposed. As stated above four variables has been identified; namely individual characteristics, immediate environment, general environment and corporate policy. All of the variables found to be significant at 5% level of significance.

One-Sample Statistics

	N	Mean	Std. Deviation	Std. Error Mean
IndMean	384	4.6280	.40408	.05715
ComMean	384	4.3300	.72393	.10238
GenMean	384	3.3980	.48252	.06824
CorMean	384	3.5834	.45487	.06433

One-Sample Test

	Test Value = 0					
	T	df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
IndMean	80.986	383	.000	4.62800	4.5132	4.7428
ComMean	42.293	383	.000	4.33000	4.1243	4.5357
GenMean	49.796	383	.000	3.39800	3.2609	3.5351
CorMean	55.705	383	.000	3.58340	3.4541	3.7127

Ho1: Individual variables associated with the entrepreneur make no difference on business failure.

For likert type questions developed for this study, a respondent who disagrees with the issue raised will select either 1 or 2, and a one who agrees chooses will select either 4 or 5. If the respondent found to be indifferent which means if she believes the issue raised has no difference a respondent selects 3. Thus the 'neutral, response shows the respondent is indifferent to conclude either to agree/disagree. Because of this reason this point has served us a bench mark to test the level of significance for each questions.

As of Table 4.3. below all likert type questions used to measure individual characteristics/Motivations, managerial skills, knowledge & experience, and fear of failure/ of a woman were statistically significant at 5% level of significance. Which means respondents believe that individual variables do have an effect on women entrepreneurs' business failure/success.

Table 4.3. Individual Variables

One-Sample Statistics

	N	Mean	Std. Deviation	Std. Error Mean
Individual reason	384	4.92	.274	.039
IndV2	384	4.68	.819	.116
IndV3	384	4.78	.545	.077
IndV4	384	4.76	.517	.073
IndV5	384	4.00	.639	.090

One-Sample Test

	Test Value = 3					
	T	Df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Individual reason	49.540	384	.000	1.920	1.84	2.00
IndV2	14.502	384	.000	1.680	1.45	1.91
IndV3	23.074	384	.000	1.780	1.62	1.94
IndV4	24.051	384	.000	1.760	1.61	1.91
IndV5	11.068	384	.000	1.000	.82	1.18

The second variable identified to have an effect on women entrepreneurs business failure is the immediate environment which is concerned with customers, suppliers and the level of competition among firms and access to finance. Accordingly all factors are significant at 5% level of significance and thus these variables have an effect on women entrepreneurs' business failure.

Table 4. Immediate environment

One-Sample Statistics

	N	Mean	Std. Deviation	Std. Error Mean
Competition	384	4.56	.812	.115
ComV2	384	3.88	.659	.093
ComV3	384	4.66	.872	.123
ComV4	383	4.31	1.228	.175

One-Sample Test

	Test Value = 3					
	T	Df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Competition	13.582	383	.000	1.560	1.33	1.79
ComV2	9.442	383	.000	.880	.69	1.07
ComV3	13.468	383	.000	1.660	1.41	1.91
ComV4	7.444	383	.000	1.306	.95	1.66

The third variable which have an effect on women entrepreneurs' business failure is the General Environments, which describes infrastructure availability, economic situations, technological, legal, and socio cultural factors. As of Table 4.5. Inflation, technology, social & cultural factors are stastically significant and affect women entrepreneurs' failure. And availability of infrastructure and government incentives were found to be stastically insignificant.

Table 5. General Environment

One-Sample Statistics

	N	Mean	Std. Deviation	Std. Error Mean
General environment	384	2.92	.900	.127
GenV2	384	3.56	.972	.137

GenV3	384	3.56	.884	.125
GenV4	383	4.31	1.176	.168
GenV5	384	4.70	.614	.087
GenV6	383	1.39	.931	.133
GenV7	384	1.44	1.053	.149
GenV8	384	3.84	.912	.129
GenV9	383	4.61	.909	.130
GenV10	382	4.06	.385	.056
GenV11	384	2.96	.856	.121

One-Sample Test

	Test Value = 3					
	T	Df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
General environment	-.629	383	.533	-.080	-.34	.18
GenV2	4.073	383	.000	.560	.28	.84
GenV3	4.478	383	.000	.560	.31	.81
GenV4	7.773	383	.000	1.306	.97	1.64
GenV5	19.563	383	.000	1.700	1.53	1.87
GenV6	-12.118	383	.000	-1.612	-1.88	-1.34
GenV7	-10.477	383	.000	-1.560	-1.86	-1.26
GenV8	6.516	383	.000	.840	.58	1.10
GenV9	12.420	383	.000	1.612	1.35	1.87
GenV10	18.957	383	.000	1.064	.95	1.18
GenV11	-.330	383	.743	-.040	-.28	.20

The fourth variable having an effect on business failure is the corporate policy. To measure this variable seven-likert type questions were developed. The seven questions were related to the existence of marketing strategy, human resource strategy, financing strategy, motivational strategies, availability of labor at lower cost, cooperation with partners, and withdrawal of partners. The result depicts existence of marketing strategy, financing strategy incentives to motivate employees, and cooperation among partners are stastically significant at 5% level of significance thus the have an effect on business failure. However, withdrawal of partners is not a significant variable.

Table 6. Corporate Policy

One-Sample Statistics

	N	Mean	Std. Deviation	Std. Error Mean
Corprate policy	383	3.94	.517	.074
CorV2	384	2.96	.727	.103
CorV3	384	3.84	.584	.083
CorV4	384	4.44	1.033	.146
CorV5	383	3.04	.771	.111
CorV6	383	4.00	.577	.082
CorV7	383	2.85	.684	.099

One-Sample Test

	Test Value = 3					
	T	Df	Sig. (2-tailed)	Mean Difference	95% Confidence Interval of the Difference	
					Lower	Upper
Corprate policy	12.717	48	.000	.939	.79	1.09
CorV2	-.389	49	.699	-.040	-.25	.17
CorV3	10.168	49	.000	.840	.67	1.01
CorV4	9.854	49	.000	1.440	1.15	1.73
CorV5	.375	47	.710	.042	-.18	.27
CorV6	12.124	48	.000	1.000	.83	1.17
CorV7	-1.477	47	.146	-.146	-.34	.05

CONCLUSION & RECOMMENDATIONS

The following conclusions are drawn from the findings presented above

Most entrepreneurship studies have been conducted focused on successful ventures. As indicated in several studies, a deep understanding of new venture failures in a different context would provide critical information for individual entrepreneurs, venture financiers, and government policymakers. The finding of this study shows that causes of business failure are associated with individual characteristics, corporate policy, immediate environment and general environment. Among individual characteristics motivation, managerial skills, knowledge, experience, and fear of failure are found to be the major causes of business failure.

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INSTITUTIONAL QUALITY AND FINANCIAL INSTABILITY

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Abstract: *This paper assess the impact of the institutional quality on banking stability using an intensive and extensive margin analysis. The empirical study highlights that the exposure to systemic risk of financial institutions and the probability of banking crisis in a given country is positively associated with a high level of corruption, political instability and low regulatory quality. Additional, we found that the effect of the rule of law on the probability of crisis occurrences depends on the level of country development, while for the systemic risk the effect is positive in both developed and developing economies.*
Keywords: *banking crisis, systemic risk, institutional quality, rule of law, corruption, regulatory quality, political stability, logit technique*
JEL Classification: *G01, G21, G28, D02,*

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INTRODUCTION

The recent financial crisis, driven by a combination of the assets price increase and credit bubble that led to excessive leverage has gripped the global economy, highlighting the weaknesses of macroeconomic policies and banks' regulatory and supervisory frameworks. The agencies responsible for regulation, supervision and risk management did not always have specific directives and tools following these mandates, which led to international inconsistencies and policies' incoherence. Given the standard features related to financial crises found in the literature, there also may be additional country-specific dimensions that may drive financial instability. This paper looks at two measures of risks with the purpose of understanding the determinants of banking crises, and signal the role of institutions that are helping at reducing the risks of the banking crisis, or alternatively, to increase this risk. Additionally, understanding how systemic risk responds to the quality of institutions is important for assessing the overall financial stability of a country. Although rating the relative contributions of the different determinants for the financial stability is not without dispute, adding together the relevant institution's characteristics will help explain the magnitude and complexity of the banking crises, and the potential failure of different policy measures. Until now, the extent to which institutional quality is effective in strengthening financial stability and reducing the incidence of financial crises is limited. Therefore, we are interested to see if

countries with strong institutional quality have a lower probability of suffering a banking crisis and if they are less exposed to systemic risk.

Institutions' analyses and their assessments have been at the forefront of economic questions as they can explain the differences in legal rules and their successful implementation from one country to another and, further their role in enhancing banking stability, the development of the financial system, and hence the growth of the economy as a whole (Bermpei et al., 2018, Boudriga and Ghardallou, 2012, Belkhir et al. 2020). Demirguc-Kunt and Detragiache (1998, 2005) show that the occurrence of banking crises can be explained by the spread of corruption, poor law enforcement efficiency or legal system vulnerabilities. In general, poor quality of regulation and supervision frameworks leads to moral hazard problems, higher risk-taking and possible banking crises. La Porta et al. (2008) emphasise that countries with a strong legal environment are better in managing risk and achieving performance. Guillaumont and Kpodar (2006) also show that bank instability is higher in societies characterised by high inflation with the lower rule of law. After the financial crisis episode, both the developing and developed economies have stepped up the use of macroprudential policies in order to contain the risk of possible future crises and strengthen the resilience of financial stability (Akinci and Olmstead-Rumsey, 2018). Although it is commonly accepted that tighter banking regulation and supervision (Podpiera, 2004; Demirgüç-Kunt et al. 2008) would improve financial sector resilience, there is conflicting empirical evidence on the impact of regulation and supervision on financial stability (Agoraki et al., 2011; Anginer et al., 2014; Barth et al., 2004). The reason for such inconclusiveness is that this relationship could be indirectly affected by different factors. In the literature, we found that the effects of bank regulation and supervision on financial stability depend on the institutional quality (Bermpei et al., 2018, Klompe and Haan, 2014), macroeconomic environment (Klomp and Haan, 2015) and corporate governance (Laeven and Levine, 2009).

In this paper, we quantify the extensive margin of the financial instability measured in our case by the probability of banking crisis and the intensive margin of the financial instability of a country, measured by its systemic risk. Using a sample comprising of 48 countries over the 2003-2013 period, the institutional indicators provided by World Bank, the banking crisis database of Laeven and Valencia (2018) and a measure of systemic risk, we found that the institutional quality reduces the probability of banking crises and the exposure to systemic risk of financial institution. In particular, for the extensive margin analysis, we found that low level of corruption, political stability and regulatory quality are key factors in reducing the systemic risk and probability of a banking crisis, these effects being more important for developed countries. As for the rule of low, we found that it is increasing the occurrence of banking crisis for developed economies while it has a hampering effect for the emerging countries.

The intensive margin analysis projects somehow a similar story as the extensive margin analysis with few exceptions. We see that for systemic risk, controlling for corruption is more important for emerging countries than for developed ones, while for the rule of law, the effect remains positive and significant for both groups of countries, with the effect being stronger for the developed countries. Political stability, however, remains negative across the two groups of countries but is losing its significance.

This work contributes to the existing literature on identifying new factors that may lead future banking crises by examining the relationship between institutional

quality and the incidence of banking crises and systemic risk using an extensive and intensive margin analysis. The paper is organised as follows: section two describes the data, section three presents the methodology, section four discusses the results, and section five concludes.

DATA

The sample of the study is based on a balanced panel of 48 emerging and developed economies over the 2003-2013 period. This period is characterised by significant financial systems changes and at the same time by intense banking crises waves. For this analysis, we have used four World Governance Indicators provided by the World Bank (Kaufmann et al. 2009), namely Control of corruption, Rule of law, Regulatory quality and Political Stability (The definitions are taken from the following URL: http://info.worldbank.org/governance/wgi2007/faq.htm). The outcomes for the extensive and intensive margin analyses area banking crisis dummy based on the database of Laeven and Valencia (2012) and the Marginal Expected Shortfall (MES) developed by Acharya et al. (2017). As control variables, we have used a macroprudential index developed by Cerutti et al. (2017), inflation, GDP per capita growth, financial freedom and market power (Lerner index). All these variables are defined in Appendix 1.

METHODOLOGY

The paper aims to identify the institutional determinants of financial stability comparing developed and emerging economies. In particular, an extensive margin analysis is proposed to understand the role of institutions in measuring the probability of a banking crisis, while an intensive margin analysis is used to understand the relationship between institutional quality and systemic risk of a specific country.

Extensive Margin Analysis

The paper uses Laeven and Valencia (2012) database to determine the banking crises across a large sample of countries. The observed outcome variable is a dummy variable that takes value 1 if a banking crisis was occurring in country *i* at time *t*, and 0 otherwise. The benchmark model is a reduced form probability model of banking crisis (BC) in which the latent dependent variable is defined by:

$$BBBB_{iiii} = \Pr(\alpha\alpha_{ii} + \beta\beta\beta\beta\beta_{iiii} + \gamma\gamma\gamma\gamma\gamma\beta\beta_{ii,ii-1} + \theta\theta BB_{ii,ii-1}) + uu_{iiii}$$

where IQ_{it} is a set of institutions specific to country *i* at time *t*, MPI_{it-1} is an index of macroprudential policies and $C_{i;t-1}$ is a set of country-specific controls defined at time *t-1* (to avoid potential endogeneity due to simultaneity), α_i are country-specific effects and u_{it} are random logistically distributed errors. This model tests the direction of the effect of the institution quality on the risk of a banking crisis. Additionally, to the benchmark model, we test if the effects of the institutions on the probability of crises are different between emerging and developed economies.

Intensive Margin Analysis

As pointed out, the extensive margin gives only one face of the financial instability of a given country. To see what is essential for the systemic banking risk of a given country in term of institutional quality, we do an intensive margin analysis. To measure the exposure of banks to systemic risk of a given country, we have used the Marginal Expected Shortfall (MES) suggested by Acharya et al. (2017).

The benchmark model in this case is:

$$\gamma\gamma^{MMMM}_{iiii} = \alpha\alpha_{ii} + \beta\beta\beta\beta\beta_{iiii} + \gamma\gamma\gamma\gamma\gamma\gamma\beta\beta_{ii,ii-1} + \theta\theta BB_{ii,ii-1} + uu_{iiii}$$

where I_{it}, M_{it}, C_{it} and α_i are the same as in the extensive margin analysis, while u_{it} are random i.i.d. errors. As in the extensive margin analysis, we are also testing if the effects of the institutions' characteristics on the systemic risk of a country are different across emerging and developed economies.

RESULTS

Extensive margin analysis results

We start the presentation of results by looking at the effects of institutional quality on the probability of banking crises (Table 1). We also compare these effects on the risk of banking crises across emerging and developed countries. The results suggest that controlling corruption in the country is very important at containing banking distress for all the specifications. In particular, findings show that the effect is more substantial for developed economies. The results are in line with studies that found that strong regulation of corruption is improving regulatory enforcement and decrease bank risk (Oliva, 2015, Essid et al., 2014, Bermpei et al., 2018). Political stability presents similar effects as controlling for corruption, meaning that reducing conflict and political instability will lead to a decreased occurrence of the banking crisis (Compaore et al. 2020, Damania et al., 2004). Again, it is more important for developed countries. An interesting result is associated with the rule of law. In particular, the rule of low increases the probability of a banking crisis for developed economies while has a hampering effect for the emerging economies. The effect of regulatory quality is reducing the risk of banking crises and affects mostly developed countries. Consequently, strengthening the quality of the institutional environment reduces the probability of banking crises and keep the degree of financial stability (Demirguç -Kunt & Detragiache, 2005).

Financial freedom has a positive effect on the risk of banking crisis, and it has a stronger impact for developed countries meaning that financial freedom is an important determinant for banking sector fragility (Detragiache & Tressel (2008), Triki & Maktouf (2012)). The macroprudential index shows that the effects of macroprudential policies have a negative effect on the bank crisis dummy across all specifications, in this case, the effect is stronger, especially for emerging countries. The probability of the occurrence of banking crises depends on the quality of regulation and supervision framework (Belkir et al. 2020).

Table 1. Extensive margin analysis: The effects of institutional quality on the probability of banking crisis

VARIABLES	(1) Crisis dummy (all sample)	(2) Crisis dummy (emerging and developing counties)	(3) Crisis dummy (developed countries)
Control of corruption	-3.249***	-2.461**	-4.088***
	(0.262)	(0.966)	(0.298)
Political stability	-0.497***	0.505	-0.592***
	(0.129)	(0.364)	(0.163)
Rule of law	4.883***	-1.026*	7.276***
	(0.381)	(0.535)	(0.520)
Regulatory quality	-0.708**	1.262	-1.650***
	(0.344)	(1.087)	(0.393)
Financial freedom	0.309***	0.156	0.302***
	(0.0511)	(0.247)	(0.0549)
Macroprudential Index	-0.0833*	-0.429***	0.0495
	(0.0440)	(0.102)	(0.0563)
L.inflation	3.436***	5.124***	2.792*
	(0.948)	(1.546)	(1.461)
L.GDP per capita growth	-9.876***	-2.698	-11.68***
	(2.235)	(4.294)	(2.813)
L.lerner indicator	-2.159***	-3.493***	-1.675***
	(0.478)	(1.069)	(0.516)
Constant	-4.336***	-3.131**	-5.576***
	(0.362)	(1.239)	(0.395)
Observations	524	314	210

*Note: Results obtained using Robust standard errors; *** p<0.01, ** p<0.05, * p<0.1*

The control variables have the expected sign. Particularly, the GDP per capita growth is negative and statistically significant with the banking crises binary variable. Thus, low real economic growth is strongly correlated with a high probability of banking distress, which reinforces the belief that a fall in real GDP growth rate is a major cause of banking crisis creation. Inflation has a positive and statistically significant coefficient, meaning that a weak macroeconomic environment characterised by high inflation increases the likelihood of banking crises.

Intensive margin analysis results

In this subsection, we are testing the importance of institutions on systemic risk (MES). We employ a panel fixed effects estimator. This estimator is particularly relevant for this analysis as we want to eliminate the sources of potential endogeneity that relates the institutions of a country with the systemic risk associated with that country. As the change in institution quality is slow in countries, may exist the possibility to have correlation between these institutions and the country-specific unobserved heterogeneity.

Using fixed effects, we allow for this correlation between the country-specific institutions and the unobserved heterogeneity. Additionally, by using lags of the controls, we eliminate any other source of endogeneity that may relate the controls to the unobservables.

The results (Table 2) are similar to the ones obtained when the effect of institutional characteristics on the risk of the banking crisis was measured. Controlling for corruption has the strongest negative impact on the systemic risk of a country, while the rule of law has a significant positive impact on the MES. Additionally, political stability reduces systemic risk. Looking at the effects of these institutions across the emerging and developed countries, we see that controlling for corruption is more important for emerging countries than for developed ones. The result is reversed to the one obtained when the risk of banking crises was measured.

Table 2. Intensive margin analysis: The effects of institutional quality on MES

VARIABLES	(1) MES (all sample)	(2) MES (emerging and developing counties)	(3) MES (developed countries)
Control of corruption	-1.583***	-2.012**	-1.225**
	(0.491)	(0.884)	(0.564)
Political stability	-0.619*	-0.427	-1.124
	(0.350)	(0.325)	(0.737)
Rule of law	3.120***	2.854**	3.170**
	(0.822)	(1.024)	(1.313)
Regulatory quality	-0.173	-0.342	-0.442
	(0.590)	(0.956)	(0.874)
Financial freedom	0.0950	0.0499	0.0893
	(0.106)	(0.0766)	(0.192)
Macroprudential Index	0.316***	0.354***	0.306***
	(0.0524)	(0.0784)	(0.0774)
L.inflation	-3.036	-4.794***	14.52**
	(1.835)	(1.596)	(6.729)
L.GDP per capita growth	-3.817***	-0.878	-7.078**
	(1.377)	(1.993)	(2.808)
L.lerner indicator	-0.0807	0.433	-0.314
	(0.415)	(0.708)	(0.525)
Constant	0.392	0.416	0.331
	(0.896)	(0.424)	(2.040)
Observations	524	314	210
R-squared	0.152	0.343	0.139

*Note: Results obtained using Robust standard errors; *** p<0.01, ** p<0.05, * p<0.1*

As for the rule of law, the effect remains positive and significant for both group of countries, with the effect being stronger for the developed countries (in the extensive margin analysis the rule of law affected the emerging and developed countries

differently, with the developed being the most affected). Political stability remains negative, but it is losing its significance across the two groups of countries. Regulatory quality does not play any significant effect nether for the full sample nor for the two subsamples.

CONCLUSION

The increase in the number of banking crises raises the debate on bank stability which has become a primary concern for financial authorities. Several empirical studies have been conducted to understand banking crises with the purpose of reducing their occurrences. These studies led to a variety of variables explaining banking sector instability, underlying the importance of institutional environment characteristics. Questions about the impact of institutional quality on banking instability, becoming the core of theoretical debates. However, this issue has rarely developed in empirical literature. In this context, we propose to emphasise the role of the institutional environment in understanding the financial stability of a country. To do this, we conducted an empirical study on a sample of 48 emerging and developed countries during the period between 2003 to 2013. The analysis highlights the following findings: the exposure to systemic risk of financial institutions and the probability of banking crisis in a given country is positively associated with a high level of corruption, political instability and low regulatory quality. Additional, we found that the effect of the rule of law on the probability of crisis depends on the level of country's development, while for the systemic risk, its impact is positive in both developed and developing economies.

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Appendix 1. Description of variables

Bank crisis dummy	Dummy variable takes the value of 1 if there is a banking crisis in the country i and during the year t, and 0 otherwise.	Laeven and Valencia (2012)
MES	Defined as the average return on banks market capitalisation on the days, the total market capitalisation of the sample experienced a loss higher than specified threshold C indicative of market distress. ($MES^{ii}_{tt-1} = MM_{tt-1}(RR^{ii}|RR^{MMSSSStiSSSS}$ <C). For these analyses, we compute an average value for each country and year.	Own calculation in accordance to Acharya et al. (2017)
Control of corruption	This is a measure of the perceptions of the extent to which public power is exercised for private gain, including both small and large forms of corruption. The index ranges from -2.5 to +2.5, higher values indicating tighter corruption controls.	World Bank
Political instability	Measures perceptions of the probability of political instability and/or politically-motivated violence, including terrorism. The index range from -2.5 to +2.5, higher values indicating a more stable political environment.	World Bank
Rule of law	Mesures perception of the degree to which agents trust and abide by society rules, in particular the quality of the contract enforcement, property rights, courts, and police, as well as the possibility of crime and violence. The index ranges from -2.5 to +2.5, higher value indicating stronger rule of law.	World Bank
Regulatory quality	Measures perceptions of the Government's ability to formulate and enforce sound policies and regulations that encourage and facilitate the development of the private sector.	World Bank

Macroprudential index (MPI)	The index is the sum of the score of 12 macroprudential instruments, namely General Countercyclical Capital Buffer/Requirement (CTC); Leverage Ratio for banks (LEV); Time-Varying/Dynamic Loan-Loss Provisioning(DP); Loan-to-Value Ratio (LTV); Debt-to-Income Ratio (DTI); Limits on Domestic Currency Loans (CG); Limits on Foreign Currency Loans (FC); Reserve Requirement Ratios (RR); and Levy/Tax on Financial Institutions (TAX); Capital Surcharges on SIFIs (SIFI); Limits on Interbank Exposures (INTER); and Concentration Limits (CONC). The index ranges from 0 to 12, higher values indicating an increasing usage of macroprudential policies by financial institutions.	Cerrutti et al. (2017)
Lerner Indicator	It is defined as the ratio of total bank revenue over assets (using total assets as a proxy for bank production). It is a measure of market power.	World Bank
Financial Freedom	It is a measure of banking efficiency and independence from government control and financial-sector intervention.	Heritage Foundation
GDP per Capita Growth (%)	Annual GDP per capita Growth	World Bank
Inflation (%)	Annual inflation rate	World Bank

Appendix 2. Summary statistics

Variable	Obs	Mean	Std. Dev.	Min	Max
Crisis dummy	524	0.08	0.27	0.00	1.00
Marginal Expected Shortfall	524	1.82	1.53	0.00	15.07
Control of corruption	524	0.63	1.06	-1.38	2.59
Political stability	524	0.19	0.97	-2.81	1.66
Rule of law	524	0.61	0.96	-1.99	2.12
Regulatory quality	524	0.73	0.84	-1.86	2.26
Macroprudential index	524	2.06	1.80	0.00	8.00
Financial freedom	524	6.03	1.80	1.00	9.00
Inflation	524	0.04	0.07	-0.05	1.10
GDP per capita growth	524	0.02	0.04	-0.15	0.16
Lerner indicator	524	0.25	0.17	-1.61	1.08

Source: Author's calculation

MOLDOVA'S INFLOW OF FOREIGN DIRECT INVESTMENTS AND ITS CONTRIBUTION TO THE EXPORT CREATION AND INCREASING COMPETITIVENESS

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Abstract: *Foreign trade and foreign direct investments are widely considered the two main engines that fuel economic growth and development of a country. Moldovan's situation is quiet a unique one, because even after almost 30 years of independence it still find itself in a transition type of state. The main goal of the article is to submit to the analysis the current state of the Moldovan's exports and foreign direct investments inflows. It examines the dynamic of the two during 2002-2018 period. The methods used in this paper are, on the one hand, the Content Analysis with a focus on qualitative observation and, on the other hand, a quantitative analysis, using the correlation between the volume of exports and foreign direct investments in order to identify the link between these indicators. As a result, we notice very little to know correlation between export and foreign direct investments in case of the Republic of Moldova, which leads us to the idea that further research is, required which would implicate other factors.*
Keywords: *economic growth, economic structure, export growth, foreign direct investment, foreign trade*

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INTRODUCTION AND GENERAL FRAMEWORK REVIEW

Following its independence in 1991, Moldova has lost a great deal of its productive capabilities, which lead to decreased agricultural and manufacturing activities. While other economies have fully recovered during the 90s, Moldova seems to struggle even in present times. That is why we find it important to see how the Moldovan

economy could be revigorated using two of the most widely recognized engines of the economic development: foreign trade, specifically export and foreign direct investment.

The process of globalization has given rise to the development of international production chains, while, the global markets around the world have strengthen the importance of the foreign trade as an engine for economic development. Almost two decades into the third millennium and it is quite hard to imagine a country reaching great economic success without freely trading goods with the rest of the world.

It is widely considered that foreign direct investment can be instrumental in achieving the economic paradigm shift towards productive investments and, ultimately lead to an increased exporting potential (Samuelson, 1948; Helpman, 1981; Krugman, 1979). It can also boost competitiveness by developing skills and infrastructure, as well as opening new markets for a country's goods and services ((Borensztein et al., 1998; Romer, 1986). There is certainly a positive linkage between foreign direct investment and trade and both might prove to be crucial for economic growth even by boosting one another. However, due to inconsistencies in the development process and other determinants that might lead to an increase in importance of one or the other factor reaching a definitive conclusion on the matter might prove to be difficult (Aizenman & Noy, 2006).

This is why the present paper does not aim to find evidence for one model or the other, but rather identify if there is any correlation between the FDI and the amount of goods and the types of goods and services Moldova is selling on the external markets. This could give us a good idea about how effective the inflows of FDI are, Do FDI affect the Moldovan exports? What is the economic sector that could increase investment intake and does Moldovan economy have the potential to become more competitive by using foreign capital?

METHODOLOGY

The proposed theme is quite complex and thus involves the use of a variety of research methods. The research methodology will involve both qualitative data analysis and quantitative data analysis.

The statistical data comes from several sources, however, we mainly opted for online databases with specific economic and trade related information, in order to provide a complex and rigorous analysis. We have collected relevant data from the online databases such as World Investment Report, World Competitiveness Index, World Bank Group, World Economic Forum, UNCTAD, Trading Economics, World Bank due to the high credibility of data presented, but we also used data from national sources such as National Bureau of Statistics, Ministry of Economy and Infrastructure of the Republic of Moldova, and MIEPO - Moldovan Investment and Export Promotion Organization. In order to treat the subject of economic structure's diversity we used once again data provided by the National Bureau of Statistics and The World Bank. Based on available information, we chose for this paper the 2002-2017 timeframe in case of foreign direct investment, while data regarding trade covers the 2002-2018.

The methods used in the research correspond to the purpose and objectives set. These include the previously written works on the subject and statistical data analysis. We used methods of qualitative research and analysis of data, using Content Analysis

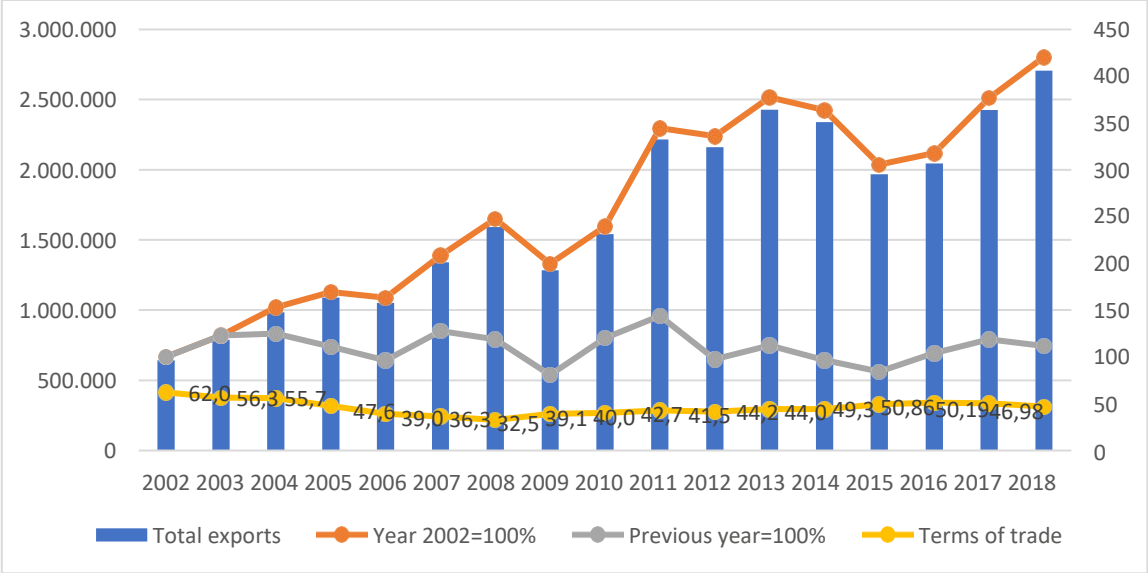
with a focus on qualitative observation. To apply this method, we selected books, studies, and articles from the field of foreign direct investment and foreign trade and competitiveness.

For the practical part of the paper we used methods of quantitative research and analysis of the data. To analyze the dynamics and evolution of foreign direct investment flows and the geographical distribution of FDI we applied the method of univariate statistical analysis, using analysis of the main components (frequency analysis, box-plot and so on). To analyze the correlation between foreign direct investment flows and export volumes we used descriptive analysis methods, using the correlation method and regression method. In order to achieve our goals and purpose, we used the SPSS statistical program, which helped us to analyze the collected data. The results obtained are presented in the form of tables, graphs, figures, etc.

MOLDOVA'S EXPORTS DYNAMICS AND DIVERSITY

Moldova in the last decade or two has definitely followed the global trends when it comes to trading goods and services abroad. The financial crisis of 2008-2009 seems to have impacted the country's trading capabilities, both exports and imports plummeting as a result. Although, the trade increased again starting 2010, the one huge issue, the Moldovan economy always had was the trade deficit. Even if this is a normal occurrence for a developing economy, the concerns are still there if the tendencies remain the same for a very long period. It is of course desirable to export more than import, but it is also important what is being imported and exported. The spillover effects, as mentioned earlier, might prove very helpful for an economic growth.

Table 1. Moldova's exports dynamics and terms of trade (2002-2018)



Source: Authors' own computations, based on data from the National Bureau of Statistics, Moldova

As seen in Table 1, Moldovan exports seem to have grown almost every year, with some periods of stagnation in 2009, 2014 and 2015. One of the main reasons for that is the set of problems Moldova had to face on the financial front. The 2009 recession has definitely affected the entire global economy, while the 2014-2015 timeframe was defined by a huge banking crisis, when a billion euros had been fraudulently lost as a result of the mismanagement conducted by three commercial banks and the National Bank of Moldova. The exports seem to have doubled in value during the 2002 – 2009 period and from 2010 to 2018. And yet, the imports have grown significantly as well, as the exports to imports ratio has rarely gone above 50%. At the same time, it is safe to say that the trade has generally increase greatly since Moldova has signed a number of agreements with the EU, the most known being the Deep and Comprehensive Free Trade Area Agreement, which has eased the access to the Western markets for the Moldovan products. It is worth mentioning that this has counter-balanced the embargos imposed by the Kremlin in the same period of time on a series of Moldovan good, such as fruits, wine and meat.

Table 2. Exports by chapters according to SITC Revision 4 (2009 -2018)

	2009	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**
Food and live animals	290123	341231	385285	375669	471313	562849	420796	474193	585383	578872
Beverages and tobacco	172939	204155	208111	246602	252990	186172	148134	147983	169162	182384
Crude materials, inedible, except fuel	85831	127899	263060	154628	242370	200210	211403	229227	273947	274179
Mineral fuels, lubricants and related materials	2760	3140	8324	4311	3128	3883	1728	795	967	876
Animal and vegetable oils, fats and waxes	50451	47316	77368	89386	43542	78310	71512	53375	52401	66111
Chemicals and related products, n.e.s.	17423	20778	20452	19739	25785	28876	33861	40178	52190	55467
Manufactured goods classified chiefly by material	47712	59580	70546	63082	112329	112980	83890	82669	89002	110986
Machinery and transport equipment	37778	45206	57135	218631	217476	200493	195110	164672	228592	355181
Miscellaneous manufactured articles	74708	85830	119813	215465	250317	154929	137047	157322	188027	227248
Commodities and transactions not classified elsewhere in the	281	253	5097	2047	581	930	514	-	1085	1081

SITC										

Source: Authors' own computations, based on data from the World Bank

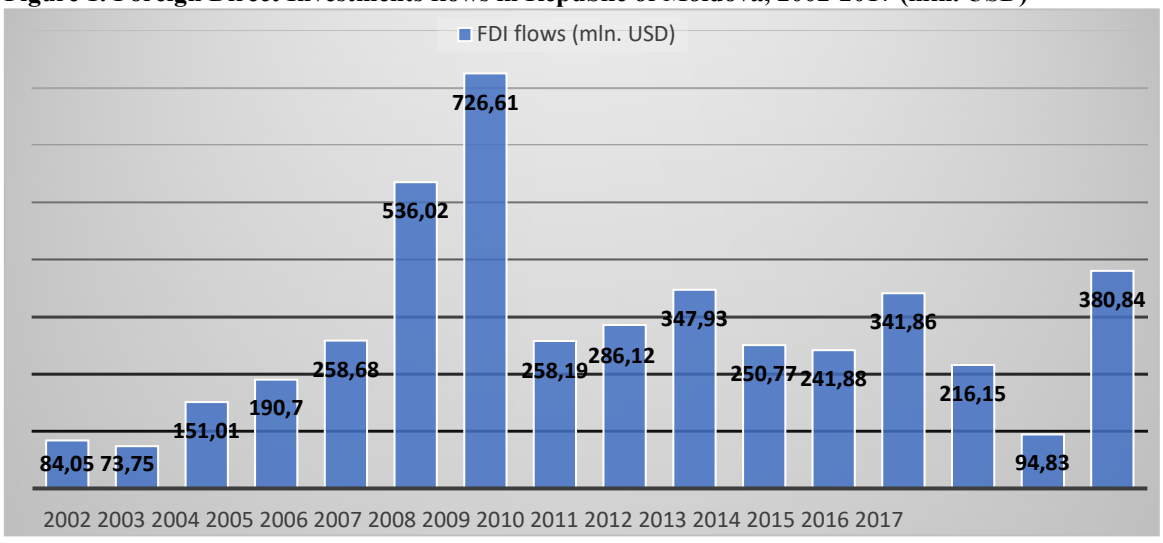
When it comes to Moldova's trade structure, we can definitely see some lack of diversity. Moldovan exports mainly consist of agricultural production, which represent around a third of the country's exports (Table 2). In itself this is not a motive to be concerned, at least not in the short-term. The Republic of Moldova is still very much an economy that is still developing and the soviet past has probably slowed down the economic development it could have reached. The products that the Moldovan producers usually export are low on the production chain, which means that the financial gains from exports are lower. At the same time, the agri-food products are also exposed to varied risk factors, such as climate and other hazards. The changes in the last decade might seem insignificant at first sight, but might also be seen as a positive, since things are not staying the same and new opportunities are created.

What we are more interested in is if the financial stability and development could be an answer in the case of Moldova? Could the value of the exports increase or decrease because of more foreign capital being pumped into the Moldovan economy? The economic structure of the country could very much imply already that the Republic of Moldova is under-developed in terms of access to funds. The foreign investors could prove to be crucial for Moldova, in order to reduce its dependence on the primary sector and develop goods higher on the production chain or at least increase the exports' value.

FLOW OF FOREIGN DIRECT INVESTMENTS TO MOLDOVAN'S ECONOMY

According to *Moldova's Investment and Export Promotion Organization (MIEPO)* annual report and *The World Bank* annual report presented in **Graphic 1**, the dynamics of the foreign direct investment flows over the past 15 years has been rather uneven.

Figure 1. Foreign Direct Investments flows in Republic of Moldova, 2002-2017 (mln. USD)



Source: Authors' own computations based on data from The World Bank, Foreign Direct Investments, and Moldova, available at: https://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD?locations=MD

During the period 2002-2008 as you can observe in **Graphic 1,** there is a uniform increase of FDI inflows into the Moldovan's economy due to macroeconomic stability and maintaining relations with the same foreign investors. Due to the global economic crisis and the political crisis in Republic of Moldova in 2009, many foreign investors have left the country and FDI inflows have fallen threefold. In the coming years after the global economic crisis and political crisis, FDI flows to the Moldovan's economy had raised up due to the economic stabilization and the signing of the association agreement with the European Union. Thus, from 2009 until present, in the Moldovan's economy, most of the foreign direct investments were from the European Union countries, the USA, Switzerland and Turkey.

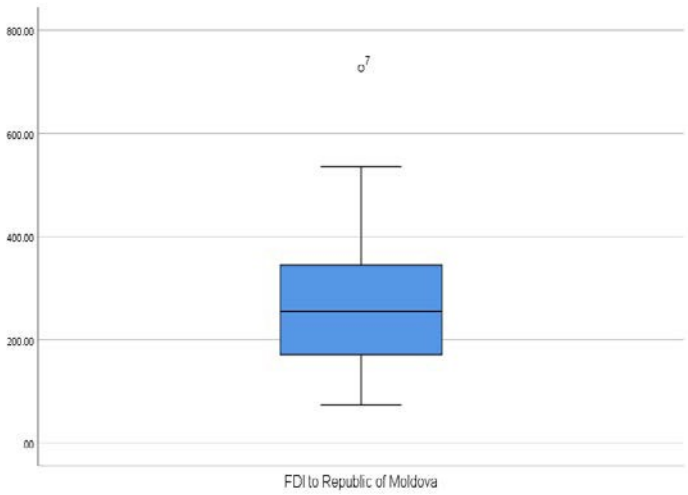
In 2015 and 2016, FDI inflows have fallen sharply due to the bill of the National Bank of the Republic of Moldova and the aggravation of the political situation in the country, which makes the country no longer attractive to foreign investors. However, as you can be seen in **Figure 1**, FDI inflows increased significantly in 2017 comparing with 2015 and 2016, which means that Moldova has gone in 2016 through a process of economic and political recovery.

Table 3. Foreign Direct Investments to Republic of Moldova (2002-2017)

N	Valid	16
	Missing	0
Mean		277.4619
Median		254.4800
Mode		73.75[a]
Std. Deviation		169.45045
Skewness		1.329
Std. Error of Skewness		.564
Kurtosis		2.320
Std. Error of Kurtosis		1.091
Range		652.86
Minimum		73.75
Maximum		726.61

Source: Authors' own computations based on data from The World Bank, Foreign Direct Investments, Moldova

Figure 2. Box Plot representation of Foreign Direct Investment in Republic of Moldova (2002-2017)



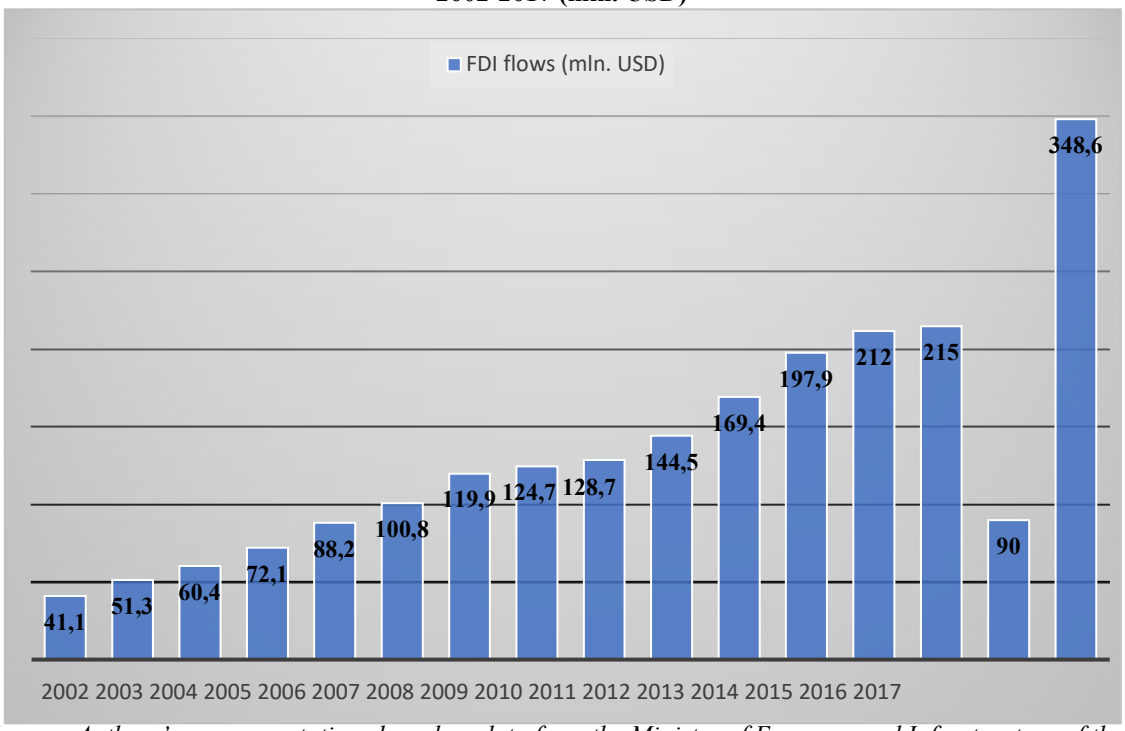
Source: Authors' own computations based on data from The World Bank, Foreign Direct Investments, Moldova

According to the data presented in **Table 3**, with the help of the SPSS statistical program, during the period 2002-2017, the average value of the foreign direct investments flows in the economy of the Republic of Moldova was 277 million USD. The flows of foreign direct investment into the economy of the Republic of Moldova range from a minimum of 73.5 million USD, registered in 2003 and a maximum of 726.61 million USD, recorded in 2008, with a standard deviation of 169.45 million USD. Also, from **Table 3** you can observe the positive value of the **Skewness coefficient** (1.329), which means that there is a moderate asymmetric distribution to the right of FDI

flows to the Moldovan's economy, and the coefficient Kurtosis has a positive value, 2.32 > 0, which means the leptokurtic distribution.

Figure 1 shows an extreme point in the distribution of foreign direct investment flows to the Moldovan's economy. The extreme point is associated with 2008, which means that in this year the volume of foreign direct investment, which entered the Moldovan's economy, was much higher than in the other years.

Figure 3. Foreign Direct Investments flows to Free Economic Zones of the Republic of Moldova, 2002-2017 (mln. USD)



Source: Authors' own computations based on data from the Ministry of Economy and Infrastructure of the Republic of Moldova, available at: https://mei.gov.md/ro/content/zonele-economice-libere

Republic of Moldova is one of the last countries in Europe that already has Free Economic Zones. Free Economic Zones or Free Entrepreneurship Areas (ZEL), according to the Law no. 440 of July 27, 2001, regarding the free economic zones, are parts of the customs territory of the Republic of Moldova, economically separated, strictly delimited throughout their perimeter. According to the national development strategy, Free Economic Zones were created to speed up the social-economic development of certain territories and the country as a whole by:

- attracting domestic and foreign investments;
- attracting modern technologies;
- promoting export;
- attracting foreign experience in production and management;
- creating jobs.

As we can observe in **Figure 2**, the dynamics of the foreign direct investment flows over the past 15 years has been rather stable and uniform. The constant increase of the foreign direct investment flows in Free Economic Zones is also due to the constant

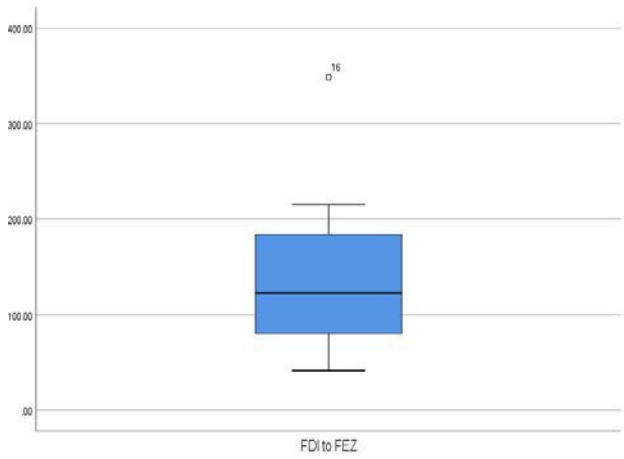
creation of new Free Economic Zones. For example, in 2009, Balti Free Economic Zone was created, which attracted the most part of the foreign direct investments during the period 2009-2017, thus maintaining an upward slope of the foreign direct investment inflows into the Moldovan's economy.

Table 4. Foreign Direct Investments flows to Free Economic Zones from the Republic of Moldova (2002-2017)

N	Valid	16
	Missing	0
Mean		135.2875
Median		122.3000
Mode		41.10[a]
Std. Deviation		79.28253
Skewness		1.316
Std. Error of Skewness		.564
Kurtosis		2.214
Std. Error of Kurtosis		1.091
Range		307.50
Minimum		41.10
Maximum		348.60

Source: Authors' own computations based on data from Ministry of Economy and Infrastructure of the Republic of Moldova

Figure 4. Box Plot representation of Foreign Direct Investment flows to Free Economic Zones from the Republic of Moldova (2002-2017)



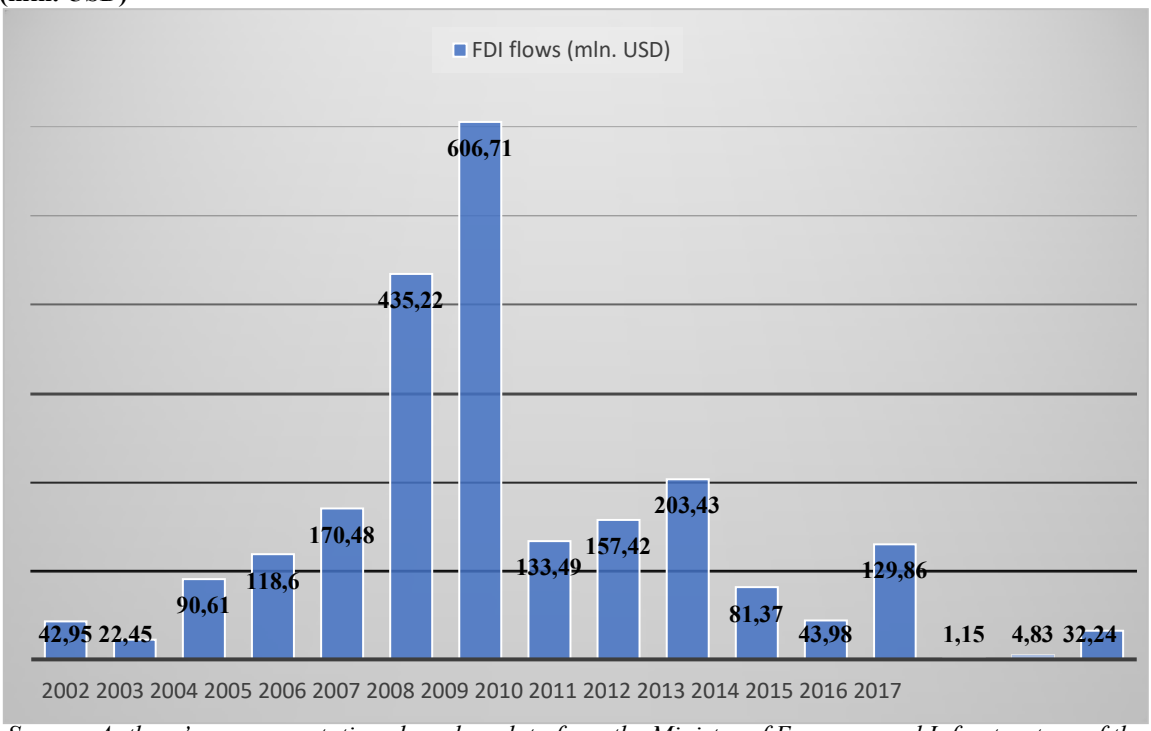
Source: Authors' own computations based on data from Ministry of Economy and Infrastructure of the Republic of Moldova

According to the data presented in **Table 4**, with the help of the SPSS statistical program, during the period 2002-2017, the average value of the foreign direct investments flows in Free Economic Zones was 135 million USD. The flows of foreign direct investment into the Free Economic Zones range from a minimum of 41.10 million USD, registered in 2002 and a maximum of 348.60 million USD, recorded in 2017, with a standard deviation of 79.28 million USD.

Also, from data presented in **Table 4**, you can observe the positive value of the **Skewness coefficient** (1.316), which means that there is a moderate asymmetric distribution to the right of FDI flows into the Free Economic Zones, and the coefficient Kurtosis has a positive value, 2.214 > 0, which means the leptokurtic distribution.

Figure 2 shows an extreme point in the distribution of foreign direct investment flows to the Free Economic Zones. The extreme point is associated with 2017, which means that in this year the volume of foreign direct investment which entered the Free Economic Zones was much higher than in the other years.

Figure 5. Foreign Direct Investments flows to Other Zones of the Republic of Moldova, 2002-2017 (mln. USD)



Source: Authors' own computations based on data from the Ministry of Economy and Infrastructure of the Republic of Moldova, available at: https://mei.gov.md/ro/content/zonele-economice-libere

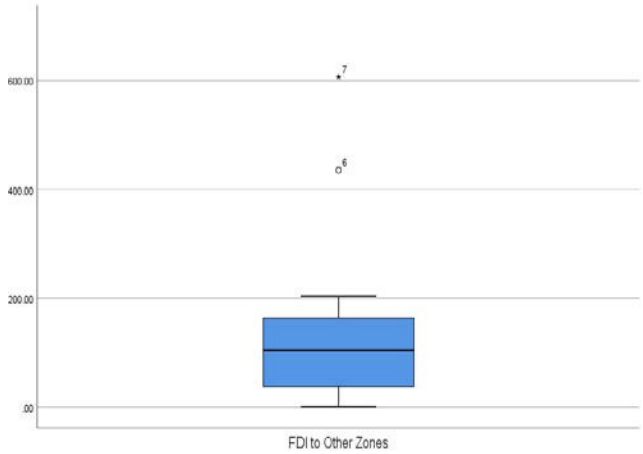
As we can observe in **Figure 5**, the dynamics of the foreign direct investment flows over the past 15 years has been rather uneven in the other zones of the Republic of Moldova than Free Economic Zones. The differences between Other Zones from the Republic of Moldova and Free Economic Zones is that foreign investors have a lot of fiscal facilities in different situations: tax reduction, exemption from excise duty, exemption from VAT and so on.

Table 5. Foreign Direct Investments flows to Other Zones from the Republic of Moldova (2002-2017)

N	Valid	16
	Missing	0
Mean		142.1744
Median		104.6050
Mode		1.15[a]
Std. Deviation		162.94218
Skewness		2.024
Std. Error of Skewness		.564
Kurtosis		4.103
Std. Error of Kurtosis		1.091
Range		605.56
Minimum		1.15
Maximum		606.71

Source: Authors' own computations based on data from Ministry of Economy and Infrastructure of the Republic of Moldova

Figure 6. Box Plot representation of Foreign Direct Investment flows to Other Zones from the Republic of Moldova (2002-2017)



Source: Authors' own computations based on data from Ministry of Economy and Infrastructure of the Republic of Moldova

According to the data presented in **Table 5**, with the help of the SPSS statistical program, during the period 2002-2017, the average value of the foreign direct investments flows in the Other Zones from the Republic of Moldova was 142 million USD, almost the same as in the Free Economic Zones. The flows of foreign direct investment into the Other Zones from the Republic of Moldova range from a minimum of 1.15 million USD, registered in 2015 and a maximum of 606.71 million USD, recorded in 2008, with a standard deviation of 162.94 million USD.

Also, from data presented in **Table 5**, you can observe the positive value of the **Skewness coefficient** (2.024), which means that there is a moderate asymmetric distribution to the right of FDI flows into the Other Zones from the Republic of Moldova, and the coefficient Kurtosis has a positive value, 4.103 > 0, which means the leptokurtic distribution.

Figure 3 shows two extreme points in the distribution of foreign direct investment flows to the Other Zones from the Republic of Moldova. The extreme points are associated with 2007 and 2008, which means that in these years the volume of foreign direct investment, which entered the Other Zones from the Republic of Moldova, was much higher than in the other years.

IMPORTANCE OF FOREIGN DIRECT INVESTMENTS IN INCREASING COMPETITIVENESS AND FOREIGN TRADE

Foreign direct investments have a major role in expanding the country's production capacities and export offer. According to data provided by the Moldovan government, in the 2001-2014 period, every US dollar invested annually in the productive capital of the exporting economic activities generated an average of $0.49 in exports in the following year. In particular, $1 invested annually in agriculture is associated with an annual increase in export revenue of about $0.57, and in the food and beverage industry - about $0.19. Statistical data does not provide a sufficient level of

detail, but even the available ones make it possible to identify sectors where investment generates new export capacities much faster. Thus, in stark contrast to agriculture and the food industry, $1 invested in the production of precision and optical medical instruments and instruments brought about $14.5 in exports, but in this industry, the small comparative effect is disproportionately high. In the case of electrical machinery and equipment (especially basic electrical wiring and circuits), the corresponding indicator is about $5.1, $3.53 in the chemical industry (but the share of re-exports is particularly high) clothing manufacturing - about US $ 3,7 in footwear production - about $1 and 80 cents. Virtually all sectors that have accelerated exports have grown in recent years due to foreign investment, whether or not accompanied by (or, in the case of light industry), effective capital investment by foreign investors. The fact that some of these sectors did not exist previously (such as automotive cable production) or were in deplorable condition (the precision instrument industry) suggests that foreign investment also plays a key role in increasing sophistication of Moldovan exports as a whole, and that efforts to attract foreign investments in the Republic of Moldova should be stepped up (The national strategy for attracting investment and promoting exports of Moldova for 2016-2020).

Foreign direct investments have contributed to the emergence of a new sector in the Republic of Moldova - the automotive industry. The automotive industry (parts, equipment, machinery and aggregates of the automotive industry) is among the top in Europe in terms of the number of new FDI projects. Projects based on FDI in this sector generate the most jobs in Europe. The Republic of Moldova managed to attract a number of foreign direct investment projects from large companies in the automotive industry, including Draexlmaier (Germany), Lear Corporation (USA), Gebauer & Griller (Austria), Confezioni Andrea Covercar (Italy), as well as non-equity investments, carried out by Leoni Company (Germany).

Foreign direct investment is an important tool that links the national economy to the global economy, giving local companies opportunities to integrate into value chains in the global framework. Now, goods and services are supplied to consumers worldwide via foreign subsidiaries rather than international commercial transactions made directly by parent companies. Foreign direct investment and trade are interconnected across cross-border value chains through international production networks. This phenomenon offers new opportunities for all countries, including the Republic of Moldova. These opportunities and benefits, however, are not achieved automatically and are not guaranteed. First, intensifying competition to attract foreign direct investment is an objective factor that requires those countries that intend to host a larger volume of investment to implement the most effective strategies to attract and maintain foreign direct investment to ensure that they contribute to the national development goals and to maximize the contribution. Secondly, different types of foreign direct investment have unique characteristics and their economic, social and environmental impacts vary from one type to another. Thus, countries engage in a competition to attract certain types of foreign direct investment and not foreign direct investment in general.

Correlation Analisys

Because of the theoretical aspects presented above about the importance of attracting FDI for the development of exports, we proposed the analysis of the correlation between the foreign direct investments attracted by the Republic of Moldova and the total volume of exports carried out between 2002 and 2017.

Table 6. Correlations Analisys

		FDI to Republic of Moldova	Total Exports
FDI to Republic of Moldova	Pearson Correlation	1	.288
	Sig. (2-tailed)		.280
	N	16	16
Total Exports	Pearson Correlation	.288	1
	Sig. (2-tailed)	.280	
	N	16	16

Source: Authors' own computations based on data from The World Bank and NSB of Republic of Moldova

From **Table 6 Correlation Analysis**, we can identify if there are correlations between the indicators proposed for analysis. Respectively, **Table 6** shows that there are no correlations between the foreign direct investments attracted by the Moldovan economy and the total exports, because the value of sig is: sig> 0.05, respectively 0.28. Thus, the correlation is insignificant and there is no positive correlation. The explanation is very simple. As can be seen in the previous chapter, in **Graphic 1**, the evolution of foreign direct investments in the Republic of Moldova was quite unstable. Even though the stock of foreign direct investment has increased greatly from 2002 to 2017, foreign direct investment flows have been extremely volatile. The current level of their flows has not yet returned to the level 2007-2008, when foreign direct investment flows were triple than at present.

The explanation is that in 2007-2008 foreign direct investment was driven mainly by market-oriented foreign direct investment targeting service sectors such as retail and financial markets as well as a revaluation accounting of assets in the energy sector.

On the other hand, the total volume of exports has seen an upward trend since 2002, which explains that the total volume of exports is not entirely dependent on the attracted FDI, but there are other factors that influence them as well we will identify them in the future paper.

Priority sectors for FDI (The national strategy for attracting investment and promoting exports of Moldova for 2016-2020 2016)**:**

ITC - the Republic of Moldova has the comparative advantages of the skilled labor force (both in the field of information and communication technology and foreign languages) and the labor force price. Another major advantage of the sector is that its results can be exported online, thereby reducing the major obstacles for Moldovan exports: distance from key markets;

Auto and auto parts production - the likelihood of attracting car production projects is low, but the attraction of automotive production projects for export to

automotive manufacturing or assembly plants in Central and Eastern Europe is high. On the basis of an already existing market and labor price competitiveness in the Republic of Moldova, projects involving intensive use of labor such as the production of car textiles or cable assemblies may be expected to increase and also could create a large number of jobs, as it had happened in other Central and Eastern European countries over the last 20 years.

Administrative services and support service activities - this sector, which includes all call centers and other business process outsourcing activities, has the potential to play a role similar to that of the ITC sector. Moldova has the comparative advantage of the young and skilled workforce, knowledge of foreign languages and reasonable labor costs. As with information, communications technology, software, the services can be delivered to customers through the information and communications technology networks, avoiding long and costly transportation to customers.

Textiles, clothing and footwear - this sector is not one of the top sectors in Europe when it comes to foreign investment and job creation but it is a traditional sector in the Republic of Moldova and it has the comparative advantages of qualified labor force and labor cost. Price competitiveness is likely to decline in the long run, but in the short term and most likely in the medium term it continues to be a sector that can create a large number of new jobs in the Republic of Moldova.

Electric devices – similar to the sector above, this sector is naturally does not attract a lot of investment in Europe, but there are a large number of electronics production and assembly plants in Central and Eastern Europe that are potential buyers for companies producing electronic parts or electrical equipment. The proximity of the Republic of Moldova to these potential buyers and the price competitiveness could counterbalance the competitiveness of the Asian competition price. Also, as labor costs in Central and Eastern Europe continue to grow, manufacturers in this region can expect to consider shifting their locations to lower-cost manufacturing countries such as the Republic Moldova.

Agri-food industry - although it is one of the first Moldovan sectors when it comes to exporting and the country has attracted investments in this sector, the performance of foreign direct investment and job creation in Europe is not impressive at all, and the volume of exported goods and the share of the sector in Moldovan exports have been decreasing. At the same time, there are significant non-tariff barriers, which could represent a significant obstacle to Moldova's food exports. There are previous investments in this sector in the Republic of Moldova, but these occurred in the privatization era. Estimates show that most foreign investment in this sector is in the form of privatization of state-owned enterprises or mergers and acquisitions of private assets. The reduced domestic market and the fragmentation of domestic supply may prove to be discouraging to potential foreign investors from investing in the Republic of Moldova. However, due to the importance of agriculture and food processing in the Moldovan economy, this sector should be included in the list of priority sectors, especially when it comes to exporting Moldovan goods.

CONCLUSIONS

It is safe to say that Moldova has become an important actor when it comes to trading regionally. A better economic integration in the new global production chains, lead to an increased trade, especially with the regional partners. Being a developing country, it is generally attractive for the potential investors as well, because of the cheap factors of production. Meanwhile, when it comes to economic complexity and export diversification, Moldova's economic structure still looks weak and mostly uncompetitive, with no high benefit products, and a high dependency on agricultural goods. This is risky for any economy, because of the external factor that can easily affect the potential production levels.

Because of the analysis of foreign direct investment, we have noticed that their entrants were quite volatile and did not have a uniform distribution throughout the country. Most foreign direct investments have entered the Free Economic Zones, especially after the global economic crisis. However, it is interesting to analyze the influence of FDI on the volume of exports and if, with the increase in FDI, exports also grow. Following the practical analysis, namely the correlation made with the SPSS program, we realized that not only foreign direct investment affects the volume of exports but there are some other factors. FDI inflows have insignificant influence on the Moldova's exports, but probably, by aggregating other factors, the influence could be significant, what we are going to find in the following analyzes.

On the other hand, the textiles, the ICT, the automotive and the electronics sectors show great potential for an eventual inflow of foreign investment. It is also important to understand that foreign direct investment is never the solely solution of any economic issue. Neither the exports, nor the competitiveness of Moldova's economy will improve as long as other great problems will persist, such as corruption or bad governance.

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MACHINE LEARNING IN BANKRUPTCY PREDICTION – A REVIEW

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Abstract: *There is an increasing interest in machine learning for bankruptcy prediction with more and more researchers contributing to the literature. Although there is a considerable amount of research, the domain does not seem to be aligned and there is still a lot of indecisiveness in terms of what is the best method to be used and on which data. Using Web of Science, Scopus and ScienceDirect databases, a systematic review of 32 texts published between 2016 and 2020 was conducted. This review shows a summary of those papers based on 9 criteria. The criteria identified include source of data, number and type of variables, models used, industry type, and timeline of dataset, sample size, aim and result as well as accuracy of the best performing model used. Overall, it has found that no model performs best on any type of data and that the domain is still away from having a conclusion about what works best and where. This paper contributes towards updating academics and practitioners with the current state of the domain, tools used for bankruptcy prediction lately and their performance.*
Keywords: *Machine learning, Bankruptcy prediction, Liquidation, Parametric modelling, Non-parametric modelling*

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INTRODUCTION

The financial sector is and always was a strong pillar of social well-being and every economy is highly dependent on it. The private sector development is, as well, built on the premises of the financial sector. It can also have an important role in providing individuals and households with monetary means for access to basic needs, such as health and education, consequently impacting poverty reduction (Policy Division Working Paper, 2004). In the last more than 100 years, starting with (Bagehot, 1873) and followed by (Schumpeter, 1934) and (Hicks, 1969) literature on market development and economic growth has been getting a lot of attention making it easy for the importance of them to be understood. Considering these elements, undeniably, there has been a great amount of research from researchers in different areas to facilitate the quality of information available in the financial sector, making financial products available, helping predict financial trends, goal evaluation, asset portfolio management, pricing IPO's, finding optimal capital structure, detecting regularities in security price movements, alleviating crediting risk by predicting default and bankruptcy, etc (Bahrammirzaee,

2010). In this regard, many techniques have been developed. This paper focuses on the advancements and literature background on the methods applied in bankruptcy prediction for studies published between 2016 and 2020. In general, these techniques/methods can be classified in two main categories: parametric (multiple discriminant analysis (MDA), linear discriminant analysis (LDA), canonical discriminant analysis (CDA), logistic regression (LR) and Naïve Bayes (NB)) and non-parametric (artificial neural networks (ANN), support vector machine (SVM), decision trees (DT), k-nearest neighbour (KNN), hazard models, fuzzy models, genetic algorithms (GA) and hybrid models, where multiple models are combined).

Starting with the parametric models, logistic regression and discriminant analysis are some of the most used statistical techniques in empirical studies of economic phenomena. The difference between them comes from the fact that LR requires a logistic distribution. DA is mostly used for categorization or classification tasks where logistic regression is mostly used for obtaining the odds ratios for each categorization variable (Lo, 1986). Naïve Bayes has proved its effectiveness because of its simplicity and tractability, allowing for effective bounds (Choi *et al.*, 2019).

Secondly, non-parametric models, the ones that are recently the most used, don't make any assumption about the distribution of the underlying data as well as the fact that the number of parameters and structure of it is decided by data rather than fixed a-priori. These models are mainly multiple and depend heavily on computer technology for their implementation (Aziz and Dar, 2006). The main advantages of these models come from their ability to learn and adapt, based on the data set, capturing non-linear relationships between variables (Fejér-Király, 2015). In the same time, the weak points come from the lack of explainability, being considered black-box algorithms, they are failing to explain causal relationships between variables (i.e. financial ratios) (Lee and Choi, 2013).

Best papers in the area of bankruptcy prediction, considering number of citations, are (Balcaen and Ooghe, 2006), (Gissel, Giacomino and Akers, 2007) and (Ravi Kumar and Ravi, 2007) which are, in fact, review papers. The first two studies are centred on parametric models while the last one covers non-parametric models as well. (Balcaen and Ooghe, 2006) make a summary of the causes that led bankruptcy prediction studies to evolve. (Gissel, Giacomino and Akers, 2007) have a very important contribution to the literature by summarizing 165 papers published between 1965 and 2006. Their study includes a summarization of the papers very similar to this study, including information such as model type, number of variables used and model accuracy. In their paper, (Ravi Kumar and Ravi, 2007) treat slightly the same time frame, analysing papers published between 1968 and 2005 highlighting the following: the source of the dataset, financial ratios used, country of origin, timeline of study and the comparative performance of the techniques by presenting the accuracy.

This paper is contributing to the literature on bankruptcy prediction by summarizing the most relevant papers published in the last 5 years in the literature using a systematic review approach. The goal is providing academics and practitioners with an overview on what has been written lately by summarizing all papers intro a table including source of data/country of origin, number of variables, type of variables, models used, industry type, timeframe of the dataset used, sample size, results and accuracy of best performing model.

The remainder of this paper presents an overview on the literature review written in Chapter 2 followed by a quick theoretical presentation over the most used methods in the papers studied in Chapter 3. Chapter 4 includes the presentation of the papers studied on the premises presented in the previous paragraph. Finally, Chapter 5 concludes and provides some suggestions for future research in bankruptcy prediction.

EARLIER REVIEWS

(Balcaen and Ooghe, 2006) created a very comprehensive review paper by analysing 35 years of literature in bankruptcy prediction. The paper analyses extensively on the application of univariate analysis, risk index models, multiple discriminant analysis and conditional probability models. On the premises that, at the moment of doing the study, there were no clear and comprehensive analysis of problems related to these methods, authors treat each problem issue accordingly and discuss each of them. There are three main problems identified by the authors in their study:
The classical paradigm (i.e. the unclear definition of failure, non-stationarity and data instability, sampling bias and the choice of optimisation criteria);
The neglect of time dimension of failure (the choice of when to observe a firm may introduce a selection bias in the resulting model (Shumway *et al.*, 1999));
Problems related to the application focus (due to commercial pressure, most of the models have been developed without a holistic understanding of the reason of company failure).
(Gissel, Giacomino and Akers, 2007) have, as well, a broad study on the subject, examining 165 papers published between 1965 and 2006. This paper traces the literature on bankruptcy prediction, from the times when simple ratio analysis was used to 2006 when the usage of intelligent techniques already picked up. Authors organize the models identified in their studied papers in three categories based on the industry source of data: General (a mix of industries); Banking; Industry-specific models.

In addition, the split between parametric and non-parametric models adopted in this paper, has inspired us to do the same in our review analysis. In their paper, it is concluded that MDA and NN are the most promising methods for bankruptcy prediction models together with the fact that in their analysis, there has not been found any correlation between the number of features and model accuracy, models with just two features being just as capable in terms of accuracy as models with 20+ features.

Another significant study in the review literature of bankruptcy prediction models is (Ravi Kumar and Ravi, 2007), their research covering papers published between 1968 and 2005. Authors categorize the papers in 8 families of techniques such as: statistical techniques, neural networks, case-based reasoning, decision trees, operational research, evolutionary approaches, rough set based techniques, other techniques including fuzzy logic, support vector machine and isotonic separation and soft computing including hybrid models based on all the previously-mentioned methods. For all papers included in the study the authors highlight the source of data sets, financial ratios used, country of origin, period of study and the prediction accuracy wherever possible.

In terms of more recent review papers, worth mentioning are (Alaka *et al.*, 2018) that analysed 49 research papers published between 2010 and 2015, (Prusak, 2018) with a focus on Eastern European Bloc focused papers between Q4 2016 and Q3 2017, (Altman,

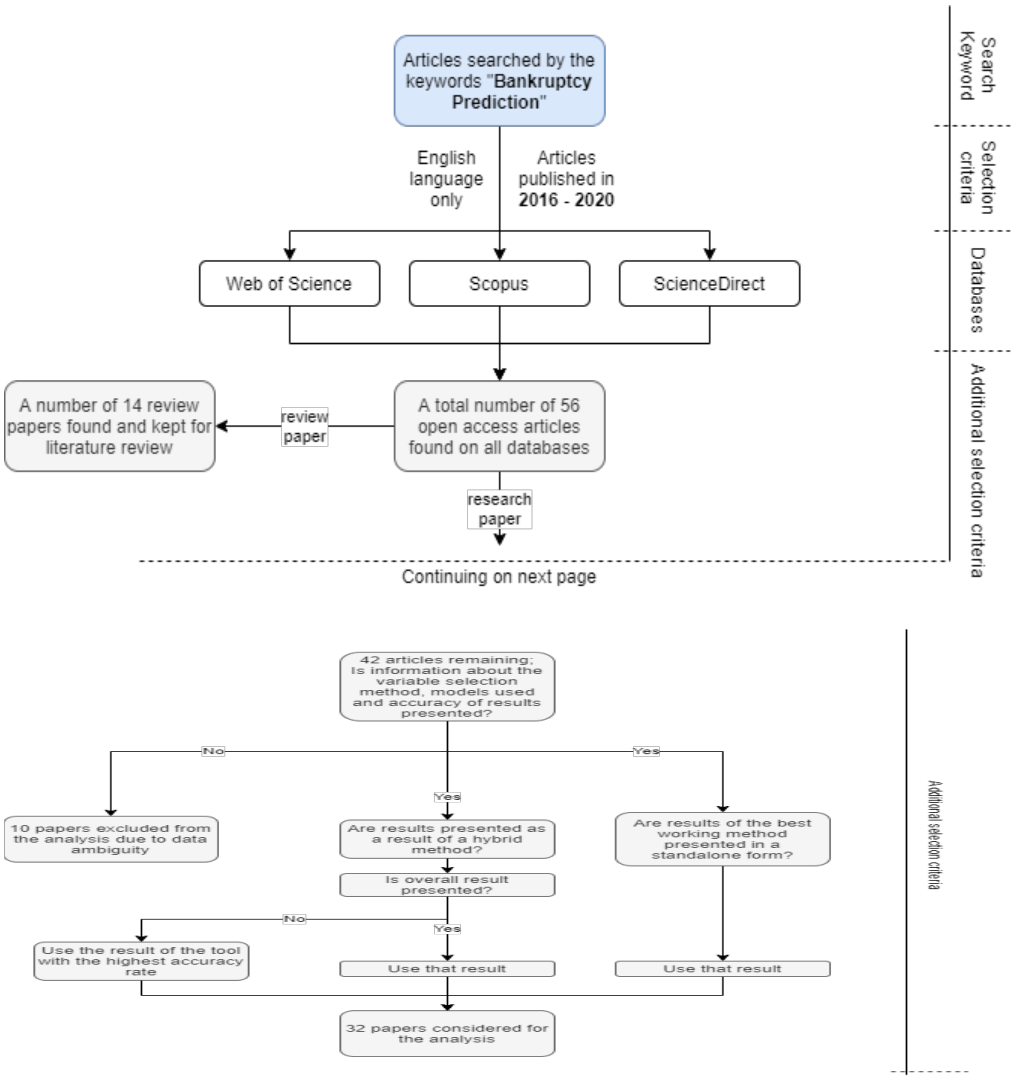
2018) making a follow-up and summarizing the 50 years history of his z-Score model. On the same note, (Qu *et al.*, 2019) with a short conference paper presenting an general overview on methods used in bankruptcy prediction, (Ptak-Chmielewska, 2019) with a focus on the addition of non-financial factors into the models, (Gruszczyński, 2019) having an overview from the unbalance sampling and sample bias perspective, (Leo, Sharma and Maddulety, 2019) focusing on banking bankruptcy risk prediction. Very important as well, (Shi and Li, 2019a) analysed papers published on bankruptcy prediction models from 1968 to 2007, same authors in (Shi and Li, 2019b) publish a bibliometric review addressing the research trends in the area of bankruptcy prediction.

What is important to be noted, after briefing the review literature on the topic of bankruptcy prediction, is the fit of this paper in the sense of covering a period that has not been covered, at the time of writing this paper, by previous studies.

REVIEW METHODOLOGY

As mentioned earlier, this review is conducted in two broad categories: (i) parametric models and (ii) non-parametric models. Among parametric models, the methods covered are: multiple discriminant analysis (MDA), linear discriminant analysis (LDA), canonical discriminant analysis (CDA), logistic regression (LR) and naïve bayes (NB). The non-parametric, or so-called intelligent models covered in this study belong to artificial neural networks (ANN), support vector machine (SVM), decision trees (DT), k-nearest neighbour (KNN), hazard models, fuzzy models, genetic algorithms (GA) and hybrid models, where multiple models are combined. Papers are analysed chronologically. The most important dimension of the present review is the type of model applied. The review includes other dimensions also such as source of data, number of variables used in the model, type of variables (financial/relational data/textual), industry type, timeline of dataset, sample size (bankrupt vs non-bankrupt where available), accuracy of the best performing model. Further, the review focused on papers published in academic journals or conference proceedings and available in the public databases Web of Science, Scopus, ScienceDirect. More on the selection framework in fig.1:

Figure 1 Articles selection framework



Overview of Intelligent Techniques

Table 1. Parametric vs Non-parametric models

PARAMETRIC	NON-PARAMETRIC
It uses a fixed number of parameters to build the model	It uses flexible number of parameters to build the model
Considers strong assumption about the data	Considers fewer assumptions about the data
Computationally faster	Computationally slower
Require lesser data	Require more data

Source: Park, Kim and Lee, 2014

Parametric models

A wide variety of papers have studied the application of parametric models in the area of bankruptcy prediction up until the 90'ies when more complex and computationally

intensive models started to be applied. The list of parametric models found in the papers studies together with a short description of the model can be found on the tab. 2 below.

Table 2 Parametric models identified in the selected papers and short description

PARAMETRIC MODELS	DESCRIPTION
Canonical discriminant analysis (CDA)	Determines how to best separate or discriminate between two or more groups of data, given their quantitative measurements of several variables of these groups (Cruz-Castillo *et al.*, 1994).
Discriminant analysis (DA)	Used to classify observations when the dependent variable is categorical and the independent variables is interval.
Logistic regression (LR)	LR uses the log-ratio to assign a company to either bankrupt or non-bankrupt class (Veganzones and Séverin, 2018);
Cost sensitive variation of logistic regression (CLR)	A variation of logistic regression which has been used for addressing class imbalance problems, mostly used in credit scoring (Zhang *et al.*, 2020).
Linear discriminant analysis (LDA)	It assumes that class-conditional densities follow Gaussian distributions and that they also have a covariance matrix (Veganzones and Séverin, 2018).
Multiple discriminant analysis (MDA)	It is used to determine the class membership of samples from a group of predictors by finding linear combinations of the variables that maximize the difference between classes (Brown, 1998).
Naïve Bayes (NB)	NB classification uses the probabilistic inference to assign a company to a class, given observed features, computing the probability of the decision variable (Choi *et al.*, 2019).

Source: mentioned on each method

Non-parametric models

With the growing advancements in computing power and the increasing size of samples studied, non-parametric models took-off. In the majority of previous studies, non-parametric classifiers outperform the performance measured by accuracy of their parametric counterparts, only for the case of small samples size it can be the other way around (De Andrés, Landajo and Lorca, 2005).

Table 3 Non-parametric models identified in the selected papers and short description

NON-PARAMETRIC MODELS	DESCRIPTION
AdaBoost	Adaptive boosting (AdaBoost) is one of the machine learning algorithms designed by (Freund and Schapire, 1996). AdaBoost works as an algorithms enhancer, combined with weak classifiers to build a learning algorithm with stronger classifiers; A misclassification cost-sensitive boosting model.

AdaCost	
Case base reasoning (CBR)	Decision tree that learns from examples using the Euclidean distance and k-nearest neighbor method (Ravi Kumar and Ravi, 2007).
Extreme learning machine (ELM)	Simple learning algorithm where the hidden layer does not need to be iteratively tuned and the training error and the norm of the weights are minimized (Yu *et al.*, 2014).
Fuzzy chance constrained least squares twin support vector machine (FCC-LSTSVM)	The chance constrained algorithm ensures the minimum misclassification for uncertain data (Song, Cao and Zhang, 2018).
Fuzzy-set qualitative comparative analysis (fsQCA)	It uses combinatorial logic, fuzzy set theory and Boolean minimization to highlight what combinations of case characteristics are sufficient to produce an outcome (Boratyńska and Grzegorzewska, 2018).
Feed-forward neural network (FNN)	Can be seen as a way to parametrize a fairly non-linear function proved to be extremely flexible in approximating smooth functions (De Andrés *et al.*, 2011);
General regression neural networks (GRNN)	A neural network with the number of neurons in the hidden layer consistent with the sample size (Song, Cao and Zhang, 2018);
Multilayer neural network (MNN)	A neural network in which the signal flow is only in one direction (Korol, 2019);
Multilayer perceptron (MLP)	The most used class of artificial neural networks, it uses a set of input-output pairs to learn the model correlations between those groups (Tsai, Hsu and Yen, 2014).
Recurrent neural network (RNN)	Mostly used for time series data analysis, it uses internal memory to process the incoming inputs (Ozbayoglu, Gudelek and Sezer, 2020).
Gaussian processes	Each class prediction comes in the form of a probability allowing explanatory power on how certain the model is about the state of bankruptcy (Antunes, Ribeiro and Pereira, 2017).
Classification and regression tree (CART)	A decision tree algorithm developed by (Breiman L. *et al.*, 1984) that works by choosing the best separation of the population (parental node) in two sub-populations (child nodes) (Durica, Frnda and Svabova, 2019);
J48 CJ48	Open-source implementation of the C4.5 algorithm; J48 optimized for cost rather than error.
Decision rule inducer (JRIP)	It works by treating all the examples of a particular decision in the training data as a class, and finding a set of rules that cover all the members of that class. Afterwards it proceeds to the next class and does the same, repeating this until all classes have been covered (Parsania, Jani and Bhalodiya, 2014);
CJRIP	Cost optimized JRIP.
k-Nearest neighbor (KNN)	It determines the probability of default by the proximity of cases next to each other being calculated as default cases divided by overall

	nearest neighbors (Kruppa *et al.*, 2013).
Principal component analysis (PCA)	It is used for dimensionality reduction while keeping much of the data set variation (Tsai, 2009);
Radial basis function network (RBFN)	Similar to MLP but in RBFN each node has its own radial basis function, such as a Gaussian function instead of the logistic function of the former (Tseng and Hu, 2010).
Random forest (RF)	A relatively new method that combines trees grown on bootstrap samples of data and a random subset of bagging of predictor variables (Yeh, Chi and Lin, 2014).
Support vector machine (SVM) CSVM Support vector regression (SVR)	Works by using statistical learning theory to perform classification and regression tasks (Ravi Kumar and Ravi, 2007); Cost sensitive support vector machine; Different than than the SVM in terms of the fact that it performs regression where SVM performs classification.
Weighted-vote relational neighbor (wvRN)	A classifier using the network structure to calculate a class probability as a weighted average of its j neighbors' probability scores (Tobback et al., 2017).
Extreme gradient boosting (XGB) XGBE EXGB	An optimized, very performant, distributed gradient boosting library; Only the last tree of XGB; Ensemble of booted trees trained with XGBE EXGB.

Source: mentioned on each method

FINDINGS

This section summarizes the reviewed articles by presenting the 9 criterias such as models used, industry type, time frame of the dataset, sample size and sample split where available, short description of the aim of the papers and results and finally the accuracy of the best performing model (tab.4).

Table 4. Summary of reviewed articles

Reference	Source of data (country of origin)	Number of variables	Type of variables	Models used	Industry type	Timeline of dataset	Sample size	Aim and results	Accuracy (%)
(Liang *et al.*, 2016)	Taiwan	180	Financial ratios and corpor	SVM, KNN, CART, MLP, NB	Mixed	1999-2009	239 bankrupt and 239 non-bankrupt	Authors used a model based on a combination of financial ratios and corporate governance indicators that proved to	83.6

			ate governance indicators					perform best, hence stepwise discriminant analysis (SDA) + support vector machine (SVM).	
(Zięba, Tomczak and Tomczak, 2016)	Poland	64	Financial ratios	LDA, MLP, JRip, CJRip, J48, CJ48, LR, CLR, AB, AC, SVM, CSVM, RF, XGB, XGBE, EXGB	Mixed	2000-2013	700 bankrupt and 10000 non-bankrupt	Authors developed a model using Extreme Gradient Boosting and it showed results better than all methods compared. Also, they introduced a novel approach using synthetic features/variables.	95.9
(Pal *et al.*, 2016)	France	35	Financial ratios	CART, DA, LR, NN	Mixed	2002-2012	8660 bankrupt and 8660 non-bankrupt	In their paper authors proved that ensemble methods seem to capture some variation within the decision space that individual models do not.	91.2
(Sartori, Mazzucchelli and Gregorio, 2016)	Italy	6	Financial ratios	CBR, CRePERIE	Mixed	2012-2013	807 bankrupt and 11637 non-bankrupt	Authors use this new method Case Retrieval Platform Extended to RevIsE that not only proves good results in terms of accuracy but can be used because of its explainability power.	86
(Du Jardin, 2016)	USA	136	Financial ratios	SVM, CBR-SVM	Manufacturing and service	2012-2013	10 bankrupt and 188 non-bankrupt	A novel approach towards having a dynamic discriminating hyperplane matched with expert ratings (Equity Summary Score) was developed in this paper.	90
(Alaminos, Del Castillo and Fernandez, 2016)	Worldwide	12	Financial ratios	LR	Mixed (non-financial)	1990-2013	220 bankrupt and 220 non-bankrupt	Authors show that a global model proves to be more effective than a regional one.	89
(Antunes, Ribeiro and Pereir	France	30	Financial ratios	GP, SVM, LR	Mixed	2005-2007	Multiple datasets: 1334 companies (50:50), 2000	Authors work on a visualization centric approach with three databases with different class imbalances.	92

a, 2017)							companies (30:70) and 2000 companies (20:80)		
(Barboza, Kimura and Altman, 2017)	USA	11	Financial ratios	SVM, RF, NN, LR, MDA, Bagging, Boosting	Mixed	1985-2013	612 bankrupt and 13449 non-bankrupt	Authors re-proved that the accuracy of modern machine learning methods is better than that of classical methods.	87
(du Jardin, 2017)	France	32	Financial ratios	DA, LR, DT, Cox Model, SVM, Bagging, Boosting, Random Subspace, Rotation Forest	Mixed	1997-2003	1920 bankrupt and 95910 non-bankrupt	Authors demonstrate that the accuracy of any model can be improved when the horizon of analysis exceeds two years.	82
(Wang, 2017)	N.A.	6	Financial ratios	SVM, NN, Autoencoder, LR, GA, Inductive learning	Mixed	N.A.	107 bankrupt and 143 non-bankrupt	Author shows that neural network with dropout shows best results in comparison with classical methods on the database studied.	99
(Tobback *et al.*, 2017)	Belgium/ UK	6	Relational data between companies and financial ratios	wvRN, SVM	Mixed	2011-2014	240000 bankrupt and 2200000 non-bankrupt	Authors report the potentially unused benefits of relational data in bankruptcy prediction models.	84
(Fito, Plana-Erta and Llobet, 2018)	Spain	5	Financial ratios	z-Score	Mixed	2005-2015	450 bankrupt companies	Authors analyze the difference in results between Altman z-Score and their score showing that on the dataset studied the later score is more effective.	95.8
(Song, Cao and Zhang, 2018)	China	27	Financial ratios	NN, RBF, GRNN, SVR, SVM, FCC-LSTSVm	Mixed	N.A.	398 bankrupt companies and 398 non-bankrupt companies	Authors demonstrate that effectiveness of methods depends on the type of industry.	98
(Nyitr	Hun	20	Financ	DA, LR,	Mi	20	1468	Authors prove that decision	8

ai and Miklós, 2018)	gary		ial ratios	DT, NN	xed	01-2016	bankrupt and 1528 non-bankrupt	trees are robust methods when faced with outliers where linear models and neural networks are sensitive.	7
(Carmona, Climent and Momparler, 2018)	USA	30	Financial ratios	XGB, LR, RF	Banking	2001-2015	78 bankrupt and 78 non-bankrupt	Authors show that XGB has a higher predictive power of bankruptcy for the banking sector to the other models tested.	98
(Le and Viviani, 2018)	USA	31	Financial ratios	DA, LR, ANN, SVM, KNN	Banking	2011-2016	1438 bankrupt and 1562 non-bankrupt	Authors show that KNN and ANN demonstrate their good ability of predicting bankruptcy on the dataset used while the other methods cannot.	82
(Obradović *et al.*, 2018)	Serbia	5	Financial ratios	LR	Mixed	2010-2011	43 bankrupt and 43 non-bankrupt	Authors show that the model of Logistic Regression shows promising results on predicting bankruptcy on the Serbian dataset.	88.4
(Gogas, Papadimitriou and Agrapetidou, 2018)	USA	36	Financial ratios	SVM	Banking	2007-2013	481 bankrupt and 962 non-bankrupt	The SVM model used by the authors outperforms the well-established Ohlson's score.	99.2
(du Jardin, 2018)	France	15	Financial ratios	DA, LR, DT, Cox, SVM, FNN, ELM	Mixed	2006-2014	120 bankrupt and 6000 non-bankrupt	The findings reinforce the idea that the model accuracy does not solely rely on data mining techniques but also on the way one will use some knowledge about the bankruptcy phenomenon during modeling process.	82.9
(Mai *et al.*, 2018)	USA	36	Textual disclosure and Financial Ratios	CNN, NN, LR, SVM	Mixed	1994-2014	477 bankrupt and 11350 non-bankrupt	Authors combine numerical variables with textual disclosures and show the first large-sample evidence of the predictive power of textual disclosures.	85
(Boratyńsk	Poland	6	Financial	fsQCA, MDA, LR	Agrib	1996	14 bankrupt and 14 non-	The study shows that fsQCA proves to be	92

a and Grzegorzewska, 2018)			ratios		usiness	-2007	bankrupt	efficient in predicting bankruptcy for the agribusiness sector.	.9
(Veganzones and Séverin, 2018)	France	50	Financial ratios	LDA, LR, NN, SVM, RF	Mixed	2013-2014	2400 bankrupt and 6600 non-bankrupt	In this study authors show that prediction methods reward the classification of the majority class to the detriment of the minority class in imbalanced training datasets.	92.8
(Chang, 2019)	Poland	64	Financial ratios	SVM, RF	Mixed	2007-2013	2091 bankrupt and 45405 non-bankrupt	In a modest study authors show that the random forest method shows the highest results although the accuracy is only a bit above 70%.	70
(Lukason and Andresson, 2019)	Estonia	10 financial and 24 tax arrears	Tax arrears and financial ratios	LR, MLP	Mixed	2013-2017	512 bankrupt and 4003 non-bankrupt	The study shows that the dynamic usage of only a certain type of payment defaults (tax arrears) can substantially outrun the accuracies of financial ratio-based models.	93.4
(Affes and Hentati-Kaffel, 2019)	USA	10	Financial ratios	LR, CDA, PCA	Banking	2008-2013	410 bankrupt and 5805 non-bankrupt	The study shows that LR and CDA can predict banks failure with great accuracy.	95.6
(Charalambakis and Garrett, 2019)	Greece	7	Financial ratios	LR	Mixed	2003-2011	1770 bankrupt and 29116 non-bankrupt	The authors create 5 different logit models to test their efficiency in predicting bankruptcy on their Greek dataset one of them showing great results both over short and long run.	91.9
(Agrawal and Maheshwari, 2019)	India	1	Financial ratios	LR, MDA	Mixed	2001-2012	135 bankrupt and 135 non-bankrupt	The study used industry beta to assess its impact on default probability by regressing it with stock returns. The result shows industry beta being statistically significant in predicting default.	75.6
(Koroll, 2019)	Europe	20	Financial ratios	MNN, RNN, Fuzzy Sets, DT	Mixed	2004-20	300 bankrupt and 300 non-	The study shows the superiority of fuzzy sets over the other developed models mostly closer the	96.2

						17	bankrupt	announcement of bankruptcy showing promising results on the long run as well.	
(Durica, Frnda and Svabova, 2019)	Poland	37	Financial ratios	CART	Mixed	2016-2017	2698 bankrupt and 26210 non-bankrupt	Using a decision tree algorithm authors manage to create a model with great accuracy mainly useful for predicting the financial difficulties of Polish companies.	93.6
(Habachi and Benbachir, 2019)	Morocco	22	Financial ratios	LDA, Bayesian	Mixed	2017-2018	114 bankrupt and 1333 non-bankrupt	Authors proposed a quite effective method of rating model using LDA using a dataset of SMEs from a Moroccan bank.	93.7
(Hosaka, 2019)	Japan	263	Financial ratios	CNN, DT, LDA, SVM, MLP, AB, z-score	Mixed	2002-2016	102 bankrupt and 2062 non-bankrupt	The authors used a CNN based on GoogleNet that proved better results that that of comparable classical models.	88
(Muñoz-Izquierdo *et al.*, 2020)	Spain	20	Financial ratios	LR	Mixed	2004-2014	404 bankrupt and 404 non-bankrupt	Authors show that a mix of financial and auditing register a considerably higher accuracy.	87

The final goal of any bankruptcy prediction model development is to have a high accuracy of prediction. Tab.4 in its last column presents the accuracy of the best performing model out of the ones tested by the authors or the accuracy of the hybrid model implemented. Values range from 70% to 99.22% with a mean value of 87.12%, which is in line with previous findings of (Alaka *et al.*, 2018), studied papers not showing incremental increase in their results but rather on a steady trend in terms of accuracy.

As (du Jardin, 2017) demonstrated, the longer the period of analysis is the better the accuracy of the model becomes. In the papers studied, the period of analysis ranges from as small as 1 year to 28 years, with an average of 8.7 years showing that most papers have a consistent time frame at their disposal at the time of analysis.

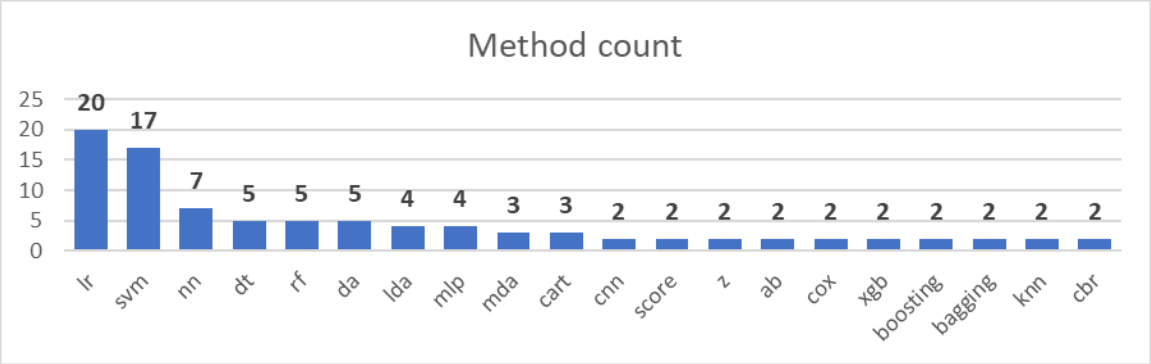
Looking at the size of the dataset considered by the papers studied, 19/32 (59%) of the papers did not have equal samples for bankrupt and non-bankrupt companies, this problem leading to the well-known oversampling problem where when faced with an imbalance between labels the algorithms tend to predict the oversampled label/class. As (Zhou, 2013) showed in his study, the accuracy of the models are highly dependent on the number of bankruptcies in the model thus authors should focus on managing the oversample problem before working on the algorithms themselves.

In terms of the sources of data, there seems to be no focus on a specific geographic region, which is great news for the domain as the algorithms are, tested on

different databases hence no specialization or improvement of algorithms on a single area.

Starting with (Agrawal and Maheshwari, 2019) that only used 1 variable for predicting bankruptcy prediction (industry beta) and continuing with (Hosaka, 2019) that had 263 financial ratios, it is clear that there is a very wide coverage in terms of researchers preference for the numbers of variables used. There does not seem to be a clear focus on the type of industry either, 25/32 (78,12%) papers analysing companies from mixed industries. Although there seems to be a wide variety in terms of the composition elements of the papers published, not the same thing can be said about the type of variables used, 28/32 (87,5%) of papers used financial ratios as the predicting variables showing a still biased view, in a form or another, towards considering financial ratios as being the only way to go in predicting bankruptcy.

Figure 2. Count of methods present in reviewed papers



Source: Own calculations

Now, the key part of this paper and what draws the most attention is the specific models used by researchers in the literature. In the Fig.2 in previous page, it is extremely interesting the be observed that the first two methods are logistic regression and support vector machine which relates with previous literature, logistic regression being considered the key reference algorithm.

Table 5. Parametric vs Non-parametric models

METHODS	METHODS TOGETHER COUNT
da lr	5
svm rf	3
lr svm	3
lr dt	3

Source: Own calculations.

In tab.5 it can be observed that most frequently used together in the papers studied are discriminant analysis and logistic regression. This is as well in line with previous literature, discriminant analysis and logistic regression being usually tested against each other to find the best parametric model. In top 4 pairs presented above, logistic regression

is present in 3 which, again, emphasises on the power of this simple algorithm, having it always in comparison with the other, later developed algorithms.

CONCLUSION

The aim of this paper was to present the summary of latest literature on bankruptcy prediction that would help practitioners and academia understand what the current trend and research focus is and what the results are. We showed that the bankruptcy prediction models continue to evolve with even broader perspectives then before and different strategies in developing the models. This study used a systematic review to highlight key elements as source of data, number and type of variables, models used, industry type, timeline of dataset, sample size, aim and result as well as accuracy. Overall, it can be concluded that there is no tool that is generally better and that the accuracy depends more on the tweaking of the algorithm based on the sample used and its properties rather than pre-defined selection based on previous studies. This idea is aligned with (Alaka *et al.*, 2018) who provided researchers with a tool selection framework but mentioned that caution should be used and the best results are achieved by trial-and-error. Future studies should consider analysing more characteristics in the published papers in the literature together with a closer look on hybrid models understanding. Although there is not currently a model that *fits all* current research shows that it might be the best way to go. Finally, as most of studies analysed in this paper considered financial ratios for their analysis, there is plenty of room for research in including more qualitative variables into the models.

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MAPPING BUSINESS SUPPORT FOR THE IT ENTREPRENEURIAL ECOSYSTEM IN ROMANIA

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Abstract *Despite the emergent and fragile entrepreneurial ecosystem, lack of entrepreneurial culture in Romania, there are Romanian IT entrepreneurs that found their way and developed competitive innovative international businesses. This research examines how, whether, and to what extent the IT entrepreneurs in Iasi County are supported by the entrepreneurial ecosystem attributes and categories of actors of the ecosystem domains and quadruple helix of innovation ecosystem. We consider the strengths and weaknesses of specific business support, how they are aligned to build an ecosystem supporting competitive and innovative entrepreneurship of IT firms. By applying the concept of entrepreneurial ecosystem and quadruple helix, the business support for IT entrepreneurs is analysed (university- industry-government-public-environment). The entrepreneurial ecosystems major factors (finance, policy, support, human capital, culture, markets) have aspects that are aligned and ones that still need further reconsideration in order to support the entrepreneurial system.*
Keywords: *entrepreneurial ecosystem, mapping business support, ecosystem domains*

Acknowledgement

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INTRODUCTION

Isenberg's Entrepreneurial Ecosystem (EE) concept sets out a number of institutional factors such as governmental policy, financial resources, culture, markets and markets human resources that contribute to supporting the entrepreneurs in becoming innovative and competitive. EE is a metaphor that emphasize the self-sustain attributes of the system when there are appropriate support domains and entrepreneurial nurturing environments. According to Isenberg (2010) changing a culture to one more supportive of entrepreneurship is difficult and "there is no single formula for creating an entrepreneurial economy and the use of a roadmap is an imperfect practical way". In Romania, the dynamics of change towards a more innovative economy are poor although there are islands of excellence and there is *access to a well-educated talent pool, one of Romania's greatest assets* (REPORT: Specific Support to Romania– Starts-ups, Scale-ups and Entrepreneurship in Romania, page 12 https://rio.jrc.ec.europa.eu/sites/default/files/report/KI-AX-18-008-EN-N.pdf) .

In the context of the weaker formal institutions that characterise emerging economies such as Romania, entrepreneurs find support in the entrepreneurial ecosystem. Small firm are typically resource light, therefore more dependent on external resources. The IT sector in Romania is very dynamic, especially software development companies. The case studies are from Iași, North East of Romania in Europe, an emergent smart city Iași (Georgescu et al, 2015), a city that ranked number two as the fastest-growing community overall in the Top 20 fastest-growing tech hubs by year-on-year growth to tech-related Meetup events (source: https://2019.stateofeuropeantech.com/chart/137-612). By applying, the concept of quadruple helix and using Isenberg's framework of entrepreneurship ecosystems the business support is analysed. Using empirical evidence from 5 case studies of organisations that work in supporting the entrepreneurial system, we identify the aspects that are aligned and supportive for innovation and value creation. The business support is described as forms of financial and especially intellectual capital, mainly social capital in all the 3 dimensions (structural, cognitive and relational). The ecosystems actors have aspects that are aligned and ones that still need further reconsiderations.

Despite the emergent and fragile entrepreneurial ecosystem state, the Romanian entrepreneurial and more specifically start-up ecosystem has already gained some international recognition (https://rio.jrc.ec.europa.eu/sites/default/files/report/KI-AX-18-008-EN-N.pdf, p.30). The main findings are that the IT companies are part of ecosystems that promote interactions between entities, capitalizing on opportunities and resources that can facilitate more effective action strategies. IT companies are examples of opening and producing resources from synergized actions. The ITC entrepreneurial ecosystem in Iași has started to obtain international recognition and authorities should further reconsider concrete measures so to also address support to Romanian entrepreneurs, in IT industries as well as in other sectors.

The paper structure is the following: first introduction with a presentation of the focus of the study, than the theoretical background, explaining the context- the entrepreneurial IT ecosystem, research context, design and data collection, the findings, discuss the limitations and specific implications in the reflection sections and consider a follow up-another more detailed study.

THEORETICAL BACKGROUND

There are numerous definitions of what the entrepreneurial ecosystem is and how it functions. The entrepreneurial ecosystem is a well-defined and yet versatile metaphor that highlights the interdependencies between organizations that enable specialization, co-evolution and co-creation of value across the whole of interconnected organizations (Singer, 2006; Adner and Kapoor, 2010, Isenberg, 2010; Mazzarol, 2016). Adner (2016), “the ecosystem is defined by the alignment structure of the multilateral set of partners that need to interact in order for a focal value proposition to materialize”(p. 2) where actors collaboratively create, deliver and capture value. To evaluate an EE Spigel (2017) considers three fundamental attributes : cultural, social and material. Innovation ecosystems, in *Quadruple Helix’* focuses on civil society, academia (education), public administration and industry (Högluind and Linton, 2018). Efficiency of public administration and the quality of regulation (based on the effectiveness of government)

reflect the quality of institutions' services, which are associated with innovation activities (Kawabata and Junior, 2020).

Experts realise that the interaction between components within the entrepreneurial ecosystem will improve entrepreneurial performance in an area (Borissenko and Boschma, 2016). Unfortunately, few studies examine entrepreneurship from a systemic perspective (Borissenko and Boschma, 2016). One of the most frequently used models was developed by Daniel Isenberg. According to him, the entrepreneurial ecosystem consists of six domains: appropriate finance, a proper culture, policies and leadership, quality human capital, markets expertise for selling the software products, institutional and infrastructural supports.

The networks as communities of practice learning is facilitated and entrepreneurs comply with the social norms in their environment in order to be considered legitimate economic actors (Lefebvre et al, 2015). Social networks are supporting mechanism for acquiring entrepreneurial resources (Anderson et al., 2010).

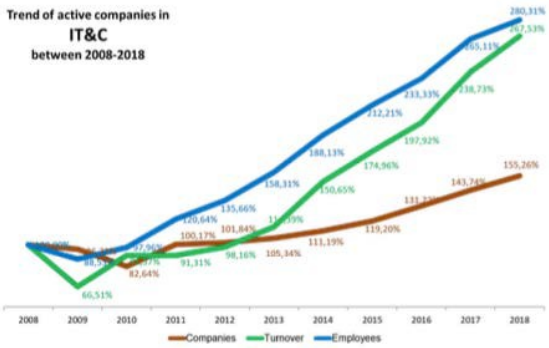
METHODOLOGY

Context and data collection

A multiple case study was chosen (5 case studies), designed to be both reliable and valid (Goffin et al., 2019). Such case studies and mapping were not previously researched. We triangulated data from official data and interviews(10 interviews with active entrepreneurs from these organisations and with a consultant/manager from each of the case studies, that in some cases was also entrepreneur). We selected the first 3 case studies from the Chamber of Commerce Iași events(the Chamber of commerce is one of the case studies), the main actors and organisers of IT entrepreneurship supporting events(Fablab and RubikHub). In this 6 interviews we ask for more organisations and selected 2 more, only one is informal (Made in Iasi-the association initiated by several IT entrepreneurs and JCI-Junior Chamber International). We consider that these respondents are representative as they were chosen according to their active involvement in creating an ecosystem for IT entrepreneurs and being actively involved in the 5 case studies selected. The case studies were selected according to their presence in the entrepreneurial community. The 5 case studies are autonomous, non-governmental, public utility, apolitical, non-profit organization, with legal personality. were created to represent, defend and support the interests of its members and the business community in relation to public authorities and bodies in the country and abroad.

The IT companies continuous create novelty, being able to generate, adopt and apply new knowledge that can power innovative output (Teece and Leih, 2016).

Figure 1. Trend of active IT&C companies



Source: Economic Facts and Figures of IAŞI County, 2019, pp 16, author Iasi Chamber of Commerce and Industry having as sources of information the data from the Ministry of Public Finance, The National Trade Register Office, the County Statistics Department of Iasi, other public sources and its own database

Table 1. Details of the case studies

Case	Status	Age	Core services/ Mission	Data
Chamber of commerce http://www.cciasi.ro/EN/index.htm	non for profit organization	13 years since 2007	IASI Chamber of Commerce and Industry was created to represent, defend and support the interests of its members and the business community in relation to public authorities and bodies in the country and abroad.	Focus group: 5 attendees 2 Interviews: one consultant and one entrepreneur, Documents: 3
Fab Lab http://www.fablabiasi.ro/en	non for profit organization	3 years Since 2017	Fab Lab Iasi is in affiliation process with the international network of Fab Lab laboratories, having the purpose to facilitate innovation and digital fabrication, programs with the purpose to stimulate innovation, digital fabrication and entrepreneurial spirit among the technical students of Iasi.	2 Interviews: one consultant and one entrepreneur, Documents: 2
Rubikhub https://rubikhub.ro	non-profit initiative	3 years Since 2017	Develop the entrepreneurial ecosystem of NE Romania by connecting, educating and empowering people to create successful global businesses. Considered one of the most active entities in the Romanian startup ecosystem.	2 Interviews: two entrepreneurs, Documents: 4
JCI Iasi https://www.jciiasi.ro	non for profit organization	18 years Since 2002 in Romania	Junior Chamber International is a non-for profit organization encourages young people to become active citizens and to participate in efforts towards social and economic development, and international cooperation, good-will and understanding.	2 Interviews: one consultant and one entrepreneur, Documents: 3

Made in Iași	Informal network	3 years	Supporting software development entrepreneurs	2 interviews with 2 of the founding members

Data analysis and findings

We explored how entrepreneurs perceive support: availability of appropriate finance for tech entrepreneurs, a proper culture, enabling policies and leadership, quality human capital, markets expertise for selling the software products, and a range of institutional and infrastructural supports (following Isenberg 2011 domains). In Iasi, the IT ecosystem is made of affiliated organisations- ecosystem as affiliation (Adner, 2016). This is supported by numerous networks and from the perspective of the representatives of these networks who have assumed to support the entrepreneurs. Understanding the 'landscape' or the ecosystem is also critical to the success of actors.

In the present study we mapped the perceptions of alignment of the dimensions of an supportive ecosystem for entrepreneurs. We gathered data until we reached saturation and interviewed entrepreneurs and active consultants in 5 case studies whose mission are to support the entrepreneurs and the ecosystem. In order to asses these aspects we used the traffic sign metaphor. In his work Adner, 2012, in order to show the alignment of each actor, he uses a simple metaphor: a continuous traffic sign represented by green, yellow, or red lights. The risk levels in Adner's blueprint follow a green, yellow and red "traffic light" for the co-innovation risks, green means the associated members are ready and in place; yellow means that they are not yet in place, but that they have a plan for this; and red means that these parties are not in place and there is no clear plan set for them.

The value proposition we considered was building an IT ecosystem supporting innovation and value creation for IT companies. We considered Eisenberg domains: human capital, finance, culture, markets, support, policy. Adner(2012) argues that it is not very frequent for an innovative value proposition to start with all the actors and domains aligned, supporting the value propositions so the lights to be all green. That is not mandatory, either. Yellow lights are acceptable, as long as they are followed by a plan to make them turn into green. Red lights, though, are challenging. Any red light, either by lack of capacity of a collaborator to deliver or by lack of will to cooperate, or due to a problem of its own, must be addressed, for instance by creating incentives to find a way to overcome problematic connections in the project (Fernandes et al, 2015).

Selected research findings of the relevant data:

1. ***Policy*** is mainly red and yellow (not yet aligned). There is not enough support for smaller IT companies, there is lack of predictability-the laws are changing frequently, low level of trust in public support pillars. At a firms level the entrepreneurs are activating *leadership- identifying an opportunity and taking the chance or the risk to try to extract value from that opportunity in international environment(interview no 4)*.
2. ***Financing*** is yellow and red (there is not an alignment in terms of financial supporting the it entrepreneurs of the ecosystem): *it's no Romanian fund who really invest in tech start-up and understand the needs(in interview no 1,3,4,5,7,9)*, there are barriers to access finance capital- the costs of debt and other costs , the reduced tax for an employee is for bigger companies that afford paying

big salaries per one employee, but there are also some few positive aspects such as: *Romania does have an awesome taxing system for startups and the advantages of lower costs compared to other ecosystems. In other words, it's easier to start with lower capital. But if you target to "conquer" only the Romanian market, you will remain an "Eastern European" or "nationwide" company which won't be appealing for international VC's (entrepreneur Sebastian Gabor, Rubikhub).*

3. ***Support*** is mainly yellow and red for supporting sustainable and competitive entrepreneurship through the 3 sub pillars for supporting innovation: political environment (lack of political stability), regulatory environment (the political situation not supporting the rule of law) and business environment (the difficulty of starting and running a business) and green for the support networks, also for the internet infrastructure(high speed connectivity) and the airport and the fact that we have a lot of connections with more countries that helped a lot.
4. ***Human capital*** is green for technical specialists- very good- *community is growing graduates from the technical and computer science, economics.. we have something that is ... no longer really present in the rest of Europe and most of the western world people that are engaged and IT dedicated* and so *the value that we can bring to our customers, the fact that we have really mastered execution*, but more human resources are needed: *there is about 5 times more demand than there is supply for people working in this industry in Iași (interview no 1 and all the other interviews mention the need of even more specialists).*
5. ***Research and academia*** – is mainly green, but also yellow in some asspects. Entrepreneurs consider that they *have access to a lot of innovative, potential people because of the Universities in Iași* and not yet aligned is the lack of business expertise: *we have brilliant IT people who have brilliant ideas but no business expertise*, the specialists should be involved in the university curricula
6. ***Markets*** is mainly yellow and red (not aligned) due to the fact that for a real IT start-up ecosystem that sells globally, entrepreneurs said: *we need to learn how to sell, at scale (said the majority of interviewed entrepreneurs), we are in a company working for big companies.. and we do projects in Sillicon Valley and what we build here in Iași does not diferent from what comes out of Palo Alto, the challenge here in Iasi is to move from a city of outsourcing and multinational companies to a city where an intellectual property is build here but we do not know how to sale, marketing and focus on growing (interview no. 7, idea that is present also in other interviews).*

CONCLUSIONS

The main findings are that the IT companies are examples of opening actions and producing resources from synergized actions part of ecosystems that promote interactions between entities, capitalizing on opportunities and resources that can facilitate more effective action strategies. The ecosystems major actors still need further reconsideration so to be aligned in order to offer business support to the in the innovation entrepreneurial IT systems: university- industry actors are aligned so to support innovative projects but the formal institutions register institutional voids. One major concern of the entrepreneurs and consultants is lack of predictability. According to Global Innovation Index, 2020, for

a sustainable and competitive entrepreneurship, there are 3 sub pillars for supporting innovation: political environment (political stability), regulatory environment(rule of law) and business environment (the ease of starting and running a business, business support mechanism).

The employees in the IT industry are a source of competitive advantage for innovation. It is a knowledge intensive business sector and government should further reconsider concrete measures so to also address support to Romanian entrepreneurs also for smaller, entrepreneurial firms.

The limitations of the present study is the inductive approach and whilst conceptually generalizable, it may work differently in other contexts.

The implications of this study are that it resulted the need of at least another study that explores how Romanian IT entrepreneurs foster innovation through networking, drawing on social network analysis and institutional theory.

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CAN PREDICTIONS WITH R HELP A SMALL START-UP COMPANY INCREASE ITS POTENTIAL SALES?

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Abstract: *The ERP solutions which include the predictions modules are very expensive and very hard to comprehend whenever a new company starts its activity. According to a survey (Ly, 2019), small to medium-sized businesses can expect to pay somewhere between $75,000 and $750,000 for implementation and this expenditure grows even larger for large businesses. Fortunately, there are some free tools available which can be used to implement a small part of an ETL professional process. Of course, we may have to admit that you also need some technical skills in order to learn how R, but also some statistical ones. The R language is very easy to use when it comes to implement regressions on the actual data of companies, and it comes at zero costs. Also, there is almost none ETL (extract-transform-load) technics needed because the client portfolio of small businesses is not large enough to be worth investing into. The statistical formula used for predictions was logistic regression and it intends to create a model to predict the probability of buying a product based on the yearly income of a costumer. To make these concepts easier to explain in this article, we have considered a toy problem where you only have one customer characteristic (the customer's yearly income) and a data scientist from a small company wants to predict if the customer will buy. This matter can be extended in future studies which can conduct the predictions of multiple independent variables, binomial or multinomial. Mainly, this article also admits that the use of digital marketing to reach the potential customers is very important, but more important is to predict the behaviour of a potential client whether it will buy or not our solution so that the company may set its own expectations.*
Keywords: *R, predictions, logistic regression, sales, digital marketing, ERP*

INTRODUCTION

There are many things that makes a small business to fail, but one of the main reasons is related to *insufficient capital* which can also be associated to *improper planning* (Chaney, 2016). These two issues can be associated like some sort of the ingredients of a fail recipe. When it comes to ERP (Enterprise Resource Planning) costs, which can be quite considerable, every businessman knows that *the importance of ERP systems far outweighs the initial cost, time and effort involved in implementation if you choose the right solution* (O'Shaughnessy, 2019). But what you can do when you have much less money than you need in order to but an ERP system? Should an entrepreneur completely ignore the CRM (Customer Relationship Management)?

We may never find the answer for that, but the entrepreneurs should take in consideration other methods, like Digital Marketing. Why Digital Marketing? Well, the

answer can be found at Clutch (a survey company from the USA), which surveyed 501 digital marketers at businesses across the U.S. to discover how they use digital marketing (Herhold, 2018). Actually, the top three digital marketing channels, which businesses are currently using, are social media marketing (81%), a website (78%) and email marketing (69%). And this is not all, you have multiple things to take in consideration, especially for a new firm opened in 2019, as you cannot possibly sustain a business without taking those three digital marketing channels in consideration. We could admit that *Digital Marketing is not an option, it's mandatory for any business* (Bhuiyah, 2017).

It is free to open a business page on Facebook or Twitter, but it comes with costs when you want to sponsor some campaigns. It is very cheap to create a website because there are lots of third-party companies that allows you to build a website at small costs, especially when you don't know HTML, CSS or JavaScript. Also, there are free email marketing platforms that can help you contact old customers, actual customers or potential leads.

The first thought is that we do not really need to pay thousands of dollars on ERP solutions, if we have a small company, but it is not that simple. Anyway, this subject can be included in a future analysis of another study as this study takes in consideration that the company, for which the study was conducted, already has a customer portfolio within its database and that the email channels are currently being used.

LITERATURE REVIEW

ERP solutions allow companies of all sizes to support key business processes by leveraging virtualization. The implementation of cloud ERPs is not straightforward and there are many issues that need to be taken into consideration when launching am ERP solution and one main issue is the cost (Sorheller, 2017). The most popular companies in the market of ERP systems are SAP, which is a German company with customers in more than 190 countries and an annual turnover of 20,8 Billion Euro in 2015 (SAP, 2016) and Oracle, an US-based company, also known for their database managements systems, which has more than 420.000 customers and a current annual turnover of 37 Billion Euros (Oracle, 2016). Therefore, we can see that big firms mainly conduct the market, which can be quite intimidating.

ERP implementation may differ from any traditional systems implementations in project costs and the need for business process reengineering (Somers & Nelson, 2001). The percentage of ERP implementation failures is over 60%, and half of top-10 failures are from market leading ERP vendors, like the ones mentioned above (Morris & Venkatesh, 2010). This means that the success of the implementation can be quite intriguing for any entrepreneur and the success is not guaranteed. So, the question is: *should a small business try to create a mini project from a small ERP process, with almost zero costs?*

The answer may be not entirely be found in this article, due to theoretical limitations, but the model implemented can help any businessman build predictions in R. The model chose for this study is based on the logistic regression formula. If the actual data does not have the assumed conditions of the model, then it is not feasible or alongside with a significant error. Mainly because a default distribution, like the normal distribution for response variable or the linearity of the proposed relationship of the

variance of errors, are among the limitations of some of the classical methods (Sedehi et al., 2010) (Amiri et al., 2018).

This is why the advantages of using the logistic regression model, in addition to observations modeling and the predicted probability of each person belonging to each of the levels of the dependent variable, can help us find out the possibility of directly calculating the probabilities ratio to use the coefficients of the model.

Mainly, the model has two different variables, the dependent variable is the one being tested, and it is called dependent because it depends on the independent variable. The other one is the independent variable which is the one you change or control in an experiment (Hermenstine, 2019). Those two are very easy to interpret and almost any person with analytics skills can apply this in the context of statistical formulas.

RESEARCH METHODOLOGY

Before getting into statistical details, the present study was conducted using the RStudio program which supports any statistical analysis and prediction formulas. Of course, in our study is also shown the *ggplot* which is an absolute representation of the normal distribution of observations taken in consideration. With that plot, we can see if the customers who bought the product tended to have a higher income or not and, similarly, if the customers who did not buy our product tend to have a lower income.

The analysis contains a simple model to predict if a customer is going to buy a product after receiving an email, due to a marketing campaign. First, we must explain the context and the basis of the model that we are going to use in our example. There is a variety of formulas that can be used for a prediction, the simplest one is linear regression. Unfortunately, as simple a linear regression is, as harder it is to fulfill all statistical assumption of that formula (Statistic Solutions, 2020) and this is the reason for choosing the logistic regression.

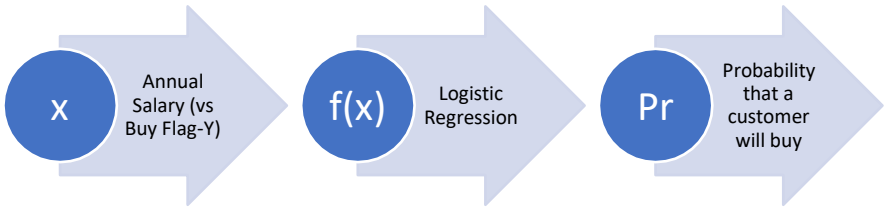

Figure 1. Model of regression followed to predict if a customer will buy our product (Mezquita, 2017)

As shown in the figure above, our model (or function) is going to get the characteristics of a customer, which in our case is the annual income, and the marketing campaign to predict in the customer will buy via the logistic regression.

The main hypothesis is that *a small start-up company can predict with the use of the logistic regression if a customer is going to buy a product or not, based on the email marketing campaign conducted on the customer portfolio.*

DATA COLLECTION

The company for which the study has been conducted is currently a part of a *toy problem* obtained from Kaggle. This decision was made since it is mandatory to make these concepts easier to explain in order to accept the hypothesis. Also, the data consists has 859 observations and 15 variables. The most important variables are *BD*, which is a binomial variable, and *Income*, which is the independent variable. These two will further be used in our predictions.

In many real cases, this kind of categories are often being used to show if some clients buy a product or not, based on how much they earn, on sex, on wealth etc. Of course, you can add other columns to this formula, in order to build a multiple regression, but in our study, we have taken in consideration the logistic regression after the ETL (Extract-Transform-Load) part was concluded. Our data has 859 customers, for which only 309 of them bought a product, the rest were contacted via email, but they did not buy anything.

Instrument design

The instrument design takes in consideration that our example has two variables:

- **Y** or so called the responding variable, which is the binomial variable (buy flag);
- **X** or so called the manipulated variable, in our case is the annual income.

$$\Pr(YY = 1 \mid XX = xx) = \frac{SS^{aa+bbbb}}{1 + SS^{aa+bbbb}}$$

Figure 2. **The logistic regression equation**

The equation can be seen in the figure above and it is used to calculate the predicted probabilities in our study. The formula's variables consist of:

- Pr is the probability;
- Y = 1, if the customer will buy (or not = 0);
- X = x, yearly income (=x);
- a is the y intercept of the line;
- b is the slope of the line.

$$bb = rr\ \frac{MM_{yy}}{MM_{bb}}$$

Figure 3. The equation for slope

The equation for slope also takes in consideration the following variables:

- r = the correlation;
- MM_{yy} = the standard deviation of Y;
- MM_{bb} = the standard deviation of X.

$$aa = \gamma\gamma_{yy} - bb\gamma\gamma_{bb}$$

Figure 4. The equation for the intercept

The equation for the intercept of Y also takes in consideration the following variables:

- $\gamma\gamma_{yy}$= mean of y;
- $\gamma\gamma_{bb}$= mean of x.

Once the values of the coefficients *a* and *b* are obtained (R can do this automatically), then the model can predict the probability of buying a product for a customer by substituting its corresponding yearly salary.

In our case, the model takes in consideration a cutoff value of 0.5. For customers who bought the product, the predicted probability of buying has to be above the cutoff value (0.5), therefore, the prediction is that they will buy.

In R, the equations from *figure 2,3 and 4* are translated as follows:

Table 1. The translation of equations in R language

Equation	Statistic equations translated in R
Logistic regression	model = glm(formula = BD ~ Salary, data = sales, family = "binomial") Prob = predict(model, newdata = sales, type = "response")
Slope	a = coef(model)["(Intercept)"]
Intercept	b = coef(model)["Salary"]
Manual prediction	pred_logit(a, b, x) new_vals = data.frame(Salary = x) predict(model, newdata = new_vals, type = "response")

Implementation of the cutoff	cutoff = 0.5 #Cutoff for probability
	sales = sales %>%
	cbind(Prob) %>%
	mutate(Prediction = ifelse(Prob > cutoff, 1, 0))

Next to the formulas translated in R, our study has some charts which were also built in Rstudio. The syntax for those charts is very long, but those charts are based on the *ggplot* command.

RESULTS AND DISCUSSIONS

Predicting if a customer will buy or not

The first plot obtained in RStudio can be observed in *figure 5.* The conclusion is that the customers who bought the product tend to have a higher income. The black line represents the mean of the income salary and we can perceive it as the turning point in our data set. Similarly, the customers who did not buy the product tend to have a lower income, less than $300K per year.

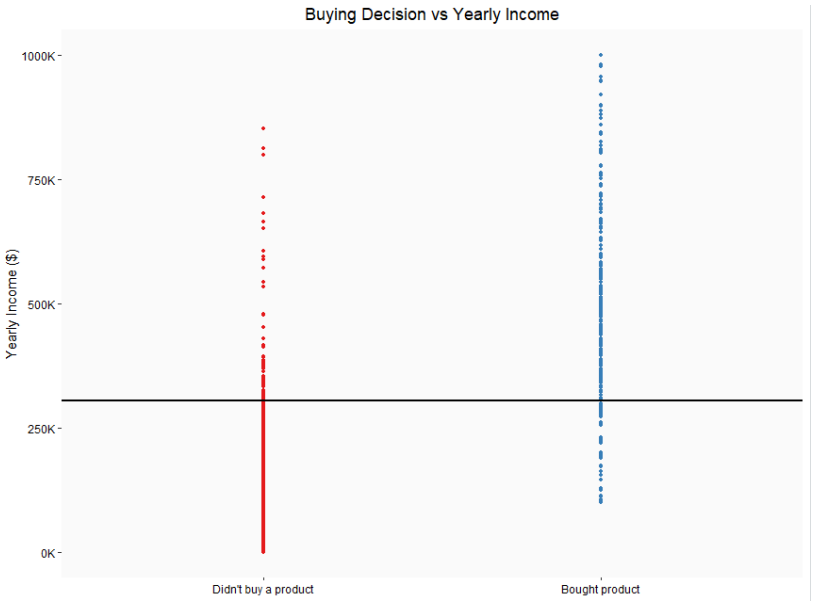

Figure 5. Buying Decision vs Yearly Income

Therefore, our data set has a normal distribution and the prediction is the next step in the study's analysis. As established, the cutoff of the analysis is 0.5; this means that all scores higher then this number can convert our potential customers. The red dots from the *figure 6* are nothing but the scores smaller than 0.5.

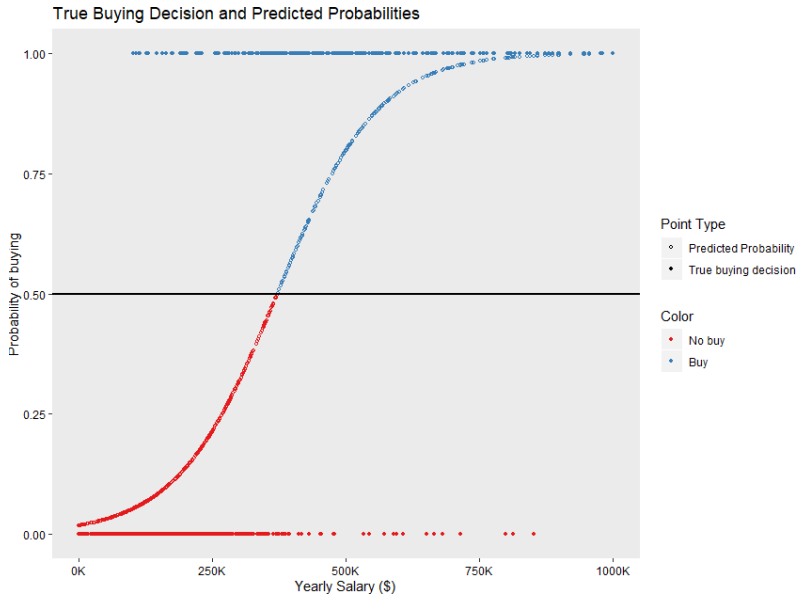

Figure 6. True buying decision and Predicted Probabilities

In order to see how the points from the plot were created, we must see an example of how the formula works in RStudio. The random example was the sum of 200,000 applied in the regression formula, next to the slope and the intercept.

$$\Pr(YY = 1 \mid XX = 150{,}000) = \frac{\$\$^{-3.96+1.07(200{,}000)}}{\$\$^{-3.96+1.07(200{,}000)}} = 0.14$$

Figure 7. The formula applied for an income of $200,000

In this example only, we can predict that a customer who earns $200,000 has a probability lower than the cutoff; therefore, the company should not focus on customers with this amount of income.

Hypothesis Testing

The decision whether there is any significant relationship between the independent variable *Y* and the dependent variable *X* can be taken based on the logistic regression equation. The chi-square test tells if the null hypothesis is valid, then *X* is statistically insignificant in our regression model. In order to measure the dependency relation between the variables, the significance level should be not higher than *0.05.*

The *glm* function applied to a formula that describes if the customer bought a product or not, by the annual income. This creates a generalized linear model, so called *glm,* in the binomial family. The summary can be printed out in RStudio and the check of the p-values can be sorted out without SPSS. As the p-values of the annual income is less than 0.05, then our model is significant in the logistic regression model as seen in the *figure 8* below. There is a 95% confidence level that our model is statistically significant.

```
Call:
glm(formula = BD ~ Salary, family = "binomial", data = sales)

Deviance Residuals:
    Min       1Q   Median       3Q      Max
-3.2028  -0.5628  -0.3360   0.4807   2.4238

Coefficients:
             Estimate Std. Error z value Pr(>|z|)
(Intercept) -3.963e+00  2.464e-01  -16.08   <2e-16 ***
Salary       1.067e-05  7.200e-07   14.82   <2e-16 ***
---
Signif. codes:  0 '***' 0.001 '**' 0.01 '*' 0.05 '.' 0.1 ' ' 1

(Dispersion parameter for binomial family taken to be 1)

    Null deviance: 1122.30  on 858  degrees of freedom
Residual deviance:  655.86  on 857  degrees of freedom
AIC: 659.86

Number of Fisher Scoring iterations: 5
```

Figure 8. Summary result of the GLM model in RStudio

RESULTS AND DISCUSSIONS

The results of the research showed how statistical equations can help any business predict the behaviour of the customer and also how the combination with R language can reduce the costs and also can increase its sales. The main findings can be summarized as follows:

- The logistic regression formula is very easy to be implemented in R because any calculation is being done in the background. The only task that the person in cause has is to make sure it selects the correct variable.
- In fact, the predictions in R can help a small business increase its potential sales if the next emailing campaign is taking place according to the results of the first analysis. For example, in our study, the entreprenour should focus on the customers that have a higher income, which can be viewed as the targeted market.

- Rstudio can also help to test the predictions confidence level interval, which can be easily be obtained.
- Finally, the need of an expensive ERP system is not always needed for a small business. Of course, this can be seen as a future study, like a comparison between Rstudio and SAP, Oracle or Tableau. Also, PowerBI works very well with R and it is also accessible at a fair price, along with the Office package.

As a general conclusion of the study, the results obtained in this study reveal that small businesses can adapt to the latest assumptions of the market even without big costs. Certanly, this is only a small piece of an entire process of a company, there are still a lot of things to take in consideration by expanding the number of independent variables.
In fact, the direction of this research is entirely based on the rest of the process that has to be taken in consideration. The main issue is the class imbalance problem. This happens when the relative frequency of a particular class, which in our case is the customers who bought the product, is low compared to the other class (the customers who did not buy the product). There are many scenarios when this could happen, but in the context of digital marketing, the only problem is that the click rate is constituted from only a small proportion of the customers. This may affect the predictions if the ETL processes are not taken in consideration.

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THE ASSOCIATION BETWEEN SELF-REPORTED HEALTH STATUS AND PHYSICAL ACTIVITY: EVIDENCE FROM ROMANIA

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Abstract: *This study adds to the research on the population perception on health status in relation to different socio-economic and health behavior factors, with a special focus on physical activity effects, which are still understudied in Romanian population, despite their potential long-term implications. The data was retrieved from the second wave of the European Health Interview Survey (EHIS) 2014. In methodological terms, our study relies on an assessment physical activity index which includes the participation frequency and activity duration in walking, riding a bike, and making sports, while ordered probit estimation strategy is employed to capture how the individuals' perception on their health is impacted by the level of physical activity. This relationship is explored both for the whole population and separately for three age groups: 15 to 19 years (adolescents), 20 to 64 years (adults), and 65 years and older (elders) in order to gain better insight into the association between physical activity and self-reported health. Our findings reveal that, excepting the adolescents' group, higher physical activity level is significantly associated with an improvement in individuals' perception on their health status. Irrespective to age group, this association is slightly reduced when accounting the effects of other health determinants. These results outline that the recommendations on physical activity for health should be take into consideration the specificity of each category of population.*
Keywords *Physical activity, self-reported health status, EHIS 2014.*

INTRODUCTION

Population health is an essential dimension of the social and economic life of a society. In Romania, both population health status and health system did not represent priorities that would lead to programs and policies to improve them. According to Eurostat (2019), Romania spends the lowest amount of all EU member states on health, both as a share of GDP (5%, compared to the EU average of almost 10%) and per capita (about 1,000 euros per capita, compared to the EU average close to 3,000 euros). Moreover, the number of doctors per 1,000 inhabitants is one of the lowest in the EU (3, compared to 8.5 in the EU). Among the risk factors of health, the most important are physical inactivity and poor nutrition.

A wide range of studies provides strong evidence of the importance of physical activity for health and to reduce healthcare costs (Andreyeva and Sturm 2006; Jacobs *et*

al. 2013; Kang and Xiang 2017; WHO, 2018). Nevertheless, there are significant gaps among the EU member states in terms of the participation degree of citizens in physical activities. According to Eurobarometer 2017, Romania is among the countries with the highest level of physical inactivity in the EU. Thus, 63% of the population reports not doing any exercise or sport, in comparison to the EU average of 46%. When it comes to other physical activities, such as walking, cycling or gardening, more than half of the population declares no engagement in such activities (51%, compared to the EU average of 35%). Among the main causes of physical inactivity, lack of time and lack of motivation are mentioned. More than 40% of respondents claim that there are no physical activity-related facilities and more than 50% consider that the government and local public administrations are not involved in supporting the population participation in physical activity.

In the attempt to reduce health inequalities and to ensure the access to health services, the European Commission has urged the members of the EU to take measures on increasing physical activity. For Romania, in accordance with the unfavorable position of this country in the EU context, this measure should be a national priority. On the one hand, a national action plan to enhance physical activity and to promote sports should reach the whole population. On the other hand, it is necessary that these policies be based on specialized studies enabling to highlight the existing differences among various categories of people and the possible inequalities regarding the access to this type of activities. Research in this area and international health organizations emphasize that such differences exist between men and women, young adults and elders, healthy people and those with chronic diseases. In addition, the participation in physical activities is also determined by the level of economic development and the existing differences between rural and urban infrastructure.

The urgent need to implement such policies to promote physical activity and increase the participation of population in sport or other physical activities, Eurostat conducts national surveys that provide scholars with databases that could be exploited in this direction. For example, the European Health Interview Survey (EHIS) 2014 consists of three health modules, namely health status, healthcare utilization, health determinants, and one module focusing on broader socio-economic and demographic characteristics of the population living in non-institutional households residing in the territory of the country.

The existing literature identifies studies that analyze the relationship between physical activity and self-reported health status among different populations, such as adolescents, adults and elders, using national or regional samples. According to these studies, physical activity has a significant positive impact on individuals' self-perception of health (Kaleta *et al.*, 2006; Södergren *et al.*, 2008; Tsai *et al.*, 2010; Galan *et al.*, 2013; Kantomaa *et al.*, 2015; Lera-Lopez *et al.*, 2015; Cui *et al.*, 2017; Urbina and Romero, 2017; Joena and Pragasam, 2019). To the best of our knowledge, in Romanian case, the research on the population health status and the effects of physical activity on health is still insufficiently developed.

Based on these considerations, the purpose of this study was to examine the relationship between physical activity and self-reported health, while controlling for a comprehensive set of socio-economic and health behavior factors, for a Romanian representative sample. The remainder of this paper is organized as follows. Section 2

reviews a series of results obtained in empirical studies analyzing the effects of physical activity on self-reported health status. Section 3 presents the data and the methodology of assessing physical activity levels and analyzing the relationship between self-reported health and its determinants, with emphasis on physical activity. Section 4 illustrates the main empirical results. The study ends with a series of concluding remarks, discussions, and references.

RELATED LITERATURE

Defining and measuring the population health status involve not only assessing the existence of diseases, but also the individuals' behavior, mental state and their perception on health. Using a subjective measure for health status, as self-reported health, has proven to be a good solution, both in terms of facilitating the measurement process and its consistency (Idler and Benyamini, 1997; Balkrishnan and Anderson, 2001; Tsai *et al.*, 2010; Joena and Pragasam, 2019). More and more studies consider this indicator developed by the WHO to be a good predictor of health service utilization and mortality (Balkrishnan and Anderson, 2001; DeSalvo *et al.*, 2005).

The existing literature put a special emphasis on the impact of physical activity on health just segments of the population. In particular, groups with a higher risk of inactivity, such as adolescents and the elderly, were targeted. As these categories perceive the level of health quite differently, the analyses performed frequently used self-rated health as a measure of population health status, along with other indicators. Research in adolescent populations is relatively numerous and has shown that an increase in physical activity level improves the self-perception of health. However, this positive correlation differs by gender, types of exercise and socio-economic conditions of parents (Ianotti *et al.*, 2009; Galan *et al.*, 2013; Kantomaa *et al.*, 2015, Granger *et al.*, 2017).

In comparison to young people, the elderly have lower health expectations, and with increasing age the level of sedentary lifestyle increases. Among older people, however, higher levels of physical activity appear to have a significant impact on self-perceived heath status (Lera-Lopez *et al.*, 2015). There are a few studies on elderly populations stratified by gender, many of which are performed on men. For women, who have a longer life expectancy, physical activity has been shown to have a significant positive impact on perceived health status (Eifert *et al.*, 2014).

Research in adult population found a significant impact of different types of physical activity, such as leisure time or fitness, on self-rated health status. However, this relationship depends on gender, age, level of education, and income (Ransfield and Palis, 1996; Okano *et al.*, 2003; Kaleta *et al.*, 2006; Södergren *et al.*, 2008; Urbina and Romero 2017).

Other studies focus on categories of populations with health problems. For example, the findings on overweight people suggest that they perceive their health status as poor or fair and that physical activity does not have a significant impact on this perception (Joena and Pragasam, 2019). In contrast, physical activity is significantly associated with self-rated health status for people with diabetes (Tsai *et al.*, 2010).

For Romania, there are only a few studies concentrating on population physical activity. On the one hand, a part of these studies analyze the level of population involvement in physical activities (Tatar *et al.*, 2018) and others investigate physical

activity in relation to health behavior factors (Roman *et al.*, 2016; Lotrean *et al.*, 2018), health-related quality of life (Badicu, 2018), and healthcare utilization (Jemna and David, 2019). On the other hand, there are just as few studies on population health. Several analyses focus on the relationship between health status and socio-demographic and psychological factors related to the whole population (Precupetu *et al.*, 2013; Iacobuta *et al.*, 2015; Precupetu and Pop, 2016) or to subpopulations such as the elderly (Ghinescu *et al.*, 2013). To our knowledge, for the Romanian population, no study was performed to analyze the link between physical activity and self-rated health status, checking for various socio-demographic factors.

DATA AND METHODOLOGY

Data source and sample study

To study the association between the individual physical activity levels and the health status, this paper uses data from the second wave of the European Health Interview Survey (EHIS) for Romania that took place in 2014. The EHIS 2014 includes population level information on health status, healthcare utilizations, and health determinants, as well as socioeconomic and demographic factors for its participants.

The present analysis was restricted to those respondents aged 15 years and older with nonmissing physical activity and health status data, resulting in a sample of 16,605 observations.

Variables

The variables used in the present analysis have been shown to be of importance in public health studies and are in accordance with the aim of this study. All these variables are described in detail below.

Dependent variable

The dependent variable, self-reported health status, is assessed on the basis of the question "How is your state of health in general?", having as optional answers: very good, good, average, poor, and very poor. In line with previous research (Molarius *et al.*, 2007; Rocca *et al.*, 2015), in the regression analyses the first two categories, very good and good, collapsed to good and the last two, very poor and poor, to poor.

Main independent variable

One of the main advantages of the EHIS data is its detailed information related to different type of physical activities. Different from other household panel surveys, it includes questions on population physical activities that are related to transportation, such as walking and riding a bike, and leisure time, such as sports. For each type of physical activity, the respondents are asked to report their participation in these specified physical activities, participation frequency, and activity duration during a regular week. Using an adaptation of International Physical Activity Questionnaire (IPAQ, 2005) methodology, a general index for physical activity was defined according to the average daily energy expenditure as determined by the reported frequency, duration, and metabolic cost associated with all the physical activities. Following the same methodology, we used a similar index variable to categorize respondents as high active (>3000 metabolic equivalent of task (MET) minutes per week), moderately active (600 to 3000 MET minutes per week), and low active (<600 MET minutes per week).

Control variables

Socio-economic characteristics affect individuals' health perception as well as their participation in physical activities (WHO, 2008; Sari, 2009; Fisher *et al.*, 2015; Sari and Osman, 2018). In order to control for potential omitted variable bias from these sources, we include rich sets of explanatory variables in the estimations. These are gender (male; female), age group (15 to 19 years; 20 to 64 years; 65 years and older), marital status (divorced; married; unmarried; widower), education level (primary; secondary; tertiary), income level (lower than quintile 1; quintiles 1-2; quintiles 2-3; quintiles 3-4; quintiles 4-5), employment status (employed; self-employed; unemployed), and degree of urbanization (densely-populated area; intermediate-populated area; thinly-populated area). It is also likely that differences in health behavior may influence physical activity as well as the self-reported health status outcomes (Bauman *et al.*, 2002; WHO, 2008; Sari, 2009; Sari and Osman, 2018). To account for these factors, Body Mass Index (normal weight; overweight; obese), smoking (daily smoker; occasional smoker; no-smoker) and alcohol consumption (no-risk; low risk; increased risk), and a nutrition index based on fruits and vegetables consumption (insufficient; moderate; sufficient) are also included in the regressions.

Empirical approach design

Given the ordinal nature of our dependent variable (poor = 0; average = 1; good = 2), we fit an ordered probit model for self-reported health status based on the specification (Green, 2000):

$$MMRRSS^{*} = \alpha\alpha + \beta\beta\gamma\gamma\beta\beta + \gamma\gamma'XX + \varepsilon\varepsilon,$$

where $MMRRSS^{*}$ is the dependent variable and stands for self-reported health, $\gamma\gamma\beta\beta$ is the main independent variable of interest and stands for physical activity, the matrix XX includes socio-economic determinants, as well as health behavior factors, and $\varepsilon\varepsilon$ is the error term which is assumed to be normally distributed across observations.

In the above model, $MMRRSS^{*}$ is an unobserved latent variables, but what we do observe is:

$$MMRRSS = 0 \; iiii \; MMRRSS^{*} \leq 0,$$
$$MMRRSS = 1 \; iiii \; 0 < MMRRSS^{*} \leq \mu\mu_1,$$
$$MMRRSS = 2 \; iiii \; \mu\mu_1 < MMRRSS^{*} \leq \mu\mu_2,$$

which is a form of censoring and where $\mu\mu_1$ and $\mu\mu_2$ are unknown parameters to be estimated with the regression coefficients.

Then, for the probit model, the probability that an individual will select one of the three alternatives of the dependent variable is defined as follows:

$$\gamma\gamma rrPPbb[MMRRSS = 0] = \Phi(-\alpha\alpha - \beta\beta\gamma\gamma\beta\beta - \gamma\gamma'XX),$$
$$\gamma\gamma rrPPbb[MMRRSS = 1] = \Phi(\mu\mu_1 - \alpha\alpha - \beta\beta\gamma\gamma\beta\beta - \gamma\gamma'XX) - \Phi(-\alpha\alpha - \beta\beta\gamma\gamma\beta\beta - \gamma\gamma'XX),$$
$$\gamma\gamma rrPPbb[MMRRSS = 2] = \Phi(\mu\mu_2 - \alpha\alpha - \beta\beta\gamma\gamma\beta\beta - \gamma\gamma'XX) - \Phi(\mu\mu_1 - \alpha\alpha - \beta\beta\gamma\gamma\beta\beta - \gamma\gamma'XX),$$

where $0 < \mu\mu_1 < \mu\mu_2$ so that all the probabilities to be positive.

We also perform different robustness and sensitivity checks to test the reliability of the estimates on the response of self-reported health in relation to physical activity. We would expect that adjusting for control variables in the regression model would not change the magnitude and the statistical significance of the coefficient of interest. In this sense, the first specification includes only socio-economic characteristics. In the second one, we additionally control for respondents' health behavior.

RESULTS

Descriptive statistics

The sample was also stratified based on physical activity into three activity levels, namely high, moderately, and low active. Dependent variable was assessed both for the entire population and separately for each age group (15–19 years, 20–64 years, and 65 years and older). The distributions of self-reported health were compared between physical activity groups using chi-square test. Further, in order to describe the characteristics of the study population, frequencies were determined as appropriate for all independent variables of interest to better understand how low, moderately, and high active individuals differ with respect to their socio-economic characteristics, as well as their health behavior.

Table 1 summarizes the descriptive data for self-reported health status of respondents presented by age group and physical activity level.

Table 1 Self-reported health, both for whole population and stratified by age group and physical activity level

AGE GROUP	SELF-REPORTED HEALTH	PHYSICAL ACTIVITY		
		LOW (%)	MODERATE (%)	HIGH (%)
Adolescents	Low	8.70	0.66	0.00
	Moderate	8.70	16.70	17.73
	Good	82.61	82.64	82.27
Adults	Low	28.41	16.53	21.24
	Moderate	45.26	50.33	68.83
	Good	26.33	33.14	33.14
Elders	Low	84.71	70.06	59.48
	Moderate	14.35	28.31	37.07
	Good	0.94	1.64	3.45
Total	Low	51.85	28.26	14.66
	Moderate	31.63	43.67	40.36
	Good	16.53	28.07	44.98

Note: Within each age group, but also at the level of the entire population, physical activity groups were significantly different ($\gamma\gamma < 0.001$) on self-reported health status.

Source: Authors' computation

In all age groups, self-reported health differs significantly ($\gamma\gamma < 0.001$) between each physical activity level. The majority of adolescents reported being in good health irrespective to the level of physical activity (between 82.27% and 82.61%). In the adults group, the proportion of respondents who reported a moderate or a good health status was

lowest in the low active group (45.26% and 26.33%, respectively) and highest in the high active group (68.83% and 33.14%, respectively). The adults' perception of one's own health suggests that physical activity plays an important part in maintaining moderate or good health, but, at the same time, could reveal that it's impact is more important for those who reported being in moderate health. For the oldest age group, the majority of respondents declared that they suffer from deterioration in their overall health. Nevertheless, the descriptive results also show a decrease in this proportion from the low active group to moderate active one and, even more evident, to high active group (from 84.71% to 59.48%). The former data indicate that it is essential for older people too to get involved in physical activities. Moreover, comparing the results stratified on age groups to the ones at the level of the entire population highlights the presence of heterogeneity within age groups with respect to the link between physical activity and the perception of respondents regarding their health status.

Descriptive data for all control variables, stratified by physical activity level, are presented in Table A.1 (in Appendix). With regard to gender of respondents, men are more engaged in physical activities of high intensity (65.65%), while women reported more activities of low and moderate intensity (61.55% and 52.50%, respectively). Across all levels of physical activity, the proportion of adults group is the highest, with an obvious increase from low active level to high active one (56.19% to 75.45%). It seems that the group of adolescents do not differ from the elderly individuals regarding their involvement in high physical activities (13.82% for adolescents and 10.73% for older people). With regard to employment status, the unemployed are the most numerous; the proportion of unemployed respondents was lower as the activity level increased (64.52% to 40.22%), while the group of employed individuals had the lowest proportion for low active level (25.67%) and the highest for the moderate level of physical activity (38.37%). More than half of respondents reported annual household incomes greater than quintile 2 regardless the level of physical activity. However, the highest proportion of 21.51% of low active individuals reported annual incomes within the range of quintiles 1 and 2, and 24.36% of those highly active reported annual incomes not exceeding quintile 1. The majority of population was married and had completed the secondary level of education, without major differences among physical activity levels. In each level of physical activity, the vast majority reported living in densely- and thinly-populated areas (>76%). An interesting difference linked to the degree of urbanization reveal that people living in thinly-populated areas are more active than their counterparts, participating especially in high intensity activities (55.57%).

With regard to personal health practices, the vast majority of respondents (>75%) were normal weighted, with the highest proportion of high active group (51.23%), and overweighed, with the highest share of low and moderately active individuals (48.04% and 47.40%). Across all levels of physical activity, the majority of respondents are nonsmokers (>69%), non-consumers (>38%) or occasional consumers (34%) of alcohol, and with a balanced diet in fruits and vegetables consumption (84.34%).

Main empirical results

The primary aim of this study is to examine the effects of physical activity on self-reported health status in a nationally representative sample of Romanian population.

This relationship is also explored separately for three age groups: adolescents (15-19 years old); adults (20-64 years old); elders (65 years and older). Classifying the respondents in groups by age, and not treating them as one homogeneous group, enable a more in-depth analysis of the response of individuals' health perception to different levels of physical activity.

The analyses results are presented synthetically in the core text only in relation to physical activity and separately for each age group (Table 2 to Table 5). The full results are presented in Appendix Tables A.2-A.5.

Table 2. Effects of physical activity on self-perception of health

VARIABLES	MODEL 1(A)	MODEL 1(B)	MODEL 1(C)	MODEL 1(D)
PA_*Moderate*	0.5359 ***	0.2747 ***	0.4918 ***	0.2645 ***
PA_*High*	0.9897 ***	0.4406 ***	0.9041 ***	0.4267 ***

Notes: (1) Model 1(A) includes only physical activity; Model 1(B) includes also socio-economic characteristics; Model 1(C) includes in addition to physical activity health behavior factors; Model 1(D) includes both socio-economic and health behavior factors; (2) The reference categories for each independent variables are: *low active* (physical activity); *female* (gender of respondent); *adolescent* (age group); *primary education level* (education); *unmarried* (legal marital status); *unemployed* (employment status); *lower than quintile 1* (income level); *densely-populated area* (degree of urbanization); *obese* (BMI status); *daily* (smoking); *increased risk* (alcohol consumption risk profile); *insufficient* (nutrition – fruits and vegetables consumption). (3) *** indicate the rejection of null hypothesis for 1%; ** indicate the rejection of null hypothesis for 5%; * indicate the rejection of null hypothesis for 10%.

Source: Author's computation

At the level of the entire population (Table 2), the outcomes indicate that the individuals' perception on health status is better (from bad to average to good) with higher physical activity level (from low to moderately to high active). Irrespective to model's specifications, the impact of physical activity on self-reported health is highly significant and positive, result which is in compliance with previous studies (Kaleta *et al.*, 2006; Södergren *et al.*, 2008; Cui *et al.*, 2017; Joena and Pragasam, 2019).

After adjusting for socio-economic characteristics, the lower estimates show that the effect of physical activity on self-reported health diminishes, revealing the significant influence of other factors such as group of age, education level, marital status, employment status, income level, or degree of urbanization on self-perception of health. However, when including health behavior factors in addition to physical activity, estimates show that the response of self-rated health to different levels of physical activity is slightly different in magnitude. These findings suggest that the significant influence of Body Mass Index, smoking, drinking, and nutrition habits on individuals' perception on their health does not affect largely the relationship between physical activity and self-reported health status. Finally, adjusting for both socio-economic and health behavior factors, the outcomes are closer to the ones obtained after controlling for social and economic characteristics, emphasizing once again the importance of these factors when analyzing the link between physical activity and self-perception of health.

With respect to control variables, the results from the last model (Table A.2) shows that their effects are slightly different in magnitude, but not in sign or significance, highlighting the stability of estimates regardless the model's specifications. Furthermore, analyzing the impact of age, the results show that the individuals' perception on their

health is lower (from bad to average to good) with higher age. Therefore, the considerable heterogeneity within the subgroups of population relative to physical activity and health justifies the further analysis by age groups (Chad *et al.*, 2005; Vegda *et al.*, 2009; Moineddin *et al.*, 2010; Sari, 2010; Fisher *et al.*, 2015). The findings on the relationship between physical activity and self-rated health stratified by age group are summarized in Tables (3)-(5), and presented in detail in Appendix (Tables A.3-A.5).

Table 3. Effects of physical activity on adolescents' self-perception of health

VARIABLES	MODEL 2(A)	MODEL 2(B)	MODEL 2(C)	MODEL 2(D)
PA_*Moderate*	0.2028 .	0.0295 .	0.1466 .	0.0524 .
PA_*High*	0.2070 .	0.0914 .	0.1437 .	-0.0140 .

Notes: (1) Model 2(A) includes only physical activity; Model 2(B) includes also socio-economic characteristics; Model 2(C) includes in addition to physical activity health behavior factors; Model 2(D) includes both socio-economic and health behavior factors; (2) The reference categories for each independent variables are: *low active* (physical activity); *female* (gender of respondent); *18-19* (age group); *primary education level* (education); *unmarried* (legal marital status); *unemployed* (employment status); *lower than quintile 1* (income level); *densely-populated area* (degree of urbanization); *obese* (BMI status); *daily* (smoking); *increased risk* (alcohol consumption risk profile); *insufficient* (nutrition – fruits and vegetables consumption). (3) *** indicate the rejection of null hypothesis for 1%; ** indicate the rejection of null hypothesis for 5%; * indicate the rejection of null hypothesis for 10%.

Source: Author's computation

The results of the regression analysis pertaining to the 15-19 years age group are presented in Table 3. In this age group, no significant associations were found between physical activity and self-perception of health regardless to model's specifications. These findings are partially supported in literature (Boyle *et al.*, 2010; Faulkner and Faulkner, 2010). As Granger *et al.* (2017) state, despite the consensus on the positive relationship between physical activity and objective health outcomes in adolescent populations, there is conflicting evidence related to the impact of physical activity levels on self-reported health status. The authors emphasize two possible explanations, one referring to the use of standardized measurement scales and objectively measured physical activity levels, and the other one denoting the role of other health determinants.

In this regard, after controlling for socio-economic and health behavior factors (see Table A.3 in Appendix), improvements in self-perceived health can be observed in relation to gender (men having a better perception on their health than women), higher education level, higher income level (but significant only for incomes exceeding quintile 3), lower degree of urbanization, and healthy diet. This supports the findings of studies by Ianotti *et al.* (2009), Galan *et al.* (2013), Kantomaa *et al.* (2015), and Granger *et al.* (2017).

Table 4. Effects of physical activity on adults' self-perception of health

VARIABLES	MODEL 3(A)	MODEL 3(B)	MODEL 3(C)	MODEL 3(D)
PA_*Moderate*	0.2962 ***	0.1852 ***	0.2672 ***	0.1763 ***
PA_*High*	0.5684 ***	0.2703 ***	0.5277 ***	0.2637 ***

Notes: (1) Model 3(A) includes only physical activity; Model 3(B) includes also socio-economic characteristics; Model 3(C) includes in addition to physical activity health behavior factors; Model 3(D) includes both socio-economic and health behavior factors; (2) The reference categories for each

independent variables are: *low active* (physical activity); *female* (gender of respondent); *60-64 years* (age group); *primary education level* (education); *unmarried* (legal marital status); *unemployed* (employment status); *lower than quintile 1* (income level); *densely-populated area* (degree of urbanization); *obese* (BMI status); *daily* (smoking); *increased risk* (alcohol consumption risk profile); *insufficient* (nutrition – fruits and vegetables consumption). (3) *** indicate the rejection of null hypothesis for 1%; ** indicate the rejection of null hypothesis for 5%; * indicate the rejection of null hypothesis for 10%.

Source: Author's computation

In the 20 to 64 years age group, the effects of physical activity on self-rated health status are statistically and substantially significant in all four regression models (Table 4). The results in Table 4 suggest that the perception on health improves for moderately and high active individuals than their counterparts. These findings are consistent with those of Brown *et al.* (2004), Galan *et al.* (2010), Tsai et al. (2010), and Mountjoy *et al.* (2011), who point out that the relationship between physical activity and self-reported health status is dose-dependent in adult populations.

As before, comparison among different model's specifications shows that the effects of physical activity are lower and statistically significant when controlling for other determinants of health status (Ransfield and Palis, 1996; Okano *et al.*, 2003; Kaleta *et al.*, 2006; Södergren *et al.*, 2008; Urbina and Romero, 2017). In addition, among this age group, all socio-economic and health behavior factors contributes significantly to the improvement of self-perceived health, with notable impact of lower age, higher level of education, being employed or self-employed, or lower Body Mass Index (see Table A.4 in Appendix).

Table 5. Effects of physical activity on elders' self-perception of health

VARIABLES	MODEL 4(A)	MODEL 4(B)	MODEL 4(C)	MODEL 4(D)
PA_*Moderate*	0.4775 ***	0.3606 ***	0.4198 ***	0.3443 ***
PA_*High*	0.7638 ***	0.5914 ***	0.6440 ***	0.5483 ***

Notes: (1) Model 4(A) includes only physical activity; Model 4(B) includes also socio-economic characteristics; Model 4(C) includes in addition to physical activity health behavior factors; Model 4(D) includes both socio-economic and health behavior factors; (2) The reference categories for each independent variables are: *low active* (physical activity); *female* (gender of respondent); *85 years and older* (age group); *primary education level* (education); *unmarried* (legal marital status); *unemployed* (employment status); *lower than quintile 1* (income level); *densely-populated area* (degree of urbanization); *obese* (BMI status); *daily* (smoking); *increased risk* (alcohol consumption risk profile); *insufficient* (nutrition – fruits and vegetables consumption). (3) *** indicate the rejection of null hypothesis for 1%; ** indicate the rejection of null hypothesis for 5%; * indicate the rejection of null hypothesis for 10%.

Source: Author's computation

Table 5 provides the outcomes pertaining to the group of 65 years and older. Among this group, physical activity is also positively and significantly associated with self-reported health status (Eifert *et al.*, 2014; Lera-Lopez *et al.*, 2015). Irrespective to model's specifications, its effect is even larger than in adults' group, highlighting the fact physical activity could be a driver for a healthy and long life for older people (WHO, 2011; Langhammer, Bergland, and Rydwik, 2018).

After adjusting for other determinants of self-perception of health, the impact of physical activity is slightly lower, but remains strongly significant (see Table A.5 in

Appendix). With respect to the significant socio-economic characteristics and health behavior habits of individuals aged 65 years and above, an improved self-reported health is significantly related to gender (with a higher impact in males), lower age, higher level of education, lower Body Mass Index, no alcohol consumption, and better nutrition habits.

CONCLUSIONS

This study adds to the research on the population perception on health status in relation to different socio-economic and health behavior factors, with a special focus on physical activity effects, which are still understudied in Romanian population, despite their potential long-term implications. Moreover, this study is the first, to our knowledge, to investigate the impact of physical activity on self-reported health status using data provided by EHIS 2014.

In methodological terms, our study relies on an assessment physical activity index which includes the participation frequency and activity duration in walking, riding a bike, and making sports, while ordered probit estimation strategy is employed to capture how the individuals' perception on their own health is impacted by the level of physical activity. This relationship was explored both for the whole population (classifying all respondents as one homogeneous group) and separately for three age groups: 15 to 19 years (adolescents), 20 to 64 years (adults), and 65 years and older (elders) in order to gain better insight into the association between physical activity and self-reported health.

Our findings reveal that, in general, higher physical activity level was associated with an improvement in self-perception of health. However, the physical activity effects are reduced when controlling for socio-economic characteristics and health habits of respondents. Among these determinants of self-perceived health status, age group had a strong significant impact, which justified the further analysis by age groups.

Among adolescents, physical activity did not have a significant effect on their perception on health status, irrespective to model's specifications. However, self-reported health status was significantly associated to gender, education level, income level, degree of urbanization, and nutrition habits. These results emphasize that socio-economic characteristics play an important part in how adolescents perceive their health status.

In the 20 to 64 years age group, increasing physical activity improves self-reported health status. This association is slightly lowered by the effects of other determinants of health. Among these factors, age, education level, employment status, and Body Mass Index have a stronger influence on respondents' perception on their health.

A significant association, and even stronger, was also evident between physical activity and self-perceived health status in the elders group, where moderately or high active individuals have a better perception on health than their counterparts. Other significant changes in self-perception of health depend on age, education level, and health behavior factors including Body Mass Index, alcohol consumption and fruits and vegetables consumption. In contrast to adolescents' group, the individuals' age 65 years and older give more importance to health behavior factors when rating their health status.

Finally, the outcomes reveal a consensus on the impact of education level on self-reported health. Regardless the age group, the significant positive and strong association between education level and better self-rated health status suggest that further policies should promote more physical activity as an important driver for improving health and adopting a healthier lifestyle. Besides education, the policy measures in response to the low participation of population in physical activities should take into considerations the socio-economic and health behavior differences among and within age groups. Therefore, the recommendations on physical activity for health should be addressed separately depending on the specificity and the most relevant determinants of health corresponding to each category of population.

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APPENDIX

Table A.1: Population characteristics, stratified by physical activity level (NN = 16,417).

VARIABLE	PHYSICAL ACTIVITY		
	LOW (NN = 4,278)	MODERATE (NN = 9,976)	ACTIVE (NN = 2,163)
Gender_*Male*	38.45	47.50	65.65
Gender_*Female*	61.55	52.50	34.35
Age group_*Adolescent*	1.61	4.56	13.82
Age group_*Adult*	56.19	72.17	75.45
Age group_*Elderly*	42.19	23.27	10.73
Education_ *Primary*	19.52	8.94	6.20
Education_*Secondary*	70.48	78.94	82.99
Education_*Tertiary*	10.00	12.12	10.82
Marital status_*Divorced*	4.49	5.96	5.04
Marital status_*Married*	59.96	61.66	49.84
Marital status_*Unmarried*	11.55	20.67	39.53
Marital status_*Widower*	24.01	11.71	5.59
Employment_*Employed*	25.67	38.37	34.95
Employment_*Self-employed*	9.82	12.55	24.83
Employment_*Unemployed*	64.52	49.08	40.22
Income_< *Quintile1*	20.73	17.30	24.36
Income_*Quintiles1-2*	21.51	19.31	20.76
Income_*Quintiles2-3*	20.20	20.52	19.88
Income_*Quintiles3-4*	17.67	21.20	17.34
Income_*Quintiles4-5*	19.89	21.67	17.66
Durbaniz_*Densely-populated area*	31.88	34.27	22.05
Durbaniz_*Intermediate area*	20.80	23.28	22.38
Durbaniz_*Thinly area*	47.31	42.45	55.57
BMI Status_*Normal weight*	41.12	43.05	51.23
BMI Status_*Overweight*	48.04	47.40	42.58
BMI Status_*Obese*	10.85	9.54	6.20
Smoking_*Never*	82.37	74.93	69.96
Smoking_*Occasional*	4.01	5.51	6.98
Smoking_*Daily*	13.62	19.56	24.06
Alcohol_*No risk*	51.15	39.44	38.06
Alcohol_ *Low risk*	34.78	40.45	34.97
Alcohol_ *Increased risk*	14.07	20.11	26.97
Nutrition_*Insufficient*	15.66	12.00	12.90
Nutrition_*Moderate*	39.04	34.64	30.98
Nutrition_*Sufficient*	45.30	53.36	56.13

Note: Physical activity groups were significantly different ($\gamma\gamma$ < 0.001) on all control variables.
Source: Authors' computation

Table A.2. ***Ordered probit regression results (whole population)***

VARIABLES	MODEL 1(A)	MODEL 1(B)	MODEL 1(C)	MODEL 1(D)
Intercept	0.0129 .	1.8205 ***	-0.4123 ***	1.3210 ***
PA_*Moderate*	0.5359 ***	0.2747 ***	0.4918 ***	0.2645 ***
PA_*High*	0.9897 ***	0.4406 ***	0.9041 ***	0.4267 ***
Gender_*Male*		-0.0174 .		0.0003 .
Age_*Adult*		-1.0894 ***		-1.0561 ***
Age_*Elderly*		-2.0504 ***		-2.0089 ***
Education_*Secondary*		0.3501 ***		0.3337 ***
Education_*Tertiary*		0.6096 ***		0.5704 ***
Marital status_*Married*		-0.8232 ***		-0.7609 ***
Marital status_*Divorced*		-0.8365 ***		-0.7845 ***
Marital status_*Widower*		-1.1263 ***		-1.0606 ***
Employment_ *Employed*		0.5892 ***		0.5597 ***
Employment_ *Self-employed*		0.3749 ***		0.3666 ***
Income_*Quintiles1-2*		-0.0048 .		-0.0006 .
Income_*Quintiles2-3*		0.0537 .		0.0604 *
Income_*Quintiles3-4*		0.0046 .		0.0035 .
Income_*Quintiles4-5*		0.1052 ***		0.0965 **
Durbaniz_*Intermediate_area*		-0.1130 ***		-0.1116 ***
Durbaniz_*Thinly_area*		-0.0639 **		-0.0533 **
BMI Status_ *Normal_weight*			0.8283 ***	0.5386 ***
BMI Status_*Overweight*			0.4353 ***	0.3794 ***
Smoking_*Never*			-0.3565 ***	-0.2917 ***
Smoking_*Occasional*			0.0904 **	0.0780 *
Alcohol_ *Low risk*			0.1477 ***	0.0858 ***
Alcohol_*No-risk*			-0.0430 .	-0.0233 .
Nutrition_*Moderate*			0.1214 ***	0.1108 ***
Nutrition_*Sufficient*			0.2064 ***	0.0581 *

Notes: (1) Model 1(A) includes only physical activity; Model 1(B) includes also socio-economic characteristics; Model 1(C) includes in addition to physical activity health behavior factors; Model 1(D) includes both socio-economic and health behavior factors; (2) The reference categories for each independent variables are: *low active* (physical activity); *female* (gender of respondent); *adolescent* (age group); *primary education level* (education); *unmarried* (legal marital status); *unemployed* (employment status); *lower than quintile 1* (income level); *densely-populated area* (degree of urbanization); *obese* (BMI status); *daily* (smoking); *increased risk* (alcohol consumption risk profile); *insufficient* (nutrition – fruits and vegetables consumption). (3) *** indicate the rejection of null hypothesis for 1%; ** indicate the rejection of null hypothesis for 5%; * indicate the rejection of null hypothesis for 10%.

Source: Authors' computation

Table A.3. ***Ordered probit regression results (adolescents' group)***

VARIABLES	MODEL 2(A)	MODEL 2(B)	MODEL 2(C)	MODEL 2(D)
Intercept	2.1175 ***	1.6503 ***	1.6092 **	1.4629 **
PA_*Moderate*	0.2028 .	0.0295 .	0.1466 .	0.0524 .
PA_*High*	0.2070 .	0.0914 .	0.1437 .	0.0140 .
Gender_*Male*		0.1931 *		0.2140 *
Age_*15-17*		-0.0032 .		-0.0260 .
Education_*Secondary*		0.6075 ***		0.5287 **
Employment_ *Employed*		-0.5450 .		-0.4479 .
Employment_ *Self-employed*		-0.2196 .		-0.1970 .
Income_*Quintiles1-2*		0.0697 .		0.0143 .
Income_*Quintiles2-3*		0.0825 .		0.0509 .
Income_*Quintiles3-4*		0.4208 **		0.3236 *
Income_*Quintiles4-5*		0.4161 **		0.3926 *
Durbaniz_*Intermediate_area*		-0.2903 **		-0.2466 *
Durbaniz_*Thinly_area*		-0.2208 *		-0.2031 *
BMI Status_ *Normal_weight*			0.6408 .	0.5804 .
BMI Status_*Overweight*			0.4937 .	0.4739 .
Smoking_*Never*			0.2764 .	0.2128 .
Smoking_*Occasional*			-0.2050 .	-0.3124 .
Alcohol_ *Low risk*			-0.4408 .	-0.4910 .
Alcohol_*No-risk*			-0.5907 .	-0.6358 .
Nutrition_*Moderate*			0.3907 **	0.3801 **
Nutrition_*Sufficient*			0.3521 **	0.3343 **

Notes: (1) Model 2(A) includes only physical activity; Model 2(B) includes also socio-economic characteristics; Model 2(C) includes in addition to physical activity health behavior factors; Model 2(D) includes both socio-economic and health behavior factors; (2) The reference categories for each independent variables are: *low active* (physical activity); *female* (gender of respondent); *18-19* (age group); *primary education level* (education); *unemployed* (employment status); *lower than quintile 1* (income level); *densely-populated area* (degree of urbanization); *obese* (BMI status); *daily* (smoking); *increased risk* (alcohol consumption risk profile); *insufficient* (nutrition – fruits and vegetables consumption). (3) *** indicate the rejection of null hypothesis for 1%; ** indicate the rejection of null hypothesis for 5%; * indicate the rejection of null hypothesis for 10%.

Source: Authors' computation

Table A.4. ***Ordered probit regression results (adults' group)***

VARIABLES	MODEL 3(A)	MODEL 3(B)	MODEL 3(C)	MODEL 3(D)
Intercept	0.6457 ***	-0.4561 ***	0.0491 .	-0.8593 ***
PA_*Moderate*	0.2962 ***	0.1852 ***	0.2672 ***	0.1763 ***
PA_*High*	0.5684 ***	0.2703 ***	0.5277 ***	0.2637 ***
Gender_*Male*		0.0658 ***		0.0854 ***
Age_*20-24*		2.1197 ***		2.0707 ***
Age_*25-29*		1.6220 ***		1.5945 ***
Age_*30-34*		1.4475 ***		1.4234 ***
Age_*35-39*		1.2390 ***		1.2217 ***
Age_*40-44*		1.0236 ***		1.0159 ***
Age_*45-49*		0.7411 ***		0.7297 ***
Age_*50-54*		0.4543 ***		0.4581 ***
Age_*55-59*		0.1095 **		0.1199 ***
Education_*Secondary*		0.3203 ***		0.2902 ***
Education_*Tertiary*		0.5520 ***		0.5152 ***
Marital status_*Married*		-0.1424 ***		-0.1354 ***
Marital status_*Divorced*		-0.0675 .		-0.0653 .
Marital status_*Widower*		-0.0635 ***		-0.2267 ***
Employment_ *Employed*		0.4207 ***		0.4023 ***
Employment_ *Self-employed*		0.4136 ***		0.3967 ***
Income_*Quintiles1-2*		0.0252 .		0.0177 .
Income_*Quintiles2-3*		0.1234 ***		0.1222 ***
Income_*Quintiles3-4*		0.1015 **		0.0931 **
Income_*Quintiles4-5*		0.2480 ***		0.2303 ***
Durbaniz_*Intermediate_area*		-0.1154 ***		-0.1107 ***
Durbaniz_*Thinly_area*		-0.0327 .		-0.0245 .
BMI Status_ *Normal_weight*			0.8622 ***	0.4605 ***
BMI Status_*Overweight*			0.5190 ***	0.4215 ***
Smoking_*Never*			0.1629 ***	0.1400 ***
Smoking_*Occasional*			0.0953 **	0.0779 *
Alcohol_*Low risk*			-0.0350 .	-0.0359 .
Alcohol_*No-risk*			0.0923 ***	0.0669 **
Nutrition_*Moderate*			0.0888 **	0.0507 *
Nutrition_*Sufficient*			0.1465 ***	0.1093 **

Notes: (1) Model 3(A) includes only physical activity; Model 3(B) includes also socio-economic characteristics; Model 3(C) includes in addition to physical activity health behavior factors; Model 3(D) includes both socio-economic and health behavior factors; (2) The reference categories for each independent variables are: *low active* (physical activity); *female* (gender of respondent); *60-64 years old* (age group); *primary education level* (education); *unmarried* (legal marital status); *unemployed* (employment status); *lower than quintile 1* (income level); *densely-populated area* (degree of urbanization); *obese* (BMI status); *daily* (smoking); *increased risk* (alcohol consumption risk profile); *insufficient* (nutrition – fruits and vegetables consumption). (3) *** indicate the rejection of null hypothesis for 1%; ** indicate the rejection of null hypothesis for 5%; * indicate the rejection of null hypothesis for 10%.

Source: Authors' computation

Table A.5. ***Ordered probit regression results (elders' group)***

VARIABLES	MODEL 4(A)	MODEL 4(B)	MODEL 4(C)	MODEL 4(D)
Intercept	-1.0112 ***	-2.0249 ***	-0.7490 ***	-1.8814 ***
PA_*Moderate*	0.4775 ***	0.3606 ***	0.4198 ***	0.3443 ***
PA_*High*	0.7638 ***	0.5914 ***	0.6440 ***	0.5483 ***
Gender_*Male*		0.1394 ***		0.1517 ***
Age_*65-69*		1.0116 ***		0.9442 ***
Age_*70-74*		0.8008 ***		0.7508 ***
Age_*75-79*		0.6312 ***		0.5915 ***
Age_*80-84*		0.3102 **		0.2857 **
Education_*Secondary*		0.1609 **		0.1605 ***
Education_*Tertiary*		0.2407 **		0.2365 **
Marital status_*Married*		0.1900 .		0.1925 .
Marital status_*Divorced*		0.3373 *		0.3579 *
Marital status_*Widower*		0.0956 .		0.1083 .
Employment_ *Employed*		0.1933 .		0.1677 .
Employment_ *Self-employed*		-0.0931 .		-0.1243 .
Income_*Quintiles1-2*		0.0678 .		0.0870 .
Income_*Quintiles2-3*		0.0809 .		0.1104 .
Income_*Quintiles3-4*		-0.0127 .		0.0204 .
Income_*Quintiles4-5*		0.1208 .		0.1371 .
Durbaniz_*Intermediate_area*		-0.0549 .		-0.0710 .
Durbaniz_*Thinly_area*		-0.0487 .		-0.0538 .
BMI Status_ *Normal_weight*			0.0450 .	0.1425 **
BMI Status_*Overweight*			0.1679 **	0.2015 ***
Smoking_*Never*			0.1971 **	0.0727 .
Smoking_*Occasional*			0.2501 .	0.2177 .
Alcohol_ *Low risk*			-0.0351 .	-0.0103 .
Alcohol_*No-risk*			0.2806 **	0.1802 ***
Nutrition_*Moderate*			-0.1119 **	-0.1316 **
Nutrition_*Sufficient*			-0.0753 .	-0.0247 .

Notes: (1) Model 4(A) includes only physical activity; Model 4(B) includes also socio-economic characteristics; Model 4(C) includes in addition to physical activity health behavior factors; Model 4(D) includes both socio-economic and health behavior factors; (2) The reference categories for each independent variables are: *low active* (physical activity); *female* (gender of respondent); *85 years and older* (age group); *primary education level* (education); *unmarried* (legal marital status); *unemployed* (employment status); *lower than quintile 1* (income level); *densely-populated area* (degree of urbanization); *obese* (BMI status); *daily* (smoking); *increased risk* (alcohol consumption risk profile); *insufficient* (nutrition – fruits and vegetables consumption). (2) *** indicate the rejection of null hypothesis for 1%; ** indicate the rejection of null hypothesis for 5%; * indicate the rejection of null hypothesis for 10%.

Source: Authors' computation

HYBRID METHODOLOGY AND MATERIAL CHANGE OF INTEREST RATE BENCHMARKS

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Abstract: *The development of financial markets over the past several decades pointed out a very important role of financial benchmarks, which are used as a reference price for financial instruments or to determine interest payments. However, after the global financial crisis, allegations emerged that interbank interest rate benchmarks had been manipulated. A significant decrease in the size of interbank transactions was observed as well. Both elements lower the credibility of the interest rate benchmarks used so far. Taking into account the responsibility for financial stability, the EU bodies adopted a regulation on benchmarks (BMR) in 2016. The main purpose of this paper is to provide an analysis of this piece of legislation from the perspective of legal continued viability of interest rate benchmarks. The main subject of the analysis was the development of the EURIBOR and LIBOR methodology. The results of the analysis showed that the new hybrid methodology, which utilises eligible transaction data, transaction-derived data, and databased expert judgement, is a robust evolution of the quote-based methodology. It means that administrators did not change benchmark's underlying interest, and no one should diagnose the risk to the continued viability of EURIBOR and LIBOR rates.*
Keywords: *Interest rate benchmark, EURIBOR, LIBOR, material change.*

INTRODUCTION

The increasing importance of interest rate benchmarks has been keeping pace with the development of the financial market. These rates are the basis for derivatives (Klein 2004), but they are also used to calculate the cost of credit and to measure the performance of investment fund. In addition, the channel of the monetary policy transmission to the real sphere of economy is based on the behaviour of such interest rates (Creel, Hubert, and Viennot 2016). During almost the entire period of interbank interest rates functioning, setting of these rates was never regulated by public law. However, the financial crisis proved how susceptible these benchmarks were to manipulation, undermining confidence in the market mechanism and leading to a drop in liquidity. This created a regulatory gap, which the Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO) had taken upon themselves to fulfil - as one of their tasks as global standard and rules setters.

Both institutions issued recommendations, which started of a large-scale reform of benchmarks. More demanding rules for setting reference rates have already been introduced in countries such as Australia, Japan, Canada as well as the EU. The purpose of this article is to analyse the continuity of the provisions of interest rate benchmarks, which have had to be modified in the light of changes in economic reality and the EU regulatory requirements. This problem is presented in relation to LIBOR and EURIBOR, focusing on continuity, the breach of which, due to a potential material change in the

methodology for determining the benchmark, could prevent their use in financial contracts.

ORIGINAL METHODOLOGY FOR DETERMINING LIBOR AND EURIBOR

The methodology for determining European interest rates benchmarks was based on the London Interbank Offered Rate. It is believed to have been used for the first time in 1969, when a shah of Iran was offered a loan at an interest rate calculated as the arithmetic mean of the rates used by participants in the consortium (Vaughan and Finch, [2017]). It was not until 1986 that the rules for calculating LIBOR were written down and the LIBOR banks' panel was established. The British Bankers' Association (BBA) managed the process. At the start of 2008, LIBOR was calculated for as many as 10 currencies, and rates were set for 15 maturities - or tenors (Gyntelberg and Wooldridge, 2008).

Countries acceding to the euro area have recognised that the new currency implies the abandonment of domestic interest rate benchmarks, for example German FIBOR or Dutch AIBOR. The European Banking Federation (EBF) in Brussels has taken responsibility for the development of a continental benchmark referring to the euro. The current administrator is the European Money Market Institute (EMMI). EURIBOR was first published for value at 4 January 1999. The panel at that time was made of 53 banks, with geographical parity (Hörth, [1998]). Since May 2019, the panel is made of 18 banks.

The most important, for the original methodology of setting LIBOR, was the question asked to the panel banks. In addition, that question was: "At what rate could you borrow funds, were you to do so by asking for and then accepting interbank offers in a reasonable market size just prior to 11 a.m.?" (BBA, 2013). To answer, the banks had to provide their expert judgement – called quotation. EURIBOR was defined as the interest rate at which euro interbank term deposits were being offered within the European Monetary Union (euro) zone by one prime bank to another at 11.00 am Brussels time (EMMI, 2013).

Despite their linguistic similarity, certain subjective difference of these definitions should be considered. LIBOR banks should indicate via their quotes how costly it would be to secure funding for themselves, so they acted on its own behalf. EURIBOR panel banks, on the other hand, shared what they thought would be the interest rate offered by a hypothetical prime bank. At the same time, the phrase "rate at which deposits are being offered" was unclear and open for subjective interpretation.

From the quantitative point of view, both LIBOR and EURIBOR were calculated as the arithmetic mean of the quotes contributed to the calculation agent, who was required to reject 25% (LIBOR) or 15% (EURIBOR) of the highest and lowest quotes (Eisl, Jankowitsch, Subrahmanyam, 2017).

FSB-IOSCO RECOMMENDATIONS AND THE EU LAW

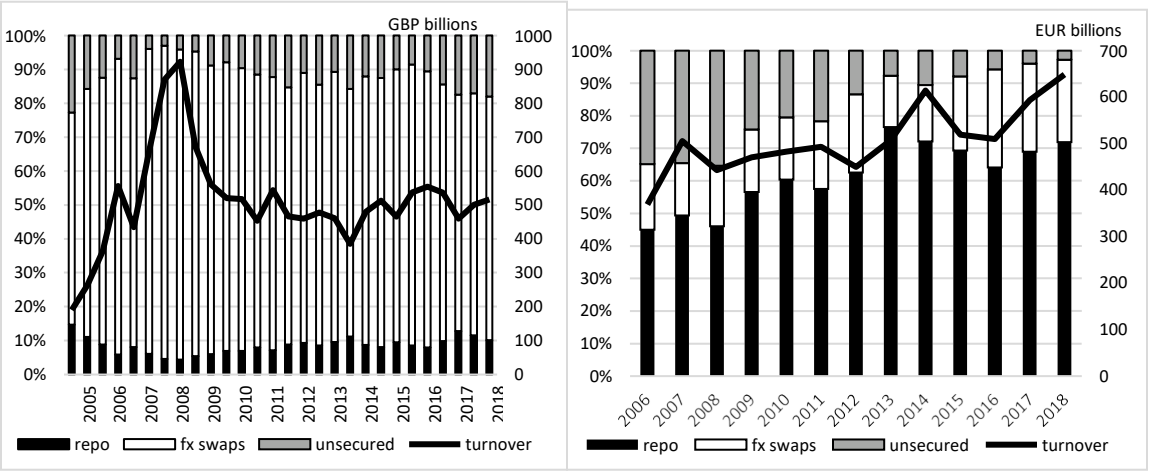
Since 2008 financial activity and financial services based on interbank interest rates benchmarks had to face two challenges. One of them is the change in the structure of the money market, ie.financial market segment in which instruments with an original maturity of up to 12 months are traded (Mishkin and Eakins, 2015), for deposit

transactions, particularly evident in the Euro zone. While the value of daily average volume is steadily increasing and reached EUR 650 billion in 2018, the share of unsecured transactions dropped. Before the financial crisis that share was almost 35%, against only 3% in 2018 (Figure 1). Additionally, liquidity was concentrated in the shortest maturities (Table 1).

Three factors could be identified as the main drivers of this continued decline in volume and liquidity concentration. The first one is a post-crisis aversion to counterparty credit risk. The second: activity of the European Central Bank related to almost unlimited liquidity injection. In addition, the third one: the need to comply with new requirements (LCR, and NSFR) coming from the Basel III regulatory framework which partially penalize wholesale funding (Tabb and Grundfest, 2013).

Figure 1 Money market structure and daily average volume

a) UK b) the Euro area



Source: Author based on Bank of England and ECB data.

Table 1. Maturity structure of interbank unsecured transactions

Period	volume per maturity bucket [%]					
	overnight		T/N-2W		1M-6M	
	UK	Euro area	UK	Euro area	UK	Euro area
H1 2008	n/a	14,62	n/a	12,12	n/a	47,25
H2 2016	91,54	56,05	6,42	7,22	1,72	36,75
H1 2018	89,77	59,03	8,29	5,42	1,50	34,97

Notes: UK – only GBP transactions; shares do no add to 100; n/a-not available.
Source: Author based on Bank of England and ECB data.

The other challenge was the vulnerability of interbank interest rates to manipulation. This vulnerability originated from using quotes not related to any transactions. So why certain banks would be interested in determining an interest rate that was out of market equilibrium? This question seems to have two answers. One of them is the desire to generate profits on interest rate derivatives. The unfair cooperation of derivatives traders and the quoting money market dealers may lead to higher profits on acquiring derivatives (Ashton and Christophers 2015; Martin 2013). The other reason may

have been the desire to demonstrate that the costs of financing in the interbank market are lower than those of competitors, which means higher credibility.

Some concerns that interbank interest rate benchmarks behaviour is not reasonable appeared in 2008 (Ewerhart et al, 2007; Mollenkamp and Whitehouse, 2008; Gyntelberg and Wooldridge, 2008). Based on these signals and their own analyses, supervisory authorities commenced investigations. As a result 10 global banks were punished for inappropriate practices in setting both IBOR rates; total fines amounted to some USD 9 billion (McBride, 2016).

The threat to the stability of the financial system forced introduction of measures to prevent manipulation. The Financial Stability Board (FSB) and the International Organization of Securities Commissions (IOSCO) (IOSCO, 2013; Berman, 2015) recommended appropriate changes. Both standards setters underlined that interest rate benchmarks should to be largely based on transaction data. Therefore, the LIBOR and EURIBOR methodology required modifications.

FSB and IOSCO standards, as a "soft law", are not legally binding (Brummer, 2015), so no sanctions were imposed for ignoring IOSCO or FSB recommendations. This is the reason why the European Commission decided to convert global best standards into "hard law". This move was also done to avoid regulatory arbitrage, seen as a threat to the European financial market consistency considering the British and Belgian rules already introduced. It is worth noting that the Belgian parliament voted on the relevant legislation in December 2015, but due to the adoption of BMR, it was never implemented.

The relevant EU legal act is Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds (OJEU L171/1 as of 29.6.2016) - hereinafter: BMR. According to BMR Article 3(1)(3), a benchmark is any index by reference to which the amount payable under a financial instrument or a financial contract, or the value of a financial instrument, is determined or an index that is used to measure the performance of an investment fund, define the asset allocation or compute the performance fees. BMR defines financial contract as a consumer credit agreement and consumer credit agreements which are secured either by a mortgage. According to BMR definitions financial instruments as any of the instruments listed in MiFID directive and admitted to a trading venue.

Under BMR supervised entities (such as banks or investment funds) may only use benchmarks provided by administrators included in the relevant register. The administrator must be authorised by the national competent authority and only then can it be disclosed in the register of the European Securities and Markets Authority (ESMA) – see: BMR Article 36.

EVOLUTION OF THE METHODOLOGY FOR DETERMINING INTEREST RATE BENCHMARKS

The process of modifying the LIBOR methodology of computation started following publication of the Wheatley Review (HM Treasury, 2012). The recommendations of this review included: public supervision over LIBOR determining, change of the LIBOR setting entity, improved administrator's corporate governance, extensive use of transaction data and setting benchmarks alternative to LIBOR.

The successor to the BBA was elected by a committee of the UK Government. In January 2014 the ICE Benchmark Administration Ltd (IBA - a subsidiary of the ICE, US based stock exchange) was established, which assumed BBA's rights to LIBOR. From that moment, the IBA is responsible for the evolution of LIBOR. Administrator of LIBOR started with limiting the tenors of deposit transactions and abandoned calculations for non-liquid currencies. Therefore, LIBOR is provided since 2014 for CHF, EUR, GBP, JPY and USD only. Then the IBA (as a new administrator of LIBOR) proceeded with improving corporate governance, for instance by establishing the permanent Oversight Committee. However, the most important change was introduction of the waterfall methodology.

Its purpose was to fulfil the requirements of BMR Article 11(1), according to which the input data must be sufficient to represent accurately and reliably the market or economic reality that the benchmark is intended to measure. BMR Annex I, the *lex specialis* for interest rate benchmarks, requires that the administrator adopt a hierarchy of input data where transaction data take priority. Should this information prove insufficient, transactions in related markets must be used and expert judgements should be given less priority.

The assumptions and the algorithm of the LIBOR waterfall methodology were established in 2016 (IBA, 2016). It means the IBA decided that LIBOR would be a wholesale funding interest rate, anchored in LIBOR panel banks' unsecured wholesale transactions to the greatest extent possible. The narrowing of the source of funding was therefore abandoned and information on market operations took priority. This means that expert assessment - in the form of quotes - is only appropriate if it is not possible to refer to transactions actually concluded on the unsecured segment of money market.

The LIBOR waterfall methodology defines the hierarchy of information contributed by the LIBOR panel banks. The most important is the volume-weighted mean interest rate on deposits in the wholesale money market. This segment covers transactions with central and development banks, public institutions, non-banking financial institutions and non-financial enterprises. If no such transactions are available, the panel bank should use historical data. The third level is an expert judgment, based on market data assessment.

Using this hierarchy, the panel bank is required to provide the IBA with interest rate calculations. The information is averaged, after rejecting the extremes. Thus, the numerical algorithm for setting LIBOR is unchanged – compering the pre-crisis time, although the input data is different. Having established these rules, IBA proceeded with operational and statistical tests (IBA, 2018). Since the panel banks managed to demonstrate their ability to use the waterfall methodology, the IBA applied to the British Financial Conduct Authority (FCA) to be officially appointed the administrator and obtained relevant authorisation in April 2018 (IBA, 2018a).

It took a bit longer to adapt EURIBOR to BMR requirements. Initially, EMMI decided that computing new EURIBOR (so-called EURIBOR+) solely based on the unsecured deposits was possible (EMMI, 2016). It is likely that EMMI was prompted to do so due to its belief that the activity of 31 banks in 12 euro zone states (this is, a wider group that concurrent panel) would be sufficient to obtain enough transactions. Arguing that the expert judgement (quoted) based EURIBOR would be similar to EURIBOR+,

EMMI opted for substitution of both rates. This substitution was called "seamless transitions" (Mielus, 2016).

The report summarised this phase of EURIBOR evolution was published in 2017 (EMMI, 2017). According to this report the activity in the euro interbank market was negligible. As it turned out that majority of the banks participating in the study did not accept deposits defined by EMMI. Another finding of the report was that "seamless transition" to EURIBOR+ could not be ensured. According to the Author's opinion, it is likely that EURIBOR+ featured too high volatility that could affect the continuity of existing contracts.

The failure of this phase of EURIBOR modification prompted EMMI to declare that it was proceeding with efforts aimed at merging transaction data with quotes. In order to use the data waterfall (hybrid), EURIBOR had to redefine. EMMI clearly separated market description (underlying interest) from measurement method. In the methodology currently in, force (EMMI, 2019): EURIBOR is defined as the interest rate that measures the cost of wholesale funding of EU and EFTA credit institutions in the unsecured euro money market.

The waterfall methodology for determining EURIBOR also comprises three levels. The first one is the (volume-weighted) mean interest rate on unsecured deposits. Other banks, financial institutions and public institutions (non-financial corporations are excluded) make deposits. The second level involves extrapolated data on historical transactions. Yet another level involves information on operations from related markets, such as derivative marker, as well expert judgement. Ultimately, the panel bank is required to provide EMMI with the interest rate on euro wholesale deposits that was calculated using the hybrid (waterfall) methodology.

It is necessary to underline that the waterfall methodologies of both interest rate benchmarks currently use "time windows" for data collection. This means that banks report on transactions concluded in previous, predetermined periods. This replaces measurement on a given day and makes manipulation for individual bank difficult (Duffie and Stein, 2015).

EMMI also ran a test of computation of EURIBOR using the waterfall (hybrid) algorithm. The results revealed similarity of the data obtained using the previous methodology and using the algorithm adapted to BMR (EMMI, 2019a). Hence, in April 2019, EMMI chose to apply for authorisation, which was granted on 2 July 2019 by decision of the Belgian supervisory authority (FSMA, 2019). Following that decision, EMMI was included in the ESMA register of administrators.

Modifications adapting the methodology for determining of LIBOR and EURIBOR to BMR requirements should be assessed in view of their potential material change. This is a key aspect of the reform from the perspective of benchmark users and retail clients, as such change may raise doubts about the validity of contracts that refer to a given interest rate benchmark. It is important to underline that BMR (Article 13(1)(c)) uses the term "material change in the methodology", but does not indicate the elements determining its occurrence.

Therefore, the analysis should be carried out in a multidimensional manner. The first dimension is a formal one. Article 13(1)(c) of BMR requires the administrator to establish procedures for consulting on any proposed material change in the methodology for

determining benchmark, including the circumstances in which the administrator is to notify users of any such changes.

One should also note BMR Article 28(1) on administrator's obligation to publish a procedure to be followed in the event of a material change of a benchmark. This obligation was fulfilled by both the IBA and the EMMI (IBA, 2019; EMMI, 2019b). The administrators have not launched such procedures (as of June 15th, 2020), which means that they believe that no material change has occurred.

The second dimension should be a quantitative. It is necessary to compare the behaviour of quoted based benchmark and benchmark determined by means of the hybrid methodology. This is a reason why changes in their levels and correlations have been analysed (Fig. 2 and Table 2).

Table 2. Spearman's rank correlation coefficient for quoted based and hybrid interest rate benchmarks

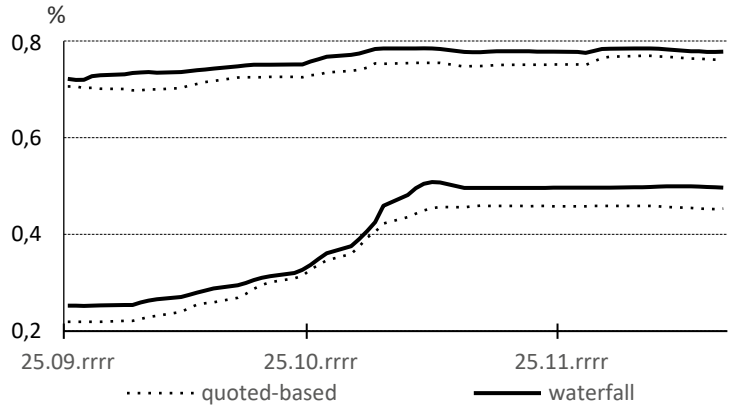
Interest rate benchmark	Tenor			
	1M	3M	6M	12M
EURIBOR	0,572	0,642	0,683	0,879
LIBOR	0,842	0,956	0,917	0,908

Note: only LIBOR GBP was taken into account.
Source: Author.

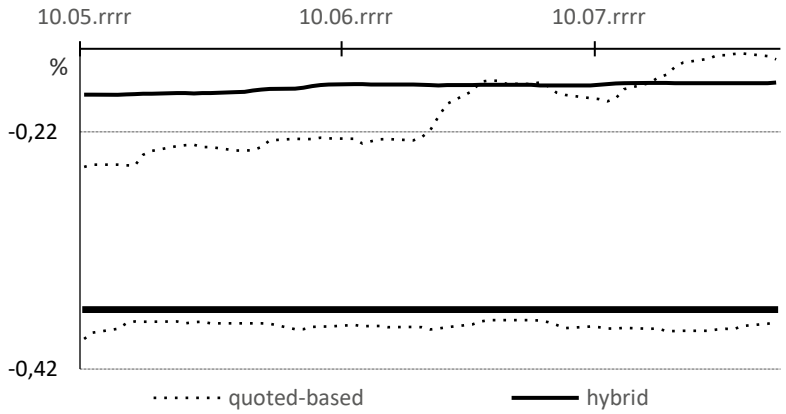
The calculations indicated that hybrid (waterfall) methodology yields rates, which presented a natural in finance market-driven volatility. However, for the individually captured tenors, in none of the cases has there been a difference of more than 10 basis points. At the same time, there has been a downward shift of the band, which bounds all analysed tenors. Such conclusion is valid for both interest rate benchmarks. This should be linked to a more detailed definition, indicating the essence of LIBOR and EURIBOR: cost of wholesale funding received via deposit taking.

Figure 2. The range of benchmarks tenors

a) LIBOR



b) EURIBOR

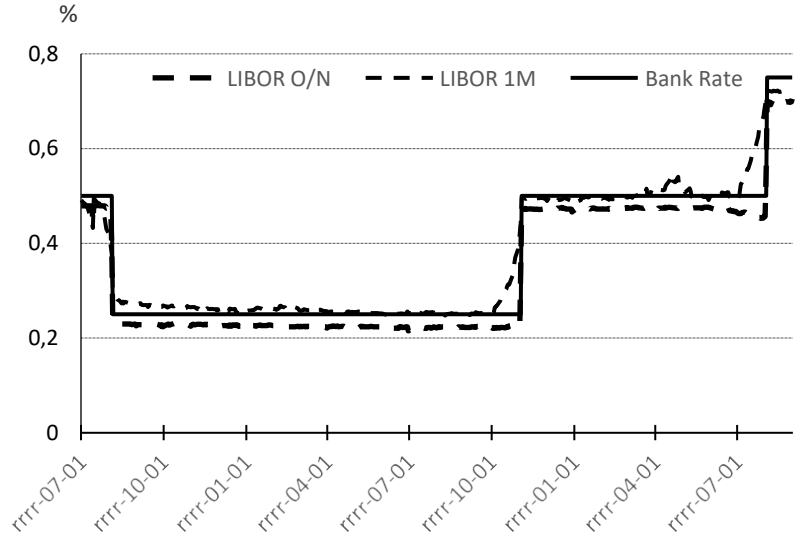


Note: Tenors from 1M to 12 M; 5-day moving average was used.
Source: Author.

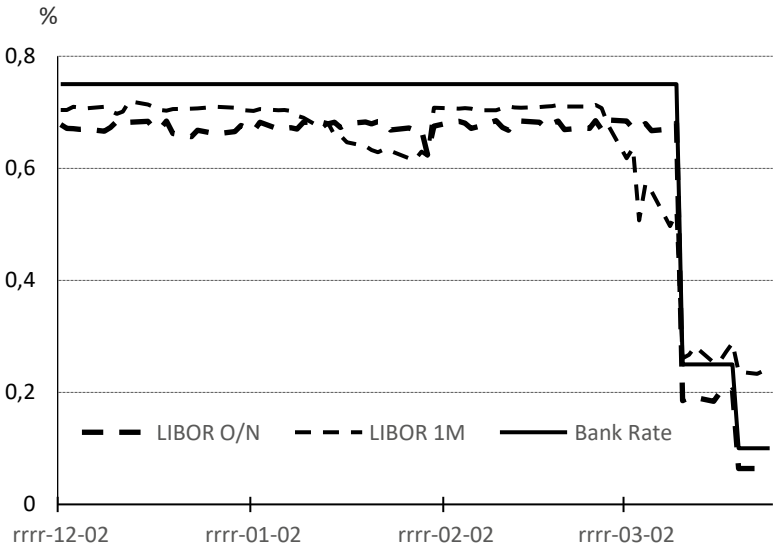
The behaviour of interest rate benchmarks, previously narrowed to interbank interest rates, has been always perceived as one of the main channels through which the official interest rates set by central banks are transmitted further to commercial bank rates and to the real economy (Lešanovská and Geršl, 2014). The fact that interest rate benchmark determined by means of the hybrid methodology does not respond to monetary policy impulses any longer should be treated as an important factor constitutes a material change of the methodology. This aspect is illustrated in Figure 3, which shows reaction of quoted – based LIBOR and waterfall – based LIBOR on changes in official rate of Bank of England (Bank Rate). EMMI confirmed on November 28, 2019 that it had completed the phase-in of all panel banks to the EURIBOR hybrid methodology. Since then the ECB has not change its key interest rates. Therefore, the analyses of response of benchmark using the waterfall methodology is limited to LIBOR only.

Figure 3. LIBOR and Bank Rate

a) quoted-based LIBOR, July 2016 – August 2018



b) waterfall-based LIBOR, December 2019 – March 2020



Note: On April 1, 2019, IBA announced that it had completed the transition of all panel banks to the LIBOR waterfall methodology.
Source: Author based on IBA and Bank of England data.

Once more it is clear that waterfall methodology presents a market-driven volatility. It is a natural consequence of fact that currently made LIBOR submission should be determined based on data from a range of relevant transaction types instead of pure expert judgement. But the ability of capturing modifications in Bank Rate has not been changed. The waterfall-based LIBOR is still an efficient channel of monetary policy impulses transmission.

The formal reasons and the results of quantitative analysis indicate that there should be no concerns related to the legal continuity of LIBOR or EURIBOR. Such conclusion is also supported by economic characteristics of the underlying interest of analysed benchmarks. The underlying interest defines the market or economic reality that the benchmark seeks to measure. It represents the most fundamental element of a benchmark's specification, as it defines the objective for establishing the benchmark, so it is intended to be an essence of the economic concept of what the benchmark seeks to represent (EMMI, 2019; BoE, 2019).

For both benchmarks, the reference to the interest rate on unsecured deposits has not changed. Initially, they were recommended to be anchored in the interbank market. Now this recommendation has been shifted to the wholesale market, of which the interbank segment is a subset. This approach reflects changes in the money market structure. In addition, panel participants were required to present (as a last resort) quotes based on an algorithm indicating their relation to the realities of the related market for collateralised transactions (repo and derivatives). Thus, the quotes became economically verifiable.

Further to that, the interest rate benchmark is still contributed by the banks that are included in the panel because of their activity on the market concerned. Therefore, as the author believes no material change, referred to in BMR Article 13(1), has been introduced to LIBOR and EURIBOR methodology, despite modifications to the input

data. Thus, a broader list of counterparties indicated as eligible providers of wholesale unsecured funding and the use of the "time window" should be seen as an evolution forced by changes in economic realities, which is even recommended by the BMR. Therefore, one should not raise concerns regarding the continued viability of any of these interest rate benchmarks, especially in the context of the validity of existing contracts, e.g. mortgage credits.

For the financial stability perspective, and non-professional participant of financial market point of view, rather than focusing on the repercussions of a possible material change in the methodology for determining the interest rate benchmark, it is worth noting that the determining of such indexes is currently a supervised activity. This provides retail borrowers with a kind of "legal guarantee" that the interest payments are in line with regulatory requirements.

REGULATORY MEASURES PREVENTING CESSATION OF PROVIDING CRITICAL BENCHMARK

According to BMR, the benchmark can be considered as critical when it is used as a reference for financial instruments or financial contracts or for measuring the performance of investment funds, having a total value of at least EUR 500 billion. Unfortunately, no standardised data are available on the scale of using a given benchmarks. It seems that the most frequently quoted document on this subject is the report drafted under FSB auspices (MPG, 2014). In 2012, the value of contracts using LIBOR was at least USD 220 trillion, with USD LIBOR accounting for some 70% of them. Based on more recent estimates of ARRC (2018), in 2016 the exposure to USD LIBOR was close to USD 200 trillion, ie the value of 11 times larger than the US GDP of that period. Given the 2012 currency proportions, the total exposure to LIBOR should be close to USD 300 trillion. The European Central Bank (ECB, 2018) reported that in 2018 the value of EURIBOR based derivatives was at least EUR 110 trillion. The value of loans was close to EUR 10 trillion, and the issue of debt securities amounted to some EUR 1.5 trillion. The total exposure of about €122 trillion is also about 11 times higher than the GDP of the euro area at the end of 2017. Although exact data are not available, it seems correct to assume that the threshold referred to in BMR art. 20(1)(a) - EUR 500 billion - has been exceeded. This is why the European Commission considers both LIBOR and EURIBOR to be critical benchmarks.

The fact the LIBOR and EURIBOR are both critical benchmarks is important in the context of the supervisory powers to block sudden cessation of provision such benchmark. The most significant of them are defined in BMR Article 21 and 23. Article 21 defines mandatory administration of a critical benchmark. If an administrator of a critical benchmark intends to cease its activity (for instance because they generate no profits), the competent supervisory authority has the power to compel the administrator to continue publishing the benchmark until such time as the benchmark has been transitioned to a new administrator or the benchmark can be ceased to be provided in an orderly fashion. Such mandatory administration may last up to 5 years (such amendment was introduced on December 2019; the previous limit was 2 years).

According to BMR Article 23, if a contributor to critical benchmark intends to cease contributing input data, such entity must notify the benchmark administrator, who

in turn must notify, immediately, its competent supervisory authority. If the supervisory authority believes that the representativeness of a benchmark is put at risk, it may require that input data be supplied. Such an obligation can be imposed on the institution that intends to cease contributing data and or entities that have not yet involved. Such mandatory contribution may last up to 5 years.

Both these measures became a part of empowerment of supervisory authorities as of 30 June 2016. Since then the composition of the LIBOR panel has not changed; in 2017 the LIBOR panel banks even submitted a written commitment to participate in this group until the end of 2021 (FCA, 2017). Most likely, such declaration was made because of the awareness of the powers offered by BMR to the supervisory authority. It seems that the FCA used so called "moral suasion" as a supervisory measure (Norton, 1991; Becker and Ivashina, 2018).

Probably the same mechanism was used in case of EURIBOR, as between 2016 and 2018 the composition of the panel remained unchanged. It was only in the first half of 2019 that the Monte dei Paschi di Siena and the National Bank of Greece left the panel. In both cases, the FSMA chose not to exercise the powers bestowed on it in BMR Article 23. It was motivated by the insignificant activity of both banks on the money market.

The possible use of administrative compulsion as a measure preventing leaving the financial market is very rarely foreseen in the EU law. In this regard, the ability to impose mandatory contributions or mandatory administration for five years (as opposed to two) showed that the European Commission was taking the public interest imperative seriously. It means critical benchmarks, including LIBOR and EURIBOR cannot be ceased to be provided in a disorderly fashion.

YEAR 2021 AND BMR PROVISIONS

The Benchmark Regulation (BMR) does not contain any provision indicating "pre-cessation" trigger for determining benchmark. The way the BMR is constructed implies that competent authorities can only contemplate withdrawing the authorisation granted to the administrator of benchmarks after deployment of remedial measures, in accordance with BMR Article 35 (ECB, 2020). From this perspective, it is difficult to accept the position publicly presented by the former CEO of FCA Andrew Bailey (2017).

Andrew Bailey stated that low activity on the interbank market meant that LIBOR is sustained by the use of expert judgement by the panel banks to form many of their submissions. He also added it is not right to require, that panel banks continue to submit expert judgements indefinitely. Therefore, the FCA has no intention to support publishing LIBOR beyond the end of 2021 and the financial market must start using a different interest rate benchmark. The Bank of England, with the approval of the FCA, nominated SONIA, as a (credit) risk-free-rate, as an alternative to LIBOR (Schrimpf and Sushko, 2019).

FCA opinions are not fully precise. SONIA cannot directly replace LIBOR because it is calculated only for the shortest maturity, ie *overnight*. Until a term structure is developed, SONIA cannot be considered an economic substitute for LIBOR. Also, LIBOR is published for 5 currencies, while SONIA only describes the market for deposits denominated in GBP. Finally, the regulatory aspect is almost omitted in FCA's opinions. Importantly, GBP money market interest rate benchmark, including term rates

(until Brexit is legally finalised) must be published according to BMR rules. So until the FCA authorises the potential administrator, it is not acceptable to use rates based on SONIA.

The FCA position also shows some kind of the inconsistency of the supervisory authority. If the sense of measuring the money market was questioned in 2017, why was the IBA authorised in 2018? The need to maintain the stability of existing agreements could be ensured by Article 51(4) of the BMR, which explicitly gives the supervisory authority the power to take such a decision. Under this Article, a reference index that does not meet BMR requirements can be used for existing contracts but no new ones can be concluded.

Andrew Bailey (2019) admitted publicly that the representativeness of the LIBOR panel might be a concern. Therefore, he assumes that after 2021 the banks will leave it. None of the participants in the panel has spoken on this topic so far. Under such circumstances, the FCA's statements can be seen as a form of pressure for the banks to do so, despite the lack of "pre-cessation" provision in the BMR. Finally yet importantly, FCA ignores the fact that the waterfall methodology anchors LIBOR also in transactions out of the interbank market. It is true that banks in London occasionally accept unsecured deposits from other banks, but it is also irrelevant to the modified LIBOR calculation rules. Current LIBOR submission at level 3 describe interest rate with reference to the unsecured wholesale funding market. In order to determine this rate the panel bank must follow its internally approved procedure agreed with IBA. It means that submissions are robust and verified.

In its opinions, the FCA also refers to BMR Article 28(2), which compels supervised entities to draft a plan to be followed in the event that a benchmark materially changes or ceases to be provided; such plan may nominate an alternative benchmark. FCA explicitly suggests that LIBOR users should consider SONIA as a substitute, which will make SONIA a legally sanctioned replacement of LIBOR after 2021. FCA explicitly recommends an alternative to LIBOR but does not indicate an "emergency" index for SONIA. It seems that the design of individual benchmarks should depend on economic realities and in particular on the liquidity of individual markets. In many financial sectors, this is possible (see capital or commodity market). Therefore, the attitude of British regulators, where the use of one of the benchmarks is imposed, is somewhat incomprehensible.

The opinions on EURIBOR are entirely different. The administrator, authorised since July 2019, has made it clear that EURIBOR calculated by means of hybrid methodology is a continuation - according to BMR - of the benchmark published since the late 1990s (EMMI, 2019a). Any financial market supervisory or regulatory authority (ECB, 2019) does not challenge this view.

In addition, the Belgian supervisory authority competent for EMMI rejects the FCA approach. Obviously, the fact remains that the volume of unsecured trade in the euro zone interbank market has decreased significantly - see Figure 1b. But this is the very reason why EMMI chose to extend the definition of eligible transactions to non-banking institutions in order to counteract such deficiencies.

For the Euro zone efforts have also been made to establish a *risk-free-rate*. In September 2017, the ECB announced its intention to establish a rate for the *overnight* market. The input data for this benchmark will originate from reports of 54 largest euro

zone banks. The new index (€STR) was used to replace panel – based EONIA, the previously established *overnight* reference rate (EMMI, 2019c). In addition, if market participants will accept mechanism to generate the term structure and the administrator, acting in accordance with BMR, starts publishing these rates, a EURIBOR alternative will be established. However, according to both the ECB and the market participants, new benchmarks are not intended to replace EURIBOR.

Hence, the author of this article believes that it is vital to remember that the end of 2021 is not a limit date under BMR. No legal requirements exist that would require to cease publishing EURIBOR or LIBOR. Furthermore, the process of publishing both benchmarks already follows the rules of Regulation 2016/1011. Thus, the FCA created the 2021 „problem". Economic reasons and - before everything else - legal reasons, may raise doubts, in particular when considering BMR Article 51(4), which provides that use of the benchmark that fails to meet BMR in contracts concluded before 1 January 2020 shall be permitted by the competent authority.

CONCLUSIONS

The experience of the financial crisis clearly demonstrated that setting interest rate benchmarks based on expert judgements is flawed. Such benchmarks were susceptible to manipulation because quotes were not linked to transactions. It is therefore fully understandable that the process for determining IBOR rates should be thoroughly modified, according to recommendations by FSB-IOSCO and, in the case of the European Union, according to Regulation 2016/1011.

For LIBOR and EURIBOR a very important stage in this process has already been completed. Benchmark administrators have been authorised. As the competent supervisory authorities believe, establishing a methodology, which reflects the reality of the money market in a reliable and sustainable manner, was successful. In addition, for both the euro area and London, it became clear that that data on unsecured transactions in the wholesale market still had to be supplemented by expert judgements. On the one hand, this indicates that the market is significantly less liquid, while on the other hand, it is acceptable in the regulations. Modified rules for determining the discussed rates should be viewed as a successful compromise in striving for the highest possible degree of transparency of the benchmark supported by transactions whenever available and care to avoid a situation where publication of a benchmark is ceased.

The evolution of computation LIBOR and EURIBOR must raise questions about the continuity of the benchmarks determined based on quotes only and the waterfall methodology currently used. Considering the underlined arguments, both economic and legal, the author points out lack of grounds for claiming that the material change of the methodology, referred to in BMR Article 13(1)(c) actually took place. Furthermore, Regulation 2016/1011, importantly, bestows powers on financial supervisory authorities, aimed at preventing a disorderly departure from publishing critical benchmarks. The implementation of these powers is intended to safeguard the stability of financial transactions and contracts and the interests of, in particular, non-professional market participants.

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THE POLICY OF THE EUROPEAN UNION IN THE AVIATION FIELD. SOME CONSIDERATIONS

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Abstract: *The European Union has developed policies that have led to the optimization of investments and market conditions affecting the aeronautical industry, as well as the improvement of the regulatory framework, while maintaining the highest standards of the European Union in terms of safety, security and environment. By adopting an ambitious foreign policy in the field of air transport through negotiating global agreements with a clear focus on growing markets, the European Union can aid European air transport, helping to improve access to important foreign markets and investment opportunities in these markets. Increasing thus the international connectivity of Europe and guaranteeing fair and transparent market conditions for the airlines of the European Union. Airports, together with air traffic management service providers, are essential elements of civil aviation infrastructure. The quality, efficiency and costs of these services have become increasingly important for the competitiveness of the sector. The availability of highly performing and competitive airport services, including runways, passenger terminals and ground handling services, are essential for the competitiveness of the European Union's aviation sector and for the quality of travel services. Therefore, this analysis was carried out on the basis of surveys of the specialized literature in the field of aviation, taking into account the policies and regulations made by the European Union to support the aviation activity. Thus, a competitive and sustainable air transport sector will allow Europe to maintain its leading position in the interests of its citizens and its aviation sector.*
Keywords: unique airspace, airline delays Aviation policies, regulations, European Union, aeronautical industry
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INTRODUCTION

Air transport and air mobility is a strategic EU sector in which more than 5 million people work directly and indirectly and contribute 300 billion euros or 2.1% to EU GDP, meaning that air transport plays a vital role in the integration and the competitiveness of Europe, as well as its interaction with the world. Despite the current crisis, a long-term increase of 5% per year is expected until 2030. With the rise of air transport, in all its forms, the EU has set itself an ambitious goal of increase aviation safety to such an extent that European airspace becomes the safest in the world. I propose to clarify certain aspects related to the European Union's aviation policy, the effect of the

agreements signed with the USA and the countries outside the European Union, as well as the European Commission's efforts to create a single airspace. Closely related to this is the problem of overcrowding at airports, their extensions as well as the economic problems caused by aircraft delays.

THE UNIQUE EUROPEAN AIRSPACE

The international civil aviation developed in accordance with the establishment of bilateral relations by which Governments guarantee and control the expansion of their own air transport industry. The European Court of Justice (ECJ) brought judgments by which it declared *open skies* agreements between the USA and eight EU Member States contrary to Community law because of their discriminatory, distortive and destabilizing effect on the Community market. The Court declared one of the basic principles of *open skies* agreements, the so-called "nationality clause", which prescribes that only carriers owned and effectively controlled by the signatory Member State can be designated in a particular agreement, contrary to the EC Treaty.

International air transport industry has traditionally been arranged by bilateral air service agreements (ASAs) through which States exchange traffic rights, designate airlines that can provide air services between the signatory Countries and determine capacities, frequencies and fares of their service. Desiring to create a single airspace, similar to the maritime one, based on the objective of opening access to the markets of the states, on an equal footing with competition and respecting the same rules - including safety, security, air traffic management, social and environmental issues, etc., the EU has set itself an even more ambitious goal: to create a global free airspace. Air traffic, even if of a commercial nature, is subject to the access regulations of the states, based on their national sovereignty, so that the plane of a nation requires the prior approval of the respective state it flies over. Member States have, by virtue of Article 100 (2) of the Treaty on the Functioning of the European Union, conferred on the European Parliament and the Council the prerogatives of legislation and decision in the field of air transport. The combined efforts of the European Commission aim at the constant expansion of this European airspace, not as a foreign policy objective alone but for practical reasons: to reduce flight time. The natural consequence would be to shorten itineraries and the number of delays, as well as reduce flight costs and aircraft emissions.

The first set of common requirements establishing a single European airspace was adopted in 2004 (SES I)[1] and amended in 2009 (SES II) Regulation (EC) no. 1070/2009 to include performance-based mechanisms. Thus, a European foreign policy in the field of aviation was born in 2005 that managed to conclude agreements with non-EU countries and strategic partners, which resulted in a common aviation area with the EU's neighbouring countries. Moreover, during the leadership of Jean Claude Junker, the Aviation Strategy for Europe was adopted. This initiative, demanded by the airlines, would give a boost to the European economy, to strengthen its industrial base. Not only European affairs would benefit from this leading position, but also the citizens who now benefit from new transport routes at reduced prices.

The US and the EU signed an agreement in June 2010 and strictly built on the 2007 EU-US Open Skies agreement. In particular, it affirms that the terms of the 2007 agreement will remain in place indefinitely. In addition, it provides the basis for a closer

cooperation on environmental norm. The parties also agree on the importance of defining a high labour standard in the airline industry.

EUROPEAN UNION AVIATION POLICY

The success of the negotiations, which had the effect of creating a single aviation market, was accompanied by the adoption of common rules to ensure its proper functioning. The European Union has remained consistent with its principles in other economic areas. Thus, ensuring a level playing field and a high and uniform level of protection of passengers' rights have also been found in the field of aviation. If state aid is banned for European companies, non-European ones are not subject to such restrictions, hence the pressure on the European Commission to be more aggressive in negotiations and to defend their interests. The agreements should remove restrictions on capacity and frequency, code sharing, routes, multiple designation of airlines, ownership as a basis for designation and price. Regulation (EC) no. 868/2004 had to deal with combating unfair competition from foreign carriers. However, this tool proved to be impossible to apply. In 2017, the Commission therefore presented a new mechanism to ensure fair competition between EU and foreign carriers (COM (2017) 0289), and this proposal is currently under discussion.

The regulation of civil aviation between U.E and US evolved from a bundle of traditional bilateral ASAs of rather protectionist nature by following a more liberal approach. This resulted in the coexistence of protectionist agreements and open skies agreements that revoke restrictions in capacity, frequency and price. The need to avoid the fragmentation of internal European Open Aviation Area, led to a multilateral agreement negotiated by the European Commission on behalf of all its Member States with US, the so-called EU-US Open Skies Agreement (March 2008). The US accepted the concept of “EU carrier” and provided any Community Air carrier the right to fly between any point in the EU to any point in the US without any restrictions on pricing or capacity. EU carriers are also provided with the possibility to continue flights beyond the United States towards third countries both for passengers and cargo flights and with the so-called 7th freedom rights for passenger flights between US and a number of non-EU European Countries.

The 2007 agreement provided EU and US carriers with a greater opportunity to introduce commercial cooperative arrangements for code-sharing, franchising and leasing and greater possibility of antitrust immunity for the development of airline alliances. It also established a Joint EU/US Committee to oversee the agreement’s implementation and harmonisation of EU and US air transport industry standards. EU and US established to cooperate in the areas of safety, security and environment. In the same register of equal opportunities, it was established that access to airports and airport services (Regulation (EEC) No 95/93) should be provided in a non-discriminatory and transparent manner by an independent 'slot coordinator' who distributes to airlines “time slots” based on an optimum airport capacity.

As the aeronautics industry becomes increasingly global, it should provide a more comprehensive solution to bilateral problems, regional or international. The possibility of creating an international, truly global airline regulatory policy is advancing more and more, covering competition between airlines and an institution (regulatory body) which

would regulate global airline competition and create a level playing field for all. For example, Qatar Airways does not comply with European rules on the cost of carbon emissions, which allows it to save millions and can thus offer lower prices for detour routes to Asia. Therefore, its aircraft pollute enormously, just the opposite of what the European Union wants to achieve.

In order to protect passengers and aircraft and ensure a high and uniform level of safety throughout the EU, national safety rules have been replaced by common safety rules, which have been progressively extended to the entire air transport chain. "Placing users at the heart of the transport policy" seems to be the key action proposed by the Commission of the European Community in the aeronautical field. Particularly, specific new measures are needed on user's rights so that, regardless of the mode of transport used, users can both know their rights and enforce them.

In addition, a European Aviation Safety Agency has been set up to develop, among other things, these rules. Security requirements at all EU airports have also been harmonized to improve the prevention of malicious acts against aircraft as well as passengers and crew. However, Member States retain the right to apply more stringent security measures. In addition, the common rules [Regulation (EC) No. 261/2004] for the protection of the rights of passengers using air transport are intended to ensure that passengers receive at least a minimum level of assistance in the event of long delays or cancellations. These rules also provide for compensation mechanisms. However, the application of these regulations is proving difficult, which is why legal action is often initiated. In March 2013, the Commission presented a new proposal to amend Regulation (EC) No. 261/2004 [COM (2013) 0130] in order to further improve the application of Union rules, clarifying the essential principles and implicit rights of passengers that have led to numerous disputes between airlines and passengers in the past. The co-decision procedure is still ongoing, and Parliament and the Council have not yet agreed on the final solutions. On 24th September 2019, the Committee on Transport and Tourism decided to open interinstitutional negotiations after the first reading in Parliament.

The single aviation market continues to improve in terms of the time slot allocation system, with the vast majority (80%) of routes departing from Union airports still being served by a single carrier (60%) or two carriers (20%), the financial difficulties faced by a number of airlines and secondary airports or the complexity of supervising air carriers currently operating in several Member States. Significant is the increase in air/passenger transport (approximately 74%) as well as the share of the air sector in total passenger transport (9.2%).

The aviation market has changed radically in the last two decades. American and European airlines have gone through dramatic changes in corporate strategy and internal structure. They have been forced to adapt to regulatory changes that are intended to create greater competition in an industry that has tended toward oligopoly and that in many countries has been the object of state ownership. More exposed on long-range routes than their American counterparts, European carriers have made a major strategic change from for measures of protectionism through efforts at intra-European cooperation to an emphasis on alliances with US carriers - a process that has culminated in the recently announced agreement between British Airways (BA) and American Airlines (AA).

The renegotiation of previous bilateral agreements has placed the protected national carriers into a competitive and turbulent deregulated market. If deregulation leads back to oligopoly, this outcome will be perversely logical. Advocates of airline deregulation in the US have always wanted the process extended to international aviation, though mainly because they believe that it will lead to greater competition. European liberalizers are more reticent about the international benefits of the liberalization entailed in creating a single EU aviation market. Such reticence may be due to the universal E U propensity to be preoccupied with the complexities and benefits of creating a single market to the exclusion of concern about its external ramifications. It may also be due to an uncertainty about what deregulation will do to the international stakes of EU carriers. The liberalization of international aviation is imperative and, indeed, long overdue.

The expansion of the Low-Cost Carriers is often considered as one of the most important recent advances in the European aviation because it offers a different product based on services offered at significantly lower prices. Due to this market segment, as well as the problems associated with managing this growth airfreight is expected to expand at 6.6 percent annually. In the absence of enough capacity expansion, this demand growth may be counterproductive for air transport. In addition, environmental costs are expected to rise, and air carriers will bear additional costs resulting from delays. Several European Airports already face severe capacity problems. A forecast of demand growth to the year 2025 without additional capacity growth predicts excess demand of around 3.7 million flights. This means that in year 2025, more than 60 European airports are expected to face severe capacity problems in their peak hours and at least 20 airports will have to cope with capacity problems during a few not only peak hours, but around 10 hours per day.

THE PROBLEM OF DELAYS

Even if airlines through Europe have signed voluntary agreements (not binding) to deliver defined standards of service to air travelers (such as the 2002 undertaking by the major players in the sector), in the absence of Community legislation, passengers are confronted with an increasing level of delays and with a set of national rules to protect them which are largely ineffective. The effect of such an increase was the congestion of airports, at least those of large cities. The operation of expanding airports through the construction of new terminals is a complex one involving financial and logistical efforts on the part of governments, which is reflected in the increase in airport prices and taxes. Security issues have increased operational times, which means new cost curves and significant traffic management efforts. Traffic problems have increased the number of flight delays and, in turn, generated new marginal costs.

The problem of delays is a global one. In Europe, over 25 per cent of all intra-European flights leaving from these airports departed more than 15 minutes later than their scheduled departure time (AEA, 2019). In the U.S., the Department of Transportation's Bureau of Transport Statistics reports that 30 percent of domestic flights arrived more than 15 minutes late. The losses caused by the delays in the United States alone amount to over $ 40 billion. The hub airline dummies have puzzling negative coefficients, but this result may be explained by the fact that the hub-and-spoke system in Europe is not as extensive as in the U.S. and the waves of arrivals and departures are

constrained by slot coordination at most hub airports. The ever-tighter mismatch between the demand and supply of airport services has already triggered policy discussions that bring into the forefront a challenging dilemma for decision makers and the various stakeholder groups in the airport domain: Demand Management or Capacity Enhancement?

When we analyze delay costs, we should not consider the whole delay. We should be able to distinguish what it is the optimal delay, in the total amount of delays because airlines usually add some extra time to their schedules in addition to what it is technically required to avoid partial congestion. This is the so-called buffer delay, meaning a number of minutes the airlines should add to the schedule so that marginal cost of this buffer is equaled to the expected benefit. Airlines obtain different benefits from this practice. It helps them building their reputation in terms of reliability. For the society as a whole, minutes of congestion should be added up to the point where benefits equal costs. Only the difference between observed and optimal delays could be harmful for the consumers of air traffic and airport services. For example, France presents quite high average delays however we have to take into account that this can be increased due to the central geographic position of France in Europe (more than one of each four flights in Europe cross the French airspace).

Also, there is a discrepancy between the scheduled arrival time and the real arrival time, as well as a distinction between arrival delays and departure delays. All this depends on a relative subject. For airlines is the difference between scheduled and what could be considered an optimal or minimum time for a trip. Due to the high cost that delays can represent for airlines, it is quite common to schedule a longer time for the trip than what could be gained without any kind of congestion. This difference is know as "buffer", and is specially used by hub-airlines, which want to ensure the connections for all their passengers, and by low-cost companies that wants to build a reputation of on-time flights. Airlines use buffers to recover from delay by "padding" the schedule so that they can improve the predictability of rotations and also improve their punctuality performance with respect to published schedules. The most usual approach to estimate buffer time is to just compare the schedule time with the minimum travel time for each route. This measure is imprecise as it could be affected by very favorable weather conditions. In that case it would be more adequate to consider some percentile of the distribution of buffer times. However nobody has even proposed such a measure.

An estimation of the costs of delays is based on the price for passengers and airlines drawn about the value of time. There is an "operated flights versus schedule" and "schedule versus optimum" balance that we are going to denote as schedule delays and buffer delays respectively. Buffer delays make reference to the extra time that airlines add to the schedule of a city pair, with respect to what is technically needed while schedule delays refer to the observed difference between announced arrival/departure time and the real one. The number of passengers affected by Air Traffic Flow Management (ATFM) is calculated from an estimated number of delayed flights, and an average aircraft capacity and load factor. Passengers are distinguished between business, personal convenience and tourism travelers. Two scenarios for the value of time of the different categories, high and low, are considered. The values of time comes just from "a conservative range" that moves between 34 and 44 euros taken from values of time offered by previous studies.

The alternative is more efficient traffic management or a different allocation of time slots. As access to airports is conditioned by the landing fee which is proportional to the maximum take-off weight of the aircraft, some European states (Italy, France, The Netherlands, Germany) have proposed technical amendments for clarifying the role and position of the slot coordinator, better determining and declaring airport capacities, and revising slot allocation towards the direction of economic approaches and market clearing mechanisms. In parallel, the European Commission suggests that the structure and level of airport charges be revised accordingly to reflect externalities and real costs for providing airport services, as well as the demand levels related to available capacity. Regional airports had both the unused capacity and the willingness to negotiate and offer competitive low fees.

CONCLUSION

All the problems in the aviation sector are more interconnected than in any other field of activity. Airports, together with air traffic management service providers, are essential elements of civil aviation infrastructure. The quality, efficiency and costs of these services have become increasingly important for the competitiveness of the sector. In order for air transport in the European Union to remain competitive, it is essential that access to the aeronautical market is based on a regulatory framework that also applies to non-EU companies, especially with regard to subsidies from national governments and pollution taxes.

By adopting an ambitious foreign policy in the field of air transport through negotiating global agreements with a clear focus on growing markets, the European Union can help European air transport by improving access to foreign markets and increasing investment opportunities in these markets. All these increases Europe's international connectivity and guarantees fair and transparent market conditions for European Union airlines.

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THE IMPACT OF FINANCIAL CRISIS ON THE BANKING SYSTEMS: AN ANALYSIS ON EU MEMBERS

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Abstract: *When we talk about chaos, we think of events that can inevitably occur and which are difficult to manage, such as the financial crisis. Of course, in such situations it is good to analyze the position that banks have taken to survive the impact of a crisis on a country's economy. But as for every problem there is a solution and in such events there are diversified solutions, even if the solution of the problem is slow due to the strong scope created on the economic basis. Here we can analyze the measures taken by the banks in the system to reach an economic balance. Thus, the financial crisis has made its mark on price indicators on banking markets. From different perspectives, the increase in interest rates on new loans granted to non-financial companies and deposits for households in EU is a clear signal of fragmentation and heterogeneity in European banking markets and not only. The analysis aimed to emphasize the impact of the financial crisis on the banking systems of the member countries of the European Union. In this situation, the use of the OLS method was used to see the different interferences that the crisis had, but also because its presence was different from one state to another. Because of this analysis, we can conclude that it was a period of banking restructuring that led to a heterogeneity of the banking systems that were subject to banking inefficiency during the financial crisis.*
Keywords: *Financial Crisis, Bank Systems, European Union*
JEL Classification: *G01, G21, G34*

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INTRODUCTION

A financial crisis (Shleifer & Vishny, 2011) in its essence is often associated with a financial disaster due to massive withdrawals of investments (assets, money) by fearful investors, sharp fall in asset prices, inability to pay debts by individuals and legal entities, lack or insufficiency of liquidity of financial-banking institutions, the explosion of a speculative bubble, the collapse of the stock market, the currency crisis, the overvaluation of assets, irrational investment behaviors, etc. Many economists have said that the onset of the 2007 financial crisis was caused by sectors of the financial system, including banks, mortgage lenders and rating agencies.

As a result of this event, banks were forced to increase their lending requirements, but also those on their reserves for large-scale situations, such as the last crisis. Another restriction that banks have had to comply with refers to their way of investing, limiting

speculative transactions and eliminating those that include risky real estate. The new regulations brought by governments during the financial crisis have brought major changes that have involved both the supervisory authorities and the activities based on the consumption of financial-banking services.

LITERATURE REVIEW

The financial crisis of 2007 affected the banking industry for a fairly short period of time, compared to other crises that lasted longer and caused more damage. That said, during the crisis, banks lost a lot of money for non-payment of mortgages, interbank loans were blocked, and all loans for consumers and businesses were limited. On the other hand, the financial crisis has led to the creation of new regulations at EU level through Basel III. These regulations target capital and liquidity in the banking sector to avoid another financial crisis, leaving EU member states to implement these prudential standards in their economic systems. This has led to sustained confidence in the economy, but at the same time restrictions have been set on the compensation of incentives.

Pre-crisis - the period of high profits?

Before the financial crisis of 2007 in the United States and its spread to other continents, in the EU, as in the case of other countries around the world, due to the regulations in force at that time, there was a boom that concerns the purchase of real estate and subprime mortgages (Felton & Reinhart, 2008). At that time, many foreign banks around the world bought collateralized debt of American banks as collateral. Due to the rise in subprime lending after 2000 (Baily, et al., 2008), an action by the US government to avoid the recession was to drastically reduce interest rates to almost zero, leading to a "flood" of liquidity in the economy. Due to this action, the requirements for such loans continued to operate in the same parameters, and the effect of "cheap money" stimulated the emergence of a boom in the real estate market. This boom led to a series of speculations on the market, and house prices followed an upward trend, which formed a real estate bubble. At the same time, an effect created by this action was the decrease in bond yields compared to shares that were much more attractive. The decision of the American government at that time led to chaos in the stock market, the real estate market took a leading place, and the unemployment rate had fallen sharply due to massive investments made by companies.

After the short-lived recession of 2001, investment banks (ECB, 2007) tried to make "slight" profits from these products, which were later incorporated into the same category as prime mortgages, but which nevertheless created a slight confusion among investors because the risks associated with such a maneuver could not be fully understood. The moment investors realized that subprime mortgages were a toxic debt they tried to save themselves from this situation, but this formed a cascade of failures that led to a liquidity contraction above the upper levels of the banking industry.

In the situation where unpaid mortgages were high, banks had to borrow from each other, thus becoming an "impossibility" for potential new consumers and businesses to access such loans. Another action taken by banks to avoid the crisis and this

bankruptcy was to resort to hedge funds, but this action was also insufficient for what was to come.

Financial crisis - The beginning of the end?

During the crisis, a number of reforms have been implemented at EU level, as have other regulators around the world. These regulations have focused on large high-risk banks. These regulations have been complied with and implemented by the Financial Stability Board (monitors the global financial system), the Bank for International Settlements (provides services to all central banks) and the Basel Committee on Financial Supervision (develops banking regulatory standards).

Some countries have entered a recession faster than other countries, and this has led to declining demand for imported goods and services and at the same time stimulating other countries to reach this threshold. However, the supervision of financial stability has become of major importance, and the European community has tried to place a greater emphasis on large banks that may present some uncertainties.

The decimation of the banking sector by the emergence of the financial crisis (Thakor, 2015) has led to the bankruptcy of some banks, to the merging of small banks with stronger banks but also to the rescue of some of them by governments. During that period, the banks' shares suffered substantial price declines, dividends were either reduced or postponed for a later date (1-2 years), and in terms of investors they were the most affected due to the fact that they lost huge investments. This experience has led to a much greater diversification of risks than was done before the crisis.

The outbreak of the crisis was based on a multitude of factors (ECB, 2007), among which we can mention: the rapid growth of the real estate market, the lack of liquidity in the market, a large number of banks with large portfolios of non-performing loans, systemic failures, unexpected investment behaviors or uncontrolled, taking too many risks, absence or insufficiency of regulations, contagion of one institution / country by another, etc.

Although the crisis of 2007 started in the United States, it spread globally (Claessens & van Horen, 2016) in an extremely short time, which leads us to believe that this phenomenon has easily penetrated the territories with which the United States connects. Being a crisis that could no longer be avoided and / or controlled, it determined the world's economies to enter into a long-term recession (Blecker, 2014).

The effects of the new regulations have taken into account the following aspects: better supervision of financial markets, strengthening supervisory mechanisms, the creation of a board to monitor systemic risks, the introduction of new standards to protect investors, the creation of processes and tools to help through cash infusions financial-banking institutions facing financial difficulties and measures to improve the activity of rating agencies.

DATA AND METHODOLOGY

The financial crisis has been analyzed by different economists and researchers to see the different interferences it has created within the banking sectors in different countries but also on certain economies. Jack Joo K. Ree (2011) examines how the financial crisis is transmitted through different channels (changes in the way financial assets are valued, how they affect the decrease in cross-border financing and the increase

in non-performing loans due to cross-border links) and affects the soundness of banks in Asian countries with small incomes. Igor Živko și Tomislav Kandžija (2013) analyze the effect of the global crisis on the stability of the Croatian banking sector and what kind of correlation there is between lending activities and economic growth, which can highlight the level of availability that finances the economy. Another researcher, Samuel O. Fadare (2011) examines the liquidity of the Nigerian banking system and how the financial crisis of 2007-08 affected the liquidity of deposit banks due to monetary policies that did not ensure the good survival of the banking sector at that time.

Table 1. Variable description

Variable abbreviation	Variable name	Variable description
ROA	Return on assets	The profitability of a bank in relation to its total assets
OBNKS	Operating banks	The total number of banks operating in a country
DCREDIT	Domestic credit	Loans that a central bank of a country makes available to borrowers in the same territory
NPLR	Non-performing loans ratio	The rate of those loans on which the debtor has not paid its outstanding payments for a certain period
EXCHR	Exchange rates	The price of a nation's currency against another foreign currency
BSCTLEVER	Banking sector leverage	The amount of capital present in the form of debt and which assesses the ability of the banking sector to meet its financial obligations
BCRISISDUMMY	Banking crisis dummy	The period in which the crisis begins (massive losses of the banking system and the intervention of the banking policy) and the one in which it ends (the growth of real GDP and loans within two consecutive years)

In the following we will review the analysis carried out for the period 2007-2015, in which the emphasis was on the impact that the financial crisis 2007-08 had on the banking sectors in the member countries of the European Union.

The analysis uses Ordinary least squares based on the equation below:

$$RRRR\beta\beta_{ii,tt} = \beta\beta_0 + \beta\beta_1 RRBBNNOOMM_{ii,tt} + \beta\beta_2 DDBBRRMMDD\beta\beta DD_{ii,tt} + \beta\beta_3 NN\gamma\gamma NNRR_{ii,tt} + \beta\beta_4 MMXXBBSSRR_{ii,tt} + \beta\beta_5 BBMMBBDDNNMMBBMMRR_{ii,tt} + BBBBRR\beta\beta MM\beta\beta MMDDBB\gamma\gamma\gamma\gamma W_{i,tt} + \varepsilon\varepsilon_{ii,tt}$$

where:
ROA – return on assets
OBNKS – operating banks
DCREDIT – domestic credit
NPLR – non-performing loans ratio
EXCHR – exchange ratio
BSCTLEVER- banking sector leverage
BCRISISDUMMY- banking crisis dummy
Ɛ- residuals

In order to analyze the impact of the financial crisis on the EU member states, we have constructed the following hypotheses:

H1: The financial crisis has a negative impact on EU member states

H2: The financial crisis has a greater negative impact on EU member states with upper middle income

Before performing the analysis, we proceeded by testing the data set by checking the multicollinearity by the VIF test (Appendix - A1) and making the correlation matrix (Appendix - A2) that we found them in the appendix. Following this test, it was found that we do not have multicollinearity and the correlation matrix tells us that there is a slight correlation and mostly negative between the variables with the highest value 0.21 between the operating banks and the leverage of the banking system.

Table 2. Descriptive analysis

Variable	Obs	Mean	Std. Dev.	Min	Max
ROA	252	0.176	1.530	-10.472	4.241
OBNKS	246	171.231	359.414	3	1936
DCREDIT	252	978849.2	1532	11626.16	5694972
NPLR	250	7.172	7.516	0.1	47.747
EXCHR	252	9.866	39.978	0.5	279.332
BSCTLEVER	245	14.548	8.708	4.149	51.646

Source: Results obtained by the author

As we can see in table 2, the return on assets registers a very large difference between its minimum and maximum value, which leads us to the fact that the financial crisis led to a negative return on banking systems, their losses being substantial. What is surprising is that the average of non-performing loans is quite low compared to market expectations at the time.

Table 3. The impact of financial crisis on return of assets of banking systems from EU

	[1]	[2]	[3]	[4]
lnobnks			0.131	0.041
			(0.085)	(0.079)
nplr		**-0.080*****		**-0.080*****
		(0.011)		(0.012)
exchr	-0.000	0.001	-0.000	0.000
	(0.002)	(0.002)	(0.002)	(0.002)
lndcredit			-0.012	-0.049
			(0.067)	(0.062)
bsctlever	**-0.026***	**-0.036***	**-0.028***	**-0.033****
	(0.011)	(0.010)	(0.012)	(0.011)
bcrisisdummy	**-0.724****	**-0.578****	**-0.749***	**-0.577****
	(0.219)	(0.202)	(0.219)	(0.204)
_cons	**0.751*****	**1.417*****	0.405	**1.824****
	(0.188)	(0.198)	(0.676)	(0.659)
Adj. R^2	0.076	0.225	0.080	0.221
F-stat	7.76	18.68	5.25	12.5

Note: *standard errors in parentheses*

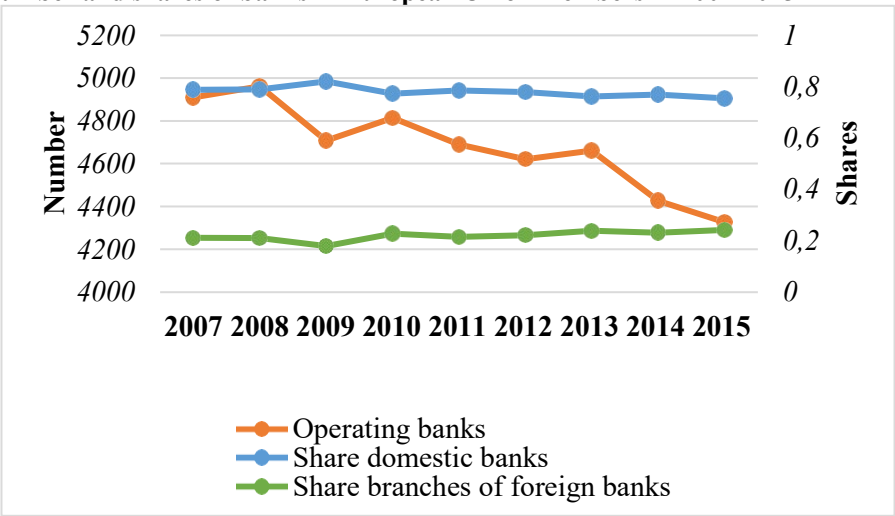
*** *statistical significance level at 1%*
** *statistical significance level at 5%*
* *statistical significance level at 10%*
Source: Results obtained by the author

The results indicate those non-performing loans (NPLR), banking sector leverage (BSCTLEVER) and banking crisis dummy (BCRISISDUMMY) have a high significance on determining return on assets into banking systems from EU. The models from the table above having as a dependent variable the return on assets indicate that non-performing loans (from total loans) are negatively significant at the 1% level, banking sector leverage negatively significant at the 10% and banking crisis dummy (years when the crisis was in every country from EU) are negatively significant at the 5% level for the regular term. This means that between these indicators and return on assets is a negative link.

The return on assets during the financial crisis and post-crisis (Appendix - A4) was negatively influenced both by the non-performing loans rate (-0.07% - crisis, -0.09% - post-crisis) and by the banking sector leverage (-0.05%). Moreover, domestic credit (0.0000003%) during the crisis influenced the return on assets in a positive way, but in a very small percentage, making the banking systems unable to cover the losses that amounted to more. If the non-performing loans rate and the banking sector leverage were 0, the return on assets was estimated during the crisis at a lower value (0.72%) than in the post-crisis period (1.39).

At the same time, if we look at the impact of the financial crisis on the return on assets of each banking sector for each EU member country (Appendix - A5), we can see that the non-performing loan rate has contributed to lower returns on bank assets in Bulgaria, Czech Republic, UK, Croatia, Italy, Lithuania, Netherlands, Portugal and Slovenia, with the exception of Slovakia with an increase of 0.15%. In the case of operating banks in each EU country, their number influenced the return on assets more positively (UK, Lithuania, Netherlands, Sweden, Slovakia) than negatively (France, Italy). Foreign exchange was the only one that helped increase the return on assets, but this happened only in 2 countries (Italy - 16.75% and Portugal 17.36%) of the 28 EU members. Domestic credit affected positively only the banking sectors from UK and Croatia, and negatively affected the banking sectors from Slovenia and Slovakia, Slovenia being the most affected on this side (USD 39.23 billion) due to the less restrictive lending policy from that period and before the onset of the financial crisis. The only ones that negatively affected the return on assets of the EU banking sectors was leverage and the financial crisis. Therefore, the country that could have an increase in return on assets of 312%, in circumstances where the non-performing loans rate and the level of domestic loans were 0, is Slovenia.

Figure 1. Number and shares of banks in European Union members in 2007-2015

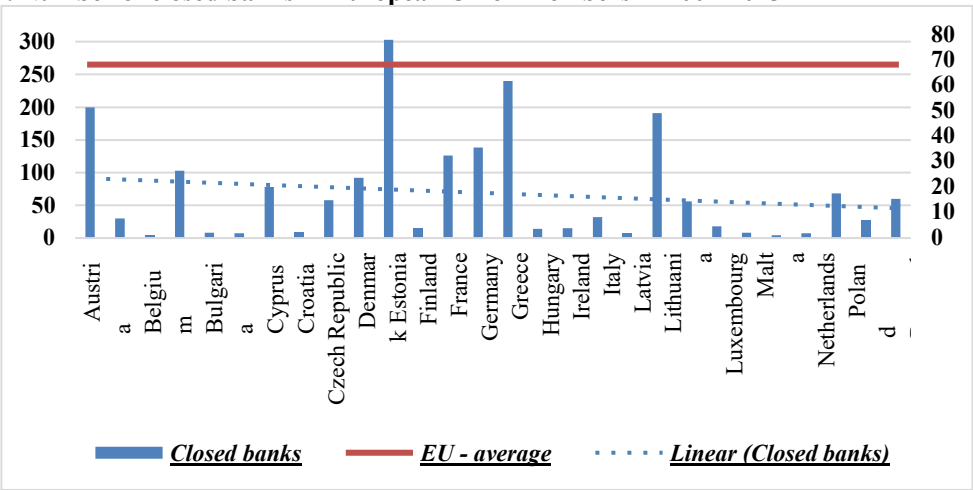


Source: Results obtained by the author

Regarding the banks operating in the EU member countries (fig. no. 1), we can see that during the existence of the financial crisis and the period after it the number of banks decreased by 18.8%, which tells us that the recession period did not helped to increase their number. The banks that operated in the period 2007-2015, as can be seen in the figure above, followed a constant ownership trend for almost the entire period, the only difference being in 2009 when several banks were domestically owned and fewer held by foreigners and 2015 when banks began to be owned more by foreigners.

Analyzing the number of banks by income level in European Union (Appendix - A3), we can see that the countries with high income owned the most part of the banks (79% shares of domestic banks and 21% shares of foreign banks) compared with those countries with upper middle income. Also, from a regional perspective, the presence of a large number of domestic banks in EU can be seen in the central (89%), northern (77%), southern (62%) and southwest (50%) . The large number of foreign banks in EU can be seen in the eastern (64%), western (66%), southeast (72%) and southwest (50%).

Figure 2. Number of closed banks in European Union members in 2007-2015



Source: Author estimations based on the informations provided by TheBanks.eu

The financial crisis has led to the closure of many banks during its existence. In fig. no. 2 we can observe that the countries that registered a large number of closed banks out of the total number of operating banks at that time is represented by Austria, Germany, Italy and Netherlands, due to the fact that in these countries there were more foreign banks and fewer with local full capital. In addition, several countries have a smaller number of banks that were forced to close their activity, which is why the number of operating banks of those countries was not extremely affected as in the countries mentioned above. However, the trend of banks that ceased operations was declining towards the end of the crisis because the banking system went into recession and tried to balance the balance of elements that led to such financial losses, customer losses, etc.

CONCLUSIONS

Financial crises have usually occurred in the circumstances in which many of the transactions are made in foreign currency. Nowadays, financial crises are not uncommon due to the multitude of factors that compose them but also to the uncertainties in the market. That is why the financial crisis of 2007, like other crises over time, provided a series of answers and lessons to be applied to the current financial system through the causes and effects of the events that made it up and culminated with a collapse of the banking system at that time.

The element of differentiation of financial crises is given by the recession period, being the result of the emergence and existence of the crisis at regional or global level. Also, in such large-scale situations, governments and central banks, commercial, investment, specialized, etc. (UN SYSTEM TASK TEAM WORKING GROUP, 2013) from around the world come together to form a "wall of protection / defense" to reduce the effects of such a phenomenon but also to prevent other financial catastrophes.

At the same time, the problems of this financial crisis required both conventional and unconventional methods of resolution, as well as coordinated actions to provide support to financial-banking institutions in difficulty and to put the interbank market back on its feet. A key problem created by the 2007 crisis is the lack of confidence in financial markets, which can be restored in the longer term through new strategies, methods, techniques, etc. which can generate change.

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APPENDIX

A1. VIF Test for multicollinearity

Variable	**VIF**	**1/VIF**
dcredit	1.9	0.526
bsctlever	1.62	0.615
obnks	1.37	0.732
bcrisisdummy	1.14	0.880
nplr	1.07	0.932
exchr	1.04	0.965
Mean VIF	1.36	

Note: VIF<10 => no multicollinearity

A2. Variable correlation - ROA

	obnks	**dcredit**	**nplr**	**exchr**	**bsctlevier**	**bcrisis dummy**	**_cons**
obnks	1.000						
dcredit	-0.484	1.000					
nplr	0.134	0.053	1.000				
exchr	-0.060	0.101	-0.071	1.000			
bsctlever	0.209	-0.545	0.071	0.029	1.000		
bcrisisdummy	-0.047	0.095	-0.098	-0.090	-0.317	1.000	
_cons	-0.275	0.165	-0.491	-0.101	-0.682	0.02	1.000

A3. Number and shares of banks in European Union by income level and region

	Number of operating banks	**Shares of domestic banks**	**Shares of foreign banks**
All countries			
High income	41592	0.79	0.21
Upper middle income	531	0.25	0.75

Regions of Europe divided on the members of European Union			
Central European Union	30331	0.89	0.11
Eastern European Union	740	0.34	0.64
Northern European Union	2334	0.77	0.23
Western European Union	4110	0.34	0.66
Southern European Union	1057	0.62	0.38
Southeast European Union	621	0.28	0.72
Southwest European Union	2930	0.50	0.50

Source: Results obtained by the author

A4. Differences on the return on assets during the crisis and post-crisis period

	Crisis	**Post-crisis**
LNOBNKS	-0.000	-0.000
	(0.000)	(0.000)
NPLR	**-0.069*****	**-0.087*****
	(0.016)	(0.013)
EXCHR	0.003	-0.000
	(0.002)	(0.002)
LNDCREDIT	**0.000****	-0.000
	(0.000)	(0.000)
BSCTLEVER	**-0.053*****	-0.021
	(0.016)	(0.014)
_CONS	**0.718***	**1.388*****
	(0.364)	(0.219)
Adj. R^2	0.278	0.192
F-stat	6.48	9.14

Note: *standard errors in parentheses*
*** *statistical significance level at 1%*
** *statistical significance level at 5%*
* *statistical significance level at 10%*
Source: Results obtained by the author

A5.1. The impact of financial crisis on return of assets of banking systems from EU – by country

Note: *standard errors in parentheses*

	AT	**BE**	**BG**	**CY**	**CZ**	**DE**	**DK**
LNOBNKS	1.005	6.666	2.117	-1.954	0.943	2.103	-0.555
	(6.671)	(2.600)	(2.072)	(0.911)	(0.409)	(1.499)	(0.799)
NPLR	-0.590	-0.133	**-0.770***	0.033	**-0.770****	-0.071	-0.191
	(1.061)	(0.113)	(0.290)	(0.035)	(0.242)	(0.163)	(0.117)
EXCHR	-0.553	0.141	17.911	4.772	0.003	0.714	0.394
	(3.882)	(0.214)	(9.750)	(4.428)	(0.030)	(0.504)	(0.326)
LNDCREDIT	-3.861	1.944	24.787	-0.448	-0.033	0.337	2.525
	(2.113)	(1.420)	(12.090)	(3.406)	(1.786)	(0.683)	(3.386)
BSCTLEVER	-0.282	**-0.192****	0.638	-0.188	-0.180	**-0.049***	-0.001
	(0.321)	(0.025)	(1.897)	(0.144)	(0.105)	(0.011)	(0.036)
BCRISISDUMMY	-0.055	0.196	0	-1.222	0	-0.064	**-0.607***
	(0.406)	(0.231)	(omitted)	(1.644)	(omitted)	(0.238)	(0.189)
_CONS	48.915	-41.147	-286.522	9.683	4.244	-20.115	-32.737
	(54.544)	(22.793)	(144.052)	(36.600)	(21.414)	(20.409)	(43.828)
Adj. R^2	0.094	0.946	0.330	0.901	0.461	0.966	0.674
F-stat	1.14	24.39	1.79	11.72	2.37	39.02	3.77

*** *statistical significance level at 1%*
** *statistical significance level at 5%*
* *statistical significance level at 10%*
Source: Results obtained by the author

A5.2. The impact of financial crisis on return of assets of banking systems from EU – by country

	EE	**ES**	**FI**	**FR**	**GB**	**GR**	**HR**
LNOBNKS	29.682	0.122	0.315	**-1.036***	**0.546***	4.351	0
	(29.146)	(1.385)	(0.630)	(0.354)	(0.128)	(3.520)	(omitted)
NPLR	-2.152	-0.166	0.221	-0.046	**-0.245*****	0.069	0.204
	(1.696)	(0.138)	(0.604)	(0.059)	(0.023)	(0.107)	
EXCHR	-9.194	-5.387	0.226	1.411	1.731	-14.686	-0.762
	(22.437)	(7.343)	(3.223)	(0.523)	(1.174)	(15.547)	
LNDCREDIT	-2.555	-2.087	-2.381	1.275	**2.300****	10.233	0
	(17.028)	(3.937)	(1.777)	(0.533)	(0.331)	(8.815)	(omitted)
BSCTLEVER	-0.775	-0.082	0.109	**-0.033****	**-0.021***	-0.039	0
	(1.603)	(0.213)	(0.163)	(0.007)	(0.006)	(0.097)	(omitted)
BCRISISDUMMY	0	0.087	0	-0.030	0.277	-2.956	0
	(omitted)	(1.533)	(omitted)	(0.052)	(0.100)	(1.899)	(omitted)
_CONS	-36.942	36.911	28.194	-16.469	**-37.822****	-135.285	1.333
	(224.505)	(61.282)	(21.655)	(8.464)	(5.257)	(121.365)	
Adj. R^2	0.310	-0.373	0.388	0.933	0.967	0.533	
F-stat	1.72	0.64	1.89	19.83	40.23	2.53	

Note: *standard errors in parentheses*
*** *statistical significance level at 1%*
** *statistical significance level at 5%*
* *statistical significance level at 10%*
Source: Results obtained by the author

A5.3. The impact of financial crisis on return of assets of banking systems from EU –by country

	HU	**IE**	**IT**	**LT**	**LU**	**LV**	**MT**
LNOBNKS	-8.437	0.651	**-0.801***	**17.444*****	15.755	7.412	-1.609
	(5.583)	(2.394)	(0.234)	(2.631)	(7.158)	(28.590)	(0.926)
NPLR	**-0.144***	-0.209	**-0.285****	**-0.433*****	0.454	-0.265	-0.204
	(0.041)	(0.301)	(0.062)	(0.040)	(1.264)	(0.191)	(0.260)
EXCHR	-0.003	-14.859	**16.751***	11.558	6.065	1.999	0.376
	(0.021)	(24.692)	(4.024)	(5.780)	(4.250)	(22.166)	(4.519)
LNDCREDIT	**6.497***	-3.818	2.872	4.827	5.036	4.315	9.934
	(2.209)	(6.928)	(2.135)	(3.115)	(4.091)	(15.114)	(6.695)
BSCTLEVER	-0.130	-0.203	-0.008	**-0.595****	-0.008	-0.627	0.111
	(0.153)	(0.484)	(0.013)	(0.171)	(0.038)	(1.773)	(0.156)
BCRISISDUMMY	-0.071	-1.756	0.584	0.000	0.197	-0.761	0
	(0.376)	(2.747)	(0.288)	(omitted)	(0.246)	(3.193)	(omitted)
_CONS	-26.775	65.157	-49.152	**-94.209***	-141.260	-60.028	-88.925
	(31.120)	(109.889)	(32.902)	(36.135)	(82.600)	(175.537)	(59.820)
Adj. R^2	0.897	-0.700	0.869	0.942	0.453	-0.15	0.1146
F-stat	12.66	0.45	9.88	27.07	2.11	0.83	1.21

Note: *standard errors in parentheses*
*** *statistical significance level at 1%*
** *statistical significance level at 5%*
* *statistical significance level at 10%*
Source: Results obtained by the author

A5.4. The impact of financial crisis on return of assets of banking systems from EU –by country

	NL	**PL**	**PT**	**RO**	**SE**	**SI**	**SK**
LNOBNKS	**1.720****	-9.558	9.385	-35.212	**0.439***	9.321	**0.251***
	(0.264)	(13.723)	(4.425)	(25.943)	(0.150)	(5.013)	(0.079)
NPLR	**-0.441****	0.516	**-0.363***	-0.142	-0.294	**-1.736***	**0.146***
	(0.086)	(0.427)	(0.099)	(0.126)	(0.192)	(0.514)	(0.056)
EXCHR	1.716	-0.855	**17.361***	-3.507	0.066	58.102	0.774
	(0.868)	(0.917)	(4.924)	(3.233)	(0.109)	(25.228)	(0.706)
LNDCREDIT	1.153	-2.237	-0.335	0.430	-0.143	**-39.228***	**-3.655****
	(1.056)	(1.367)	(3.478)	(5.911)	(0.667)	(11.751)	(0.798)
BSCTLEVER	**-0.102****	0.066	0.087	-0.081	-0.109	4.057	**-0.018***
	(0.021)	(0.184)	(0.122)	(0.784)	(0.044)	(1.723)	(0.006)
BCRISISDUMMY	**-0.305***	0	-0.374	0	0.346	1.846	0
	(0.098)	(omitted)	(0.783)	(omitted)	(0.213)	(2.573)	(omitted)

_CONS	-22.164	90.920	-51.526	137.12	1.3515	**312.314***	**39.252****
	(14.581)	(93.445)	(33.809)	(112.528)	(9.470)	(97.995)	(8.807)
Adj. R^2	0.991	0.358	0.859	-0.127	0.527	0.728	0.874
F-stat	159.65	1.9	9.13	0.82	2.49	4.57	12.18

Note: *standard errors in parentheses*
**** statistical significance level at 1%*
*** statistical significance level at 5%*
** statistical significance level at 10%*
Source: Results obtained by the author

MARKETING MIX MODELS USED IN THE LIBERALIZED HOUSEHOLD ELECTRICITY MARKET

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Abstract: *The retail electricity market in Romania has been liberalized for household consumers since 2013, allowing households to switch electricity suppliers based on price or any other preferences. The implementation of legislation and institutions compatible with those set up throughout the European Union has provided support for the development of a liberalized market. However, available data suggests that consumers only started switching in 2017, with approximately 2.5% of households having done so by the end of 2018 – a relatively rapid growth compared to other European states. This promising trend in Romania has encouraged electricity suppliers to develop a more consumer-friendly array of service offerings, with various pricing options, as well as other bundling benefits. Their marketing strategy has also involved developing promotional campaigns along with networks of customer contact points across the country. The current paper explores, classifies and compares the marketing strategies of the household electricity suppliers in Romania, based on the examples of electricity suppliers active in other countries. The aim of the paper is to show to what extent the marketing strategies observed in other countries have been successfully replicated in Romania and whether significant adaptation is required in order to meet the expectations and satisfy the needs of the local household consumer segment.*
Keywords: *electricity suppliers, retail electricity market, Romania, household consumers, marketing mix*

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INTRODUCTION

The current rules by which the household electricity market in Romania functions are significantly different from those observed in the country in the first part of the 1990s. As a result of Romania's integration in the European Union, institutional and market reforms needed to be implemented. The emerging view in Europe toward the end of the 20th century was that energy markets would serve consumers better if competition through free-market reforms would be introduced. This meant, on the one hand, that the largely state owned and vertically integrated monopolies in the areas of natural gas and especially electricity would need to be broken up. On the other hand, the energy supply markets would need to be opened up to private investors, leading to an increase in competition. The desired end result was to reduce the inefficiencies inherent to state owned monopolies and to reduce prices paid by energy consumers.

The legislative and institutional reforms were adapted and implemented in Romania starting as early as 1996, and culminating with a complete separation of the four energy value chain links (generation, transmission, distribution and supply), as well as significant private investments in the areas of generation and supply. The relatively rapid changes that took place in the traditionally conservative energy sector has taken most household consumers by surprise. In spite of the legal framework for switching electricity suppliers being put into place since 2013, the first consumers to actually take this step did it in 2017. In fact, our previous research showed that most household consumers were not aware of this possibility in 2014 (Maxim, 2015). Most of them found it difficult to disconnect the distribution (physical infrastructure ownership) from the supply activities (sellers/intermediaries), believing that only the local distribution companies could be sellers within their assigned territory – a convenient situation for the incumbent/default suppliers.

However, as the National Energy Regulatory Authority (ANRE), founded in 1998, took an increasingly active and public role in promoting the newly established liberalized market, the mass media and the general public became more aware of the existing regulatory framework. As a result, the latest figures from ANRE suggest that around 200.000 household consumers (approximately 2.5% of the total number of such entities) had switched their electricity supplier by the end of 2018 (ANRE, 2019). Assuming a linear progression of this number, it is possible that close to half a million households have been actively involved in choosing a new electricity supplier by mid-2020.

The trend presented above creates both a problem and an opportunity for the default suppliers. The problem is that their typically stable residential customer base is now being targeted by other companies. The opportunity is that they can now leverage their existing infrastructure (personnel, experience, financial and material resources etc.) in order to increase their customer base beyond their assigned geographical market.

The current paper is the third in a series of works that seek to provide a preliminary assessment of the evolution that the Romanian electricity market has gone through, with a focus on household consumers. The first of the previous two papers provides an analysis of the structural changes that took place along the various links in the electricity value chain, as well as the high-level implications for consumers (in terms of service quality and price) (Maxim & Roman, 2019). The second includes a comprehensive review of marketing practices used by European electricity suppliers, achieved through an extensive literature review (Maxim, 2020). Information from both of these works has been used in the development of the second section of this manuscript.

Completing the first stage of this research endeavor, this third paper in the series aims to provide a snapshot of the actions taken by suppliers in the household electricity market of Romania. This is achieved through a qualitative assessment of the marketing strategies employed by these companies. They are compared to the approaches used by similar companies across Europe, as described by existing literature. We were able to provide a comprehensive, albeit high-level, assessment of the marketing mix developed by the 15 largest suppliers in the Romanian electricity household market. Our study was able to identify some components in the marketing strategies of electricity suppliers that were not observed or discussed in the existing literature.

To the best of our knowledge, the current paper provides the first publicly available academic assessment of marketing strategies used by electricity suppliers in the emerging and dynamic household energy market of Romania.

Beyond the current introduction, the paper includes four other sections. Section 2 provides an overview of the legislative and structural changes that took place on the European and in the Romanian energy markets over the last two decades, as well as an overview of the marketing strategies employed by European electricity suppliers. Section 3 outlines the methodological approach and the limitations of the study. Section 4 presents the results of our assessment of marketing strategies used in the Romanian electricity retail market. Section 5 provides some concluding remarks.

THE LIBERALIZED ELECTRICITY MARKETS

The current section provides the context that has shaped the research design. It is constructed based primarily on the two previous papers in what is a three paper series on the topic of marketing strategies employed by electricity suppliers in Romania (Maxim & Roman, 2019; Maxim, 2020). We first describe the evolution that has taken place at the European level, mainly from a legislative standpoint. We then present how these changes were translated at the Romanian market level. Finally, we point out the main findings that resulted from our review of the marketing strategies used by electricity suppliers in Europe.

Legislative and structural market changes across Europe

In the 1990s, the European energy market was controlled by large, vertically integrated, state owned monopolies, whose activity was heavily regulated. The easing of regulation, coupled with liberalization, as well as the breakup and privatization of the above mentioned monopolies, became the long term vision of the European Union (EU) member states in the last decade of the 20th century. The long term goal is to create a sustainable and liberalized single European energy market that can provide sufficient amounts of affordable energy for all EU member states (solving issues related to energy security and energy poverty that currently affect numerous European countries). The prevailing consensus is that liberalization, privatization and deregulation are the paths toward increasing innovation and generating consumer welfare, thus achieving the goals of the single European energy market project.

We can identify three primary pieces of legislation that have served as stepping stones in the implementation of the proposed reform at the European level. These were Directive 96/92/EC in 1996, followed by Directive 2003/54/EC and Directive 2009/72/EC. These were adapted and incorporated into the national legislation of the EU member states, who currently have similar institutions and market mechanisms in place, insuring the needed compatibility for the success of future steps in energy market reform. With the exception of Malta (which has a special status due to its isolated energy grid), all EU member states have achieved varying degrees of energy market liberalization.

The energy sector has four main links in its value chain: generation, transmission, distribution and supply. An additional link can be included in the pre-generation stage, covering the sourcing of energy fuel, such as coal, uranium and oil. However, this is commonly not included in the market analyses, as demonstrated by market reports,

internal documents of energy companies, as well as publications by national regulatory institutions. Focusing on the specifics of the electricity market, the 'production' or 'generation' stage involves the conversion of chemical, kinetic, solar and other types of energy into electrical energy, achieved through various types of equipment, such as turbines, photovoltaic panels, engines or fuel cells (usually requiring a generator). The 'transmission' stage involves the transportation of large volumes of electricity from production facilities to regional distribution grids, using high voltage transmission lines. The 'distribution' stage connects the transmission system with the end users (residential, industrial or commercial), using medium and low voltage power lines. The 'supply' stage refers to the sale of electricity to end users by intermediaries who subsequently cover the transmission and distribution costs, as well as the cost of acquiring electricity from the producers. There are some exceptions to this approach that generally do not apply to most household consumers. For example, large industrial consumers will often seek to purchase electricity directly from a producer, while some consumers (including households) can also act as electricity producers (a process referred to as 'distributed generation'), using equipment such as solar panels or small wind turbines.

A significant step in the EU wide energy market reform process was the unbundling of the supply and distribution components of the value chain. This means that consumers no longer need to purchase electricity from the company that manages the grid infrastructure to which they are connected. Suppliers can now sell electricity without needing to own any physical infrastructure. This measure led to an increased level of competition in the supply sector, such that incumbent utility companies faced both the threat of losing default customers and the opportunity of acquiring new customers in other markets. Müller et al. (2008) is one of the first to comprehensively present the measures taken by energy companies in Germany in the new market context, most of which will are listed in Section 2.3.

The energy market reforms have had some effects that are not beneficial for consumers, such as increased prices (compared to state owned companies) (Fiorio and Florio, 2013), reduced innovation (Marino et al., 2019) and, in several cases, the emergence of oligopolies, market alliances and lower than expected market competition (Boroumand, 2015; Haas, 2019; Ghazvini et al., 2019; Mulder & Willems, 2019). The crucial factor that contributes to the establishment of a liberalized market is the supplier switching behavior (the process through which customers opt to change their electricity supplier – the initial step is a movement away from the default semi-regulated tariff offered by their incumbent supplier). Several studies show that consumers have been slow to embrace the possibility of becoming active players on the market, while others show that a significant portion of contract switching is internal (choosing a deregulated/competitive tariff from the incumbent supplier) (Maxim, 2020).

In order to increase market activity from the side of consumers, there is a crucial need to understand customer preferences, as well as the key factors that influence their switching behavior. This is the cornerstone of building a successful marketing strategy and it is one of the future avenues of research in the current endeavor focused on Romania.

Structural changes in the Romanian electricity market

After the political transition that took place at the end of 1989, the Romanian energy market was controlled by a single state-owned monopoly, covering all four links in the value chain (Autonomous Administration for Electricity – RENEL). As part of the EU inspired reforms, this entity was broken up, in several stages, starting with 1998 and continuing in 2000 and 2001. The end result was a set of state owned enterprises that now each activated within a specific part of the value chain, some acting as competitors (e.g. in the area of 'generation') and some being granted the status of natural monopoly (e.g. branches split along non-overlapping regions for 'distribution' and 'supply'). In 2005, the distribution and supply entities (formerly under the state owned company "Electrica") were privatized, with foreign investors CEZ, EON and ENEL purchasing controlling stakes in in five of the eight regional branches of Electrica, resulting in a total of five distinct non-competing distribution and supply companies at the national level.

A further necessary step in the reform process was the separation of 'distribution' and 'supply', in accordance with the EU directives in the field of energy. This step was achieved in 2007, the year in which Romania joined the European block. Finally, the market was opened up to private investors, who could establish new entities in 'ganeration' and 'supply'. The 'transmission' component of the value chain remains under the control of a single company, "Transelectrica" (state owned), as is the case in several other European states. The special status of 'default supplier' was given to the initial five supply companies, in order to protect vulnerable consumers (i.e. any consumer who would not be served by a supplier, would have to be served by the default supplier in the corresponding geographical region).

The default suppliers continued to control 100% of the household retail market until the end of 2016. This was partly due to the fact that consumers did not see a distinction between supply and distribution (the 'sister' companies that resulted from the 2007 split had very similar names). Consumers assumed that they could only purchase electricity from the company that owned the physical infrastructure connected to their home (as is the case in the telecoms sector in Romania). Since the distribution companies were natural monopolies, customers did not consider that they could switch away from the corresponding default supplier (Maxim, 2015).

Table 1. Evolution of the distribution vs default suppliers in the Romanian electricity value chain (2013 vs. 2019)

Distribution	Supply (default supplier)
2013	
CEZ Distributie	CEZ Vanzare
ENEL Distributie Banat	ENEL Energie
ENEL Distributie Dobrogea	
ENEL Distributie Muntenia	ENEL Energie Muntenia
E.ON Moldova Distributie	E.ON Energie Romania
FDEE Electrica Distributie Muntenia Nord	Electrica Furnizare
FDEE Electrica Distributie Transilvania Sud	
FDEE Electrica Distributie Transilvania Nord	
2019	
Distributie Energie Oltenia	CEZ Vanzare

E-Distributie Banat	ENEL Energie
E-Distributie Dobrogea	
E-Distributie Muntenia	ENEL Energie Muntenia
Delgaz Grid	E.ON Energie Romania
SDEE Muntenia Nord	Electrica Furnizare
SDEE Transilvania Sud	
SDEE Transilvania Nord	

Source: adapted from Maxim (2019) and ANRE (2020b)

As seen in Table 1, the names of these 'sister' companies evolved, with a clearer disconnect between the two components of the value chain. The current distinction may help alleviate the consumers' perception problem discussed above.

Over the last decade, a clear correlation between liberalization and price evolution could not be established. In fact, prices seem to have remained mostly constant, with a period of increase corresponding to the inclusion of green certificates in the final bill paid by consumers. With regard to service quality, existing data suggests that liberalization and privatization can be correlated with a lower incidence and duration of disruptions in the provision of electricity to end users (Maxim, 2020).

Recent developments on the market include an increased rate of supplier switching, attempts by a telecoms company to enter the monopolistic distribution component of the electricity value chain, as well as the employment of non-ethical tactics by companies partnered with the default suppliers in order to encourage switching. A higher level of interest by the public in the electricity market has been sustained by increased coverage of the liberalization process by mass media. The ANRE has also taken an active role in the market by introducing a price comparison tool on its website – an instrument that has proven effective in other European countries, as one of the main obstacles in the path of supplier switching is the concern of paying a higher price (Maxim, 2019).

Marketing strategies of European electricity suppliers

Based on an extensive review of academic literature (Maxim, 2020), we can provide a brief summary of the marketing strategies employed by European electricity suppliers in the household retail market. The assessment is structured based on the traditional 4P marketing mix model of marketing strategies: product, price, promotion and place.

The 'product' component refers to product design, features, range/line and support elements, such as branding, packaging, labeling, customer support and warranty. Some of the observed avenues in product strategy have been to include 'green energy' offerings – a guaranteed proportion (usually above the expected average) of the supplied electricity comes from renewable sources. This approach can help differentiate the offering and attract specific market segments, which are likely to remain loyal to the supplier. The product can also be differentiated from that of the competition through the use of dual fuel contracts (the provision of both electricity and natural gas by the same supplier), the implementation of smart meters (that allow customers to choose a tariff with lower costs during off-peak consumption, such as during the evening) and energy

saving programs (rewarding customers who reach an agreed target for a reduction of their electricity consumption).

The product support elements that have been described in existing literature are environmental labeling for renewable energy offerings (observed only in specific countries), reduced call waiting times during the customer support process and the employment of transparent and timely communication regarding tariff changes.

During our assessment of the marketing practices used by Romanian suppliers of electricity, some product innovations were identified beyond those discussed in the existing literature. Thus, we observed frequent use of offerings that combine electricity supply with technical assistance, payment plans for large energy intensive appliances (such as air conditioning) and even insurance for electronic goods that were damaged by voltage fluctuations. In addition, many of the larger suppliers also have a mobile application through which customers can interact directly with the company (to submit meter readings, pay bills, report outages etc.).

The 'price' component of the marketing mix, although not as complex, is the most frequently discussed in the existing literature – price has been identified as the most influential factor in the electricity consumer's decision making process. This component refers both to the actual level of price, as well as the approach through which the various offering are assigned a monetary value. The most frequently used pricing approach is that of fixed price contracts for a set period of time (1 to 3 years), which have also proven to be the most popular among consumers. Alternatively, a variable tariff can be used, updated periodically with revised figures from the retail market. Finally, a 'smart time of use' tariff can be utilized if customers are willing to shift some of their consumption during off-peak hours (such as night time), when the cost of electricity is lower. However, this approach requires the use of smart meters.

Aside from the above mentioned tariff plans, the price per unit of electricity sold can vary within the same company based primarily on two factors: the incorporation of green energy in the offering (high proportion of renewable energy in the mix is usually priced at a premium level) and discrimination based on volumes (households that use more energy pay a lower per unit price).

With regard to 'promotion', the literature review has helped us identify several advertising and communication practices employed throughout Europe, while our assessment of the Romanian suppliers has pointed out one additional aspect that we considered relevant. One of the key requirements for successfully promoting electricity offerings on the household market is to have a promotional message that focuses on product/price innovation (differentiation) and/or on educating the public (pointing out the advantages of green energy and, as seen in the case of Romanian suppliers, summarizing the necessary steps for switching suppliers). Researchers also recommend the use of segmented messaging, as clear differences in preference have been identified among consumers with different educational and socio-demographic traits. The use of online advertising has also been observed in Europe, as well as the use of loyalty programs. In the case of the Romanian suppliers, we identified and sought to include the existence of a social media presence by the supplier as a relevant component of the promotion component of the marketing strategy.

The last element of the 4P model is 'place' (the process through which the customer receives the offering), which has seen the fewest mentions in existing literature.

The infrequent discussion of place is likely due to the immaterial nature of electricity: it does not require any investments in physical infrastructure for transportation, as that is the concern of the transmission and distribution companies. The only two issues related to price that we were able to identify in the literature have been: local production (suppliers emphasizing that the electricity sold by them is produced locally or nationally) and the place of origin (suppliers pointing out that they are a locally or nationally based company). Both approaches seek to attract customers who wish to support the local economy and/or who prefer to avoid companies that are backed by foreign investors. In the case of Romania, we have identified an additional aspect of place – the establishment of local physical offices/points of contact. This is an approach used increasingly by larger electricity suppliers in Romania, who seek to attract more conservative customers outside of their base regional markets by providing them with a brick-and-mortar point of contact with a company representative present at the location for support, information and sales.

METHODOLOGICAL APPROACH AND LIMITATIONS

For our assessment of the marketing strategies employed by Romanian electricity suppliers we used a mixed method approach, combining simple quantitative analyses based on secondary data regarding tariffs and offerings, with a qualitative assessment of the 4P marketing mix of each supplier, based on a content analysis of their website, advertising and other information available through secondary sources.

The first step in our research design has been to identify which suppliers would be assessed. The decision was made to focus on the largest companies that are actively present on the household retail market. An annual report by ANRE provided a breakdown of the retail market by company market share, showing the largest 17 suppliers (with a market share above 1%). Out of these, 2 companies were not active on the household retail market and thus were excluded from the analysis. One note that we can make is that Complexul Energetic Oltenia does provide an offer for household consumers on their website, which has been posted in 2020. However, the market monitoring report by ANRE for 2019 does not list the company as being active on this segment. The full list of entities along with their market shares is presented in Table 2.

Table 2. The largest electricity suppliers in Romania by retail market share in 2019

No.	Company	Market share (overall retail market)	Market share (competitive retail market)	Website (detailed in the References section)
1	Electrica Furnizare	18,69%	10,94%	
2	Enel Energie Muntenia	10,56%	9,98%	Enel Energie Muntenia (2020)
3	E.On Energie Romania	9,79%	8,68%	E.On Energie Romania (2020)
4	Enel Energie	9,09%	9,08%	Enel Energie (2020)
5	CEZ Vanzare	7,49%	6,53%	CEZ Vânzare (2020)
6	Met Romania Energy	5,86%	7,24%	Met Romania Energy (2020)
7	Getica 95 COM	4,84%	5,97%	Getica 95 (2020)
8	Tinmar Energy	4,41%	5,44%	Tinmar Energy (2020)
9	Alro	4,14%	5,11%	Alro (2020)
10	Engie Romania	3,29%	4,06%	Engie Romania (2020)
11	OMV Petrom	3,08%	3,80%	OMV Petrom (2020)
12	EFT Furnizare	2,19%	2,70%	EFT Furnizare (2020)

13	Renovatio Trading	2,12%	2,62%	Renovatio Trading (2020)
14	Alpha Wind*	1,70%	2,10%	-
15	Complexul Energetic Oltenia*	1,51%	1,86%	Complexul Energetic Oltenia (2020)
16	Electrificare CFR	1,39%	1,71%	Electrificare CFR (2020)
17	Hidroelectrica	1,20%	1,49%	Hidroelectrica (2020)
* company not listed by ANRE as being active on the household retail market – excluded from analysis				

Source: own representation based on data from ANRE (2020b)

Table 2 shows the top 15 supply companies by retail market share, with the top 5 being the default suppliers. The last column to the right shows the market share that these entities have on the competitive (fully deregulated) retail market, which encompasses only customers who have switched suppliers at some point, exiting the regulated tariff market. The market shares in this column are smaller for the default suppliers, as the customers are more spread out toward the non-default suppliers on the liberalized market.

One additional observation regarding Table 2 is that Enel Energie and Enel Energie Muntenia are companies that share the same brand, the same website and largely the same marketing strategy. Aside from a slightly different mix of electricity generation sources, the only relevant difference that we have identified is that the first one is a default supplier in the west and southeast of Romania, while the second is the default supplier in the central southern region (around the capital Bucharest). These differences stem from the 2005 privatization of the territorial branches of the state-owned supply & distribution company Electrica, discussed in Section 2.2, followed by the mandated breakup of the supply and distribution components of the value chain, resulting in 'sister' companies. Thus our analysis truly focuses on 14 different companies if we consider Enel Energie and Enel Energie Muntenia as having largely similar marketing strategies.

Our quantitative assessment is based on data from the ANRE price comparison tool (ANRE, 2020a) and it is primarily useful in describing the price component of the marketing mix, but also covers specific aspects of the product component. We have created a database that includes all of the available electricity offerings for a typical Romanian household located in the two largest territorial units in the country – Bucharest (the capital city, located in the south) and Iași county (located in the north-east). The parameters for the household have been an electricity consumption of 2000 kWh/year, at low voltage – a slightly higher than average household consumption, according to ANRE (2019). The data collected covers all available product offerings for a typical customer in each of the two locations, with four types of contracts:

- Fixed price, uniform pricing across the period
- Variable price, uniform pricing across the period
- Fixed price, 'smart time of use' pricing with a split of 50% peak and 50% off-peak
- Variable price, 'smart time of use' pricing with a split of 50% peak and 50% off-peak

The entire set of offerings is spread across 49 suppliers in Bucharest and 42 suppliers in Iași, of which 9 suppliers present in Bucharest are not available in Iași and 2 suppliers present in Iași are not available in Bucharest. This results in a total of 51 suppliers, representing 89% of the 57 suppliers that are present on the retail electricity market nationally.

The qualitative assessment of the marketing mix is based on a content analysis of the company website, its online presence on social media, online advertising, video advertising and content, as well as any other secondary data source available online. The goal of the mixed qualitative and quantitative approach was to identify which aspects of the various marketing mix designs presented in Section 2.3 are employed by the 15 largest retail electricity suppliers in Romania.

Table 3 provides a summary of each of the 24 marketing strategy practices outlined in Section 2.3 are implemented by each supplier. They have been grouped around the 4P marketing mix model components. Specific details regarding how each company was rated as applying or not applying each specific tactic as part of its marketing strategy are presented in the corresponding Sections 4.1-4.4.

Table 3. Marketing strategy practices evaluated in the study

Product	**Price**
Green energy offerings	Fixed price
Dual fuel contracts	Variable price
Energy saving programs	Smart time of use price
Product branding	Price premium for green energy
Environmental labeling	Price discrimination (based on volume)
Call waiting times	
Additional bundled services	**Promotion**
Mobile application	Online advertising (Google ads, Facebook ads)
Smart meters	Social media presence (Facebook, YouTube)
Transparent and timely communication	Message focus: product/price innovation
Place	Message focus: education (switching, green energy)
Local production	Loyalty programs
Locally based company	Segmented messaging
Local physical presence	

Before continuing with the analysis, it is relevant to point out some of the limitations of the current study. Given that our assessment is based solely on secondary sources and not direct contact with each company or its customers, we may not be able to provide a complete assessment of each supplier's marketing mix. For example, the identification of online advertising practices has been tested through rigorous and repeated searches for relevant keywords using various IP address locations throughout the country and the world (via the use of Virtual Private Networks), so as to generate the presence of advertising through the Google Ads and Facebook Ads platforms. Some companies may indeed have online advertising campaigns that are either temporarily inactive or that use different targeting criteria that we were unable to meet.

Furthermore, companies such as Electrificare CFR, which have a very limited online presence, may not have been assessed adequately, especially from the perspective of the 'promotion' and 'place' components, although every effort was made in order to reduce the risk of significant errors.

Finally, as with any qualitative assessment, the content analysis method can produce slightly biased results. We have sought to compensate this by using a simple 'present/absent' scale for measuring whether each practice is used by the electricity suppliers.

MARKETING STRATEGIES USED IN THE ROMANIAN HOUSEHOLD ELECTRICITY MARKET

The current section presents the results of the qualitative and quantitative assessment of the marketing strategies employed by the Romanian electricity suppliers, using the approach detailed in Section 3. The results are structured along the four components of the traditional marketing mix model.

Product

The product component has proven to be the most complex and difficult to assess. We used multiple data sources in order to construct a relatively complete overview across the 10 distinct practices and the 15 suppliers. The results of our study are summarized in Table 4.

Table 4. Assessment of the 'product' component of the marketing mix of suppliers

	Green energy	*Dual fuel*	*Product branding*	*Enviro. labeling*	*Add. bundled services*	*Mobile app.*	*Smart meters*	*Call waiting times*	*Transparent and timely comms.*	*Energy saving progr.*
Electrica Furnizare	-	x	x	-	x	x	likely	unknown	unknown	-
Enel Energie Muntenia	-	x	x	x	x	x	unknown			
E.On Energie Romania	x	x	x	x	x	x				
Enel Energie	-	x	x	x	x	x				
CEZ Vanzare	x	-	x	x	x	x	likely			
Met Romania Energy	x	-	-	-	-	-	-			
Getica 95 COM	x	-	-	-	-	-	-			
Tinmar Energy	x	x	x	x	x	x	-	x		
Alro	-	-	-	-	-	-	-	unknown		
Engie Romania	-	x	x	-	x	x	-			
OMV Petrom	-	-	-	-	-	-	-			
EFT Furnizare	-	-	-	-	x	-	-			
Renovatio Trading	-	-	-	x	-	-	-			
Electrificare CFR	x	-	-	-	-	-	-			
Hidroelectrica	x	-	x	x	-	-	-			

Legend: "**x**" – marketing practice is used;
"**-**" – marketing practice is not used

As can be seen in Table 4, the five default suppliers, along with Tinmar Energy and, to some extent, Engie Romania have all implemented many of the 10 practices observed among European suppliers. Only 7 of the 15 suppliers are able to offer contracts in which ANRE could confirm the inclusion of renewable energy. It is worth noting that we have not found evidence to suggest that 'non-green' offers exclude the use of renewable energy - in fact, over a third of all electricity typically sold in Romania comes from renewable sources. But, if the ANRE price comparison tool does not explicitly state

that a specific offer includes a specific amount of renewable energy in the mix, we have not classified it as 'green'.

Table 5. Prevalence of 'green energy' offerings on the household retail market

Region	*Indicator*	*Fixed price*	*Variable price*
Bucharest	Max. % of green in an offer	100.00%	44.00%
	No. of green offers/total offers	26/76	4/13
Iași	Max. % of green in an offer	100.00%	44.00%
	No. of green offers/total offers	20/64	2/11

Table 5 provides an overview of the prevalence of 'green energy' offerings in the various contracts made available to household consumers in Bucharest and in Iași County. According to ANRE, close to one third of fixed price contracts include a certain amount of renewable energy in the mix. There are some suppliers who offer 100% renewable energy fixed price contracts, such as CEZ, E.On and Hidroelectrica. However, the maximum percentage of renewable energy in the variable price contracts is only 44%. Dual fuel contracts (electricity and natural gas in the same offer) are only available from companies that sell both types of energy. CEZ Vanzare, for example, does not supply natural gas, while Renovatio Trading does supply it, but does not offer dual fuel contracts to customers. Product branding was observed in the case of several suppliers. We have considered an offer to be branded if it bore a distinctive name (e.g. other than "Electrical energy" or "Standard offer for household consumers"). Notable examples include (names have been translated into English where necessary): "Engie One" and "Electrica 3 in 1" (dual fuel contracts that are bundled with additional services), "Simply green", "CEZ Green" and "E.On Green Home" by Hidroelectrica, CEZ and E.On respectively, and "Tinmar Standard/Silver/Gold" by Tinmar. Even though there is no official 'environmental label' for electricity, as seen in the case of Sweden (Kaberger, 2003), we did consider some companies to have self-labeled their offerings as environmentally friendly if they either offered a branded green energy contract, or if their website or advertising provides explicit information regarding the use of renewable energy in their offerings. We did not include those companies that only provided a standardized "energy mix label" (as required by regulations) that explains their typical energy mix.

One of the original findings of our research was the high prevalence of supply contracts that are bundled with additional services. The most frequent additions have been standard and emergency technical support/repairs, as well as insurance for electronic goods damaged by voltage fluctuations. More complex offerings include technical interventions for plumbing, payment plans for the purchase and installation of air conditioning units, as well as locksmith services.

Another original finding regarding product practices has been the use of mobile applications. From the perspective of marketing theory, we can classify these as being part of the product support system that typically includes packaging, branding and support services. We have found that 7 of the 15 suppliers use mobile applications, through which customers can send their meter readings, pay their bills, receive promotional offers and contact support.

With regard to smart meters, we have not been able to explicitly identify which companies include the installation of smart meters as part of their offerings. It is most likely that smart meters are being implemented gradually by the distribution companies. However, we hypothesize that it is very likely that this type of infrastructure is in place in the geographical regions served by Electrica Furnizare and CEZ Vanzare, as these are the only suppliers that offer 'smart time of use' tariffs.

Variations in call waiting times have not been overtly discussed in any of the sources used in our analysis. Tinmar Energy has been the only company to explicitly state that they focus on providing short call waiting times. Other sources such as online reviews have not provided sufficient information so as to adequately provide a comparison or assessment of any other supplier.

We have not identified any type of energy saving program, such as those discussed in Section 2.3, as being offered by any of the 15 suppliers. Additionaly, we have not found sufficient information that would allow us to confirm whether transparent ant timely communication regarding tariff changes exists between suppliers and customers. This can be compensated through an assessment of how transparently/easily the existing tariffs are communicated to customers via the supplier website. For example, E.On provides a simulator that calculates the estimated monthly bill for each of its tariffs based on customer input. However, we felt that such an approach would not be the equivalent of assessing the "transparent and timely communication" marketing practice discussed in Section 2.3.

Price

The existing literature agrees that price is the most important factor by which customers evaluate electricity supply offerings. The findings at the European level discussed in Section 2.3 are largely valid in the case of Romanian suppliers as well.

Table 6. Assessment of the 'price' component of the marketing mix of suppliers

	Fixed price	*Variable price*	*Smart time of use price*	*Price premium for green energy*	*Price discrimination (based on volume)*
Electrica Furnizare	**x**	**x**	**x**	-	**x**
Enel Energie Muntenia	**x**	**x**	-	-	-
E.On Energie Romania	**x**	**x**	-	-	**daily subscription plan to penalize low, but daily consumption**
Enel Energie	**x**	**x**	-	-	-
CEZ Vanzare	**x**	**x**	**x**	**x**	**daily subscription plan to penalize low, but daily consumption**
Met Romania Energy	**x**	-	-	-	-
Getica 95 COM	**x**	-	-	-	-
Tinmar Energy	**x**	**x**	-	-	-
Alro	**x**	-	-	-	-
Engie Romania	**x**	-	-	-	-
OMV Petrom	**x**	-	-	-	**x**
EFT Furnizare	**x**	-	-	-	-
Renovatio Trading	**x**	-	-	-	**x**
Electrificare CFR	**x**	-	-	-	-
Hidroelectrica	**x**	-	-	-	-

Legend:	"**x**" – marketing practice is used; "**-**" – marketing practice is not used

Fixed prices are the most frequent type of tariff used in the retail electricity market in Romania. All of the 15 suppliers offer this type of contract. This is likely explained by the prevalent consumer preference for predictability with regard to their monthly electricity bill. This type of customer need has been observed throughout Europe (Maxim, 2020). Variable price contracts are much less frequent. In fact, ANRE confirms the existence of 84 different fixed price offers for household consumers in Bucharest and only 15 with a variable price. A similar ratio applies to Iași County: 71 offers with a fixed price and 12 with a variable price.

One surprising finding was the low incidence of 'smart time of use' contracts. Only two of the 15 suppliers provide such an option. Electrica Furnizare is the largest default supplier and originally covered three of the eight national distribution territories, while CEZ Vanzare is the only default supplier that only offers electricity and not natural gas. We can assume that at least half of the national territory can benefit from this type of tariff (those living in the four territories in which the two companies have been the default supplier since 2005), but other territories may also be able to opt for smart tariffs, according to ANRE data (ANRE, 2020a).

The practice of applying higher prices to renewable energy supply contracts seems to be used by Romanian suppliers as well. The only direct comparison that we were able to make was in the case of CEZ Vanzare, who provide two similar types of fixed price contract with one having a 100% renewable energy mix. The data in Table 7 shows that there is a marginal difference in price, with a ~3% higher tariff in the case of the 'green offer'.

Table 7. Comparison of CEZ Vanzare 'green' vs. 'non-green' offers by the same electricity supplier

Region	*Green offer*	*Non-green offer*	*% difference*
Bucharest	**130.35**	**125.95**	**+3.5%**
Iași	**137.32**	**133.61**	**+2.8%**

The practice of premium prices for green energy seems to hold true for the overall retail market as well. Even though we are unable to provide comparisons such as that shown in Table 7 for any other suppliers, we have calculated average figures for the entire market.

Table 8. Assessment of prices across the four main contract types with or without 'green energy'

Region	*Indicator*	*Fixed price*	*Variable price*	*Fixed price (50% off-peak)*	*Variable price (50% off-peak)*
Bucharest	Max. price	183.37	155.58	127.30	155.58
	Min. price	96.59	96.59	117.69	129.68
	Avg. price for non-green	**126.97**	**120.75**	122.14	142.63
	Avg. price for green offers	**130.24 (+2.6%)**	**124.61 (+3.2%)**	-	-
Iași	Max. price	190.34	160.57	134.27	136.65
	Min. price	101.34	101.34	124.66	136.65
	Avg. price for non-green	**133.15**	**120.37**	128.42	136.65
	Avg. price for green offers	**139.23**	**134.86**	-	-

		(+4.6%)	(+12%)		

As seen in Table 8, the average price for contracts that are labeled by ANRE as including renewable energy are 3-4% higher than the non-green alternatives. The differences are partly explained by the fact that the average non-green price includes varying proportions of semi-regulated tariffs (default supplier tariffs), which were significantly lower in the case of variable price contracts when compared to the variable price tariffs on the competitive market. In fact, the entire 12% difference in the case of Iași can be explained away by this distinction between default and competitive tariffs.

Table 8 also shows that there are some variations in prices between geographical regions, which are likely explained by the differences in the tariff by the suppliers to each distribution company present in each region.

Finally, we found that there is only a limited use of price discrimination based on volume of consumption. Three of the fifteen companies have implemented this tactic. Two other suppliers have introduced tariffs that require a 'subscription' payment for each day during which a household is supplied with electricity. The price for each unit of electricity consumed is lower compared to the standard tariff. Thus, a customer who uses higher than average amounts of electricity (suppliers recommend a consumption above 150 kWh/month) will see lower overall monthly bills compared to using the standard tariff. This approach mainly seeks to differentiate between full-time consumer locations and temporary/intermittent locations (such as holiday homes).

Promotion

As discussed in Maxim (2020), promotional activities have a limited impact on attracting customers and need to be carefully designed in order to be effective. Table 9 provides a summary of our findings in this area.

Table 9. Assessment of the 'promotion' component of the marketing mix of suppliers

	Online advertising (Google ads, Facebook ads)	*Social media presence (Facebook, YouTube)*	*Message focus: product/price innovation*	*Message focus: education (switching, green energy)*	*Segmented messaging*	*Loyalty programs*
Electrica Furnizare	x	x	x	x	x	-
Enel Energie Muntenia	x	x	x	x	x	
E.On Energie Romania	-	x	x	x	x	
Enel Energie	x	x	x	x	x	
CEZ Vanzare	x	x	x	x	x	
Met Romania Energy	-	x	-	x	-	
Getica 95 COM	-	x	-	-	-	
Tinmar Energy	x	x	x	x	x	
Alro	-	-	x	-	-	
Engie Romania	-	x	x	x	x	
OMV Petrom	-	x	x	-	-	
EFT Furnizare	-	-	x	-	-	

Renovatio Trading	-	x	x	x	-	
Electrificare CFR	-	-	-	-	-	
Hidroelectrica	-	x	x	-	-	
Legend:	"x" – marketing practice is used; "-" – marketing practice is not used					

Many of the 'promotion' practices mentioned in Section 2.3 have been implemented by the Romanian suppliers. In addition, our research identified the "Social media presence" as an additional practice that has not been identified in the reviewed literature. In fact, "social media presence" is used by nearly all suppliers, the notable exceptions being Electrificare CFR and Alro (both are state owned companies which stem from metallurgy and rail transportation that primarily conduct business-to-business transactions), as well as EFT Furnizare.

The use of online advertising has been tested from the household consumer perspective by repeatedly performing searches using typical relevant keywords on the three most likely platforms for business-to-consumer advertising: Google.com, Facebook, and YouTube. Through the use of virtual private networks, we simulated searches from several locations in Romania, as well as abroad, in order to circumvent possible location filters set in place for the delivery of the ads. After repeated attempts, we concluded that only 5 of the 15 suppliers use online advertising through Google, Facebook and YouTube. Other companies, such as E.On Energie Romania, OMV Petrom and Engie Romania rely significantly on advertising delivered through television. Some of the ads used in the TV campaigns are available on their YouTube channels.

Messages that describe the innovation/design of the product or price (i.e. the various practices identified in Tables 4 and 5) are used by nearly all suppliers in their promotional campaigns. Messages focused on educating consumers regarding the societal benefits of renewable energy, as well as regarding the procedure of switching suppliers are employed by fewer companies, although most of them do provide this information in various locations on their website.

The need for segmented messaging in the case of suppliers that want to attract household consumers has been discussed in several other studies. However, only seven of the 15 companies have created custom messages for different household consumer segments. Examples of good practices are advertisements that illustrate families/couples/single young people, each with their specific energy and service needs, as well as advertisements that point out the differentiating factors of the offering, such as the benefits of having all energy services in a single bundled contract, the use of 100% renewable electricity, or easy interactions through the mobile application.

None of the suppliers explicitly mention any type of loyalty program. This is the only promotional practice observed in some European countries that does not seem to be currently implemented in Romania. We can hypothesize that this is due to the relatively low proportion of consumers who switch suppliers. As customers become more active in the market, electricity companies may seek to develop and introduce various types of programs that focus on increasing loyalty.

Place

Previous studies confirm that the 'place' component of the marketing mix is the least relevant when approaching the residential electricity market. There are few differentiating factors that can be leveraged in order to create a unique value proposition that is of interest for potential customers. The location in which the supplied energy is generated, as well as the location of the headquarters of the electricity company have been used in order to attract customers who wish to support the local or national economy through their purchases. Our study has identified an additional differentiating factor that is more relevant for the conservative consumer base of Romania – the establishment of a widely spread physical presence (i.e. creating sales/support offices in locations across the country). Table 10 provides a summary of our findings.

Table 10. Assessment of the 'place' component of the marketing mix of suppliers

	Local production	*Local supplier*	*Local physical presence*
Electrica Furnizare	not explicit	x	x
Enel Energie Muntenia		-	x
E.On Energie Romania		-	x
Enel Energie		-	x
CEZ Vanzare	x	-	limited
Met Romania Energy	not explicit	-	-
Getica 95 COM		x	-
Tinmar Energy		x	-
Alro		x	-
Engie Romania		-	x
OMV Petrom	x	x	x
EFT Furnizare	not explicit	-	-
Renovatio Trading	x	-	-
Electrificare CFR	not explicit	x	-
Hidroelectrica		x	-

Legend: "**x**" – marketing practice is used;
"**-**" – marketing practice is not used

Depending on the year of analysis, Romania produces the equivalent of 100% - 120% of the energy that it consumes annually. Considering that part of the production is exported to neighboring countries, imports of electricity have reached between 5-9% of annual consumption over the last few years (ANRE 2018, 2020). Under these circumstances, it is reasonable to assume that a significant majority of the energy supplied to households is produced nationally. However, only three out of the 15 companies have explicitly mentioned this in the sources that were included in the assessment. Thus, even though we expect that all of the suppliers can make this statement regarding their products, they do not consider this a significant argument that can be used to attract consumers and thus it is not part of their marketing mix practices.

The location of the company's headquarters is, however, explicitly mentioned by all Romanian based suppliers. Thus, 7 of the 15 companies state that they have a local origin or that they are owned by Romanian entrepreneurs.

With regard to the local presence, we have found that seven suppliers have established a local presence with physical points of contact with the customers in various areas of the country. This is relevant given that the Romanian retail market is not mature and customers are hesitant about establishing a utility contract with a company exclusively through online contact. In the case of CEZ Vanzare, we have added the "limited" label, as their network extends only throughout their default supplier region and two major cities located in opposite sides of the country. Some companies have addressed this issue by partnering with local companies that act as sales agents for the supplier. However, as mentioned in Section 2.2, some of these intermediaries have been found to employ unethical sales tactics that negatively impact the brand image of the electricity company.

CONCLUSION

Considering our findings, we can conclude that most of the typical marketing practices observed throughout the national retail markets of other European countries have been adapted and implemented by electricity suppliers in Romania. This could be explained by the fact that a majority of them are subsidiaries or branches of European based utility companies or other international investment groups.

Out of the 15 largest companies on the market, we can state that the five default suppliers (Electrica Furnizare, Enel Energie Muntenia, E.On Energie Romania, Enel Energie and CEZ Vanzare), along with Tinmar Energy and, to a lesser extent, Engie Romania have shown an explicit interest in designing complex and well-targeted marketing strategies aimed at households. Renovatio Trading, while providing a pleasant interface and clear information through its website, has not developed its offerings and overall marketing mix as much as the other suppliers listed above.

Other companies seem to be more focused on attracting business customers on the retail market and thus do not employ the typical marketing practices used in the household segment of the market. This seems to be the case for Met Romania Energy, Getica 95 COM, Alro, OMV Petrom, EFT Furnizare and Electrificare CFR.

Hidroelectrica is a special case. Silimarly to the CEZ group of companies, Hidroelectrica is involved both in supply and generation. Thus, they are able to provide customers with 100% renewable energy offerings consisting of nationally produced electricity. If the company would develop a truly dedicated interface aimed at connecting with household consumer, they have the potential of attracting a significant portion of the ecologically minded customers on the market, especially when considering that their current tariffs are also highly competitive.

One of the original findings of our study is that Romanian suppliers have employed marketing practices that have not been identified in existing literature. These include: the bundling of standard and emergency technical support, sale of large appliances and insurance of appliances in the electricity contract, the use of mobile applications to connect with customers, the development of a social media presence and the development of networks of physical customer contact points throughout the country.

Future developments of this study will focus on providing a more complete assessment of these marketing strategies through the collection of primary data via interviews with company representatives. In addition, a positioning and segmentation

study of the household retail market would help in order to better understand the expectations of different consumer groups, as well as helping measure the effectiveness of the marketing strategies employed by the electricity suppliers.

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DETERMINANTS FACTORS OF TAX EVASION IN ROMANIA AND ITALY

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Abstract: *The phenomenon of tax evasion has been investigated in numerous national and global studies aimed at understanding the determinants and its economic implications. The research of tax evasion at national level has mainly emphasized the role of economic factors and less that of non-financial factors (Alm and Torgler, 2006, p. 225). Many studies on the phenomenon of tax evasion have highlighted the importance of non-financial variables. Riahi-Belkaoui (2004, p. 141) points out "the need for a contingency theory of fiscal compliance that will appeal not only to the economic determinants of fiscal compliance, but also to the institutional and moral determinants". Richardson's study (2006, p. 150) examined the tax avoidance factors in 45 countries and concluded "non-financial determinants have the strongest impact on tax evasion" compared to economic variables. Moreover, Richardson (2008, p. 67-78) found evidence that adding non-financial variables to tax evasion models increases its explanatory power. With the help of World Bank's Worldwide Governance Indicators, published on the website http://info.worldbank. org/governance/wgi/, the data for the period 2009 - 2018 for Romania and Italy were analyzed. This study was carried out with the help of non-financial indicators: Corruption control (Coc) and Government effectiveness (GE) and economic indicator Profit tax (PrTx). Based on the hypothesis that, tax evasion exists, the PrTx indicator was used as a dependent variable. THE MAIN PURPOSE: The study tracks the impact of non-financial indicators on tax evasion through the variation of the independent indicators WGI: GE and Coc. THE ASPECTS TO BE TREATED further in the article: With the help of these indicators, was measured the evolution of the PrTx indicator and analyzed over a period of 10 years and a comparison was made between Romania and Italy. To understand the influence of independent variables on tax evasion and the relationship between indicators was it used a linear mixed model. Thus, both a positive and a negative correlation between the variables were identified. Resulting according to the validation of the hypotheses that, non-financial variables have a considerable impact on tax evasion.*
Keywords: *Tax evasion, corruption, government effectiveness, profit tax.*

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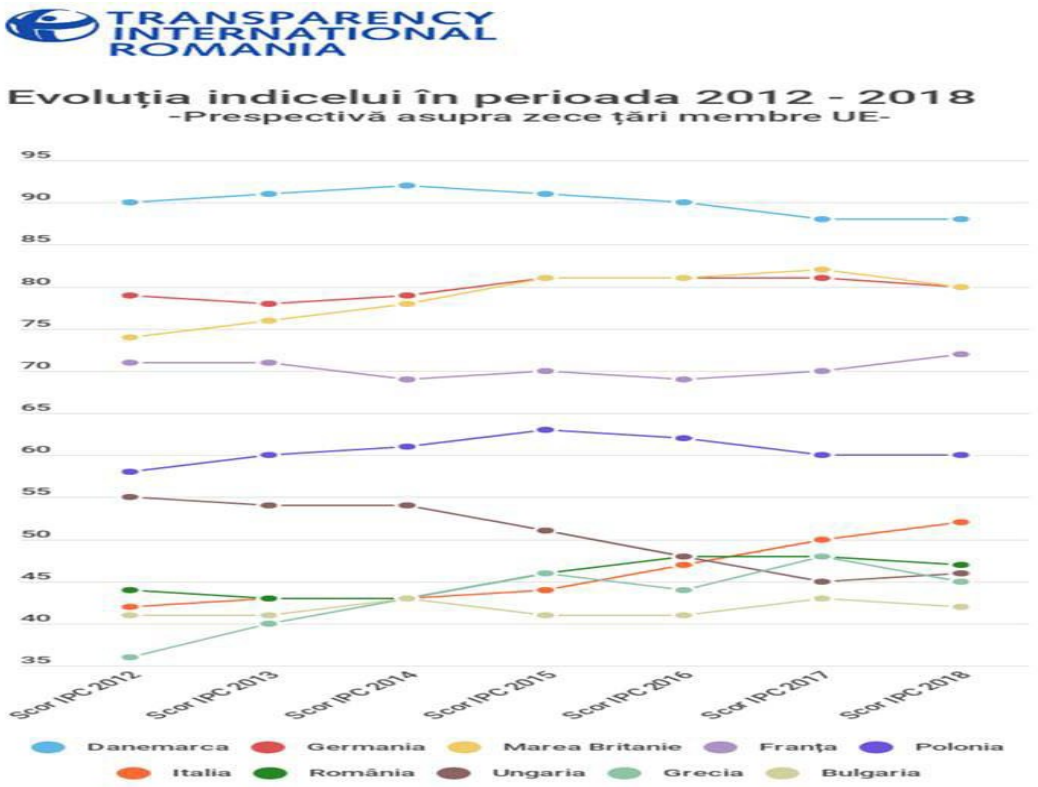
INTRODUCTION

High corruption has a strong social and cultural determination. This negative phenomenon, almost widespread at all levels of the public institution, has led to one of the highest levels in the EU in terms of tax evasion and tax arrears. The literature presents corruption as a determining factor of tax evasion. A study on the corruption perception

index for 2017 shows a failure of most countries in terms of controlling corruption. The study is conducted for 180 states, of which over 60 of them score below 50 points. The world average is 43 points. Compared to previous years, in the vast majority of countries no progress has been made on reducing corruption, as can be seen in figure no.1. This shows the evolution of the IPC (Corruption Perception Index) for Romania and Italy over a period of 7 years, compared to 8 member states of the European Union.

Figure 1 The evolution of the IPC index for Romania and Italy compared to other 8 EU member states in the period 2012 – 2018



Source: Transparency International Romania

According to figure no. 1 for the period 2012 - 2018, the perception index of corruption for Romania had in 2013 and 2014 the lowest level, respectively 43 points. The percentage shows that during this period the highest level of perception of corruption was registered, and the lowest level was registered in the period 2016 - 2017 with a score of 48 points. In the case of Italy, the corruption perception index had an upward trend, registering the lowest level in 2012 of 41 points and the highest level of perception of corruption in 2018 with 52 points.

DEFINING RESEARCH HYPOTHESES

The Profit Tax

In the structure of the tax revenues in Romania, the income from the profit tax is forecast at a level of 1.7% of the GDP for the period 2017 - 2021, a percentage that can

have a negative or positive impact under the conditions of a stable or unstable government and a level high corruption. According to a study of the "Institute for Economic Forecasting", it is shown that in Romania for 2016, the profit tax represents 6.9% of the "Composition of the revenues to the general consolidated budget" and a share of 2% of the GDP of Romania. Percentage that has a significant threshold in the gross domestic product, which in turn is influenced by the size of the tax rate, that determines an increased tax pressure or not, on the companies. The first research hypothesis regarding the tax on profit is the following:

H1 The tax rate corresponding to the income tax influences the degree of tax evasion.

There is an influence of PrTx on the degree of tax evasion. A higher percentage of taxation is perceived as exerting an increased fiscal pressure on the companies and then they are more prone to evade from to declaration the tax obligations. The studies supported by the World Bank developed by Kaufmann et al. (2011, p.220-246) proved to be some of the most well-known and well-conducted studies on the institutional environment of the countries. The calculated indicators was for 215 countries in year 1996 as part of a long-term project commissioned by the World Bank. The reliability and validity of these indicators were tested by the academic environment and policy makers. Using a statistical analysis will explain the link between tax evasion and the selected indicators.

Government effectiveness

According to the theoretical model of Allingham and Sandmo (1972), the hiding of income depends on the taxpayer's assessment of the expected income. It also depends on the efficient allocation of resources by the government. This reflects the governmental effectiveness, which in turn affects the satisfaction of the taxpayers. It can be argued that GE contributes to formation taxpayers' perception regarding the expected utility of tax liabilities. The second hypothesis is regarding GE and it is as follows:

H2 The higher the government effectiveness (GE), the lower the level of tax evasion.

Corruption control

According to Friedman et al. (p.459-493), "higher corruption and a weaker legal environment are associated with a larger underground economy", respectively an environment in which tax evasion thrives. In Alon and Hageman's study of 5000 companies from 22 former Soviet countries, there was evidence of non-compliance with taxation regulations under a high level of corruption. Thus, it can be argued that the corruption factor can stimulate individuals and companies to evade tax payments, as well as facilitate it through public officials. The more a state is corrupt, the more the confidence of the firms in the legislative power decreases and the desire to evade becomes directly proportional to the degree of perception of the state as being corrupt. The third hypothesis is:

H3 The lower the control of corruption (Coc), the higher the level of tax evasion.

DESCRIPTION OF VARIABLES

Defining the control variable, "PrTx" and the governance indicators "GE" and "Coc".

Profit Tax - represents the value of the tax for the profit obtained by companies in a fiscal year.

Statistical concept and methodology - represents the data that covers the taxes paid by a company. They measure the value of the tax on the obtained profit, for the companies that fits as a taxpayer on profit and have an impact on the declared incomes.

Method: the unweighted average. The total tax rate paid by a company provides a measure of the costs of the taxes it incurs. Taxes are a major source of income for most governments. This source of tax revenues and contributions are determined by fiscal policies and can change the structure of the economy depending on where and how these taxes are placed.

Government effectiveness - this indicator is defined as representing the capture of perceptions regarding the quality of public services, the quality of civil service and its degree of independence from political pressures, to the quality of policy formulation and implementation, and the credibility of the government's commitment against such policies.

Corruption control - refers to perceptions about the extent to which public power is exercised for particular interests. This encompasses both small and large forms of corruption, such as the takeover of power by elites and private interests.

The governance indicators and data for the control variable are published by the World Bank as measures of IEQ (Institutional Environment Quality) and each indicator is between (-2.5) and (+2.5). The size of the underground economy for Romania and Italy, will be measured as an expression of tax evasion, using data for the period from 2009 to 2019.

This study is based on the MIMIC (Multiple Indicators Multiple Causes) model: a macroeconomic measure of the underground economy. The model considers different indicators that directly affect the development of the dimensions of underground economies over time. Schneider and Buehn (2013) argue "there cannot be an exact measure of the size of the underground economy", because estimates can suffer a margin of error of 15% and emphasize the superiority of the MIMIC model, as a measure of the underground economy. Thomas M.A. (2010, pp 31–54) states that an additional sign of the reliability of WGI indicators is that they are frequently used by governments in countries such as the United States when granting grants worth millions of dollars to foreign countries.

The standard error - presents the accuracy of the governance estimates for each country. Lower values indicate more accuracy. The standard errors are related to the confidence intervals reported elsewhere, as follows: a 90% confidence interval is the government estimate +/- the standard error multiplied by 1,645.

The percentage rate (0-100) indicates the country rank of all countries in the world. 0 corresponds to the lowest rank and 100 corresponds to the highest rank.

The number of sources shows the number of individual data sources on which the indicator is based.

Governance score (from -2.5 to +2.5) estimates the governance measured on a scale of about -2.5 to 2.5. Higher values correspond to better governance.

DATA ANALYSIS AND INTERPRETATION OF RESULTS

The linear mixed model, LMM is suggested as an appropriate solution for data modeling, because it facilitates the tracking of variables (such as the size of tax evasion) over time for different variables and countries, without ignoring the effect of other independent variables (Laird & Ware, 1982). To measure the impact of variables on tax evasion and to track the differences between them, the following general form of the mixed model is proposed:

$$Yt = \beta 0 + \beta 1 * X1t + \beta 2 * X2t + \varepsilon \quad (1)$$

where: Y- represents the dependent variable;
PrTx, X1t - represents GE;
X2t - represents Coc;
β0, β1,and β2 - represents the coefficient of the model;
ε - represents the error component from the model.

Descriptive statistics

Table 1 Data on descriptive statistics of tax evasion, variables WGI indicators

Indicator	Country	Year	Number of Sources	Governance (-2.5 to +2.5)	Percentile Rank	Standard Error
Control of Corruption	Italy	2009	9	0,20	64,11	0,17
		2010	11	0,13	61,90	0,17
		2011	12	0,18	63,51	0,16
		2012	12	0,07	60,19	0,15
		2013	11	0,05	59,72	0,15
		2014	10	-0,03	56,25	0,14
		2015	10	0,02	57,69	0,14
		2016	10	0,08	59,62	0,15
		2017	10	0,19	61,54	0,13
		2018	10	0,24	62,02	0,14
Control of Corruption	Romania	2009	14	-0,26	49,76	0,13
		2010	14	-0,23	52,38	0,13
		2011	15	-0,21	52,61	0,13
		2012	15	-0,26	48,82	0,12
		2013	14	-0,19	53,08	0,12
		2014	14	-0,11	53,85	0,12
		2015	14	-0,02	57,21	0,12
		2016	13	-0,02	57,21	0,13
		2017	13	-0,03	55,29	0,12
		2018	13	-0,12	52,40	0,13
Government Effectiveness	Italy	2009	7	0,42	66,51	0,22
		2010	7	0,44	66,99	0,23

		2011	7	0,38	65,88	0,22
		2012	7	0,42	66,35	0,22
		2013	7	0,46	67,30	0,22
		2014	7	0,37	68,27	0,23
		2015	7	0,45	69,23	0,23
		2016	7	0,53	72,12	0,22
		2017	7	0,50	69,71	0,22
		2018	7	0,41	68,27	0,22
Government Effectiveness	Romania	2009	10	-0,36	44,50	0,20
		2010	10	-0,27	45,93	0,20
		2011	10	-0,33	44,08	0,20
		2012	10	-0,31	45,02	0,20
		2013	10	-0,07	51,66	0,20
		2014	10	-0,03	54,81	0,21
		2015	10	-0,06	51,44	0,21
		2016	9	-0,17	47,12	0,20
		2017	9	-0,17	47,12	0,20
		2018	9	-0,25	43,27	0,20

Source: Processing of indicators published by Worldwide Governance Indicators

Table 2 Data regarding descriptive statistics of the tax evasion regarding the control variable PrTx

Country Name	Year	Indicator Name
Italy		Profit tax (% of commercial profits)
	2009	23.2
	2010	23.2
	2011	23.2
	2012	23.2
	2013	20.4
	2014	19.9
	2015	19.5
	2016	17
	2017	23.3
	2018	16.8
Country Name	Year	Indicator Name
Romania		Profit tax (% of commercial profits)
	2009	10.2
	2010	10.5
	2011	10.6
	2012	10.7
	2013	10.7
	2014	10.7
	2015	10.9
	2016	12.3
	2017	12.3
	2018	12.3

Source: Transparency International Romania

Descriptive analysis of data on Profit Tax, Government Effectiveness and Coruption control indicators

Table 3 Descriptive data analysis for PrTx., GE and Coc indicators

	N		Mean		St. dev.		Min		Max	
	RO	IT	RO	IT	RO	IT	RO	IT	RO	IT
PrTx	10	10	11,120	20,970	0,833	2,626	10,200	16,800	12,300	23,300
GE	10	10	-0,202	0,438	0,119	0,049	-0,360	0,370	-0,030	0,530
Coc	10	10	-0,145	0,113	0,097	0,088	-0,260	-0,030	-0,020	0,240

Source: Own projection

Profit Tax: it can be seen that the average value of corporate PrTx in 2009-2018 is lower in Romania (11,120) compared to Italy (20,970). At the same time, the variation interval of the PrTx in the analyzed period was between 10,200 and 12,300 in the case of Romania, much smaller than in the case of Italy, between 16,800 and 23,300. Government effectiveness: the average value of this indicator in the analyzed period is negative, -0.202 and is much lower than the average for Italy 0.438. The variation range of GE for Romania is between -0.360 and -0.030, and for Italy it is between 0.370 and 0.530. The negative and lower values registered for Romania compared to Italy, indicate a much lower effectiveness of the government in Romania. Corruption control: for this indicator the average value for Romania is negative, -0.145, and the value of the indicator for Italy is a positive one, 0.113. The variation range for Coc is between -0.260 and -0.020 for Romania and between -0.030 and 0.240 for Italy. A much greater variation of this indicator can be observed for Italy, which shows a higher perception of Coc in the analyzed period compared to Romania.

Analysis of Profit Tax, Government Effectiveness and Coruption control indicators.

Figure 2 The evolution of the profit tax in Romania and Italy in the period 2009-2018

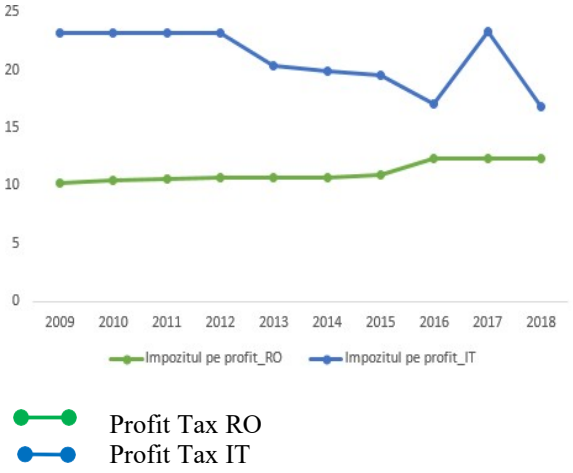
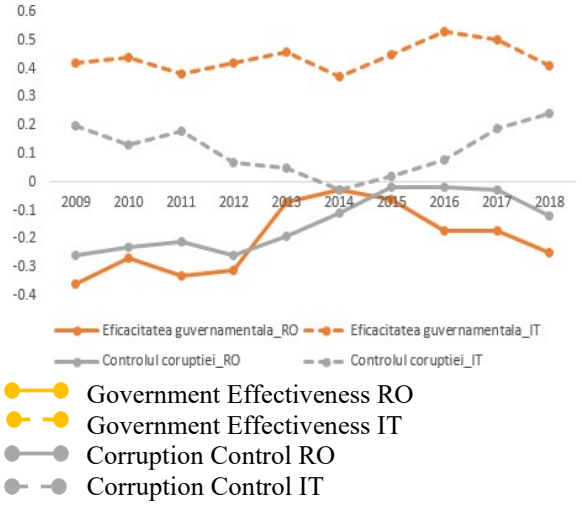


Figure 3 The evolution of government effectiveness and control of corruption in Romania and Italy in the period 2009-2018



Source: Own projection

Interpretation of the Profit Tax indicator for Romania and Italy in the period 2009-2018:

It can be observed that (figure 2); the evolution of the Profit Tax in Romania has a slightly ascending trend in the analyzed period. In the case of Italy, in the period 2009 - 2016 the trend was downward, and in 2017 it presents the highest level in the entire analyzed period. Although the evolutions of the indicator are different, Romania registers lower values than Italy. The values of this indicator for the two countries do not interfere, we can see that the PrTx in Romania is almost half the value of the PrTx in Italy.

Interpretation of the Government Effectiveness and Coruption control indicator for Romania and Italy in the period 2009 - 2018

Government effectiveness - this indicator registers negative values for Romania in the analyzed period, the lowest level is in 2009 with a value of -0.36 and shows a slightly upward trend until 2014 when it registers a maximum value of -0.03. By the end of the analyzed period, the GE indicator decreases to -0.25.

The values of the indicator for Italy remain constant throughout the period, are positive and fall between the values of 0.38 in 2011 and 0.53 in 2016. Regarding the comparison of this indicator for the two countries, Romania has a much lower government effectiveness than Italy, and the values of the indicator do not interfere in the analyzed period.

Corruption control - this indicator keeps negative values for Romania for the whole period. In 2012, it registers a minimum value of -0.26 with an increasing trend until 2015 when it reaches the value of -0.2. The indicator remains constant for 3 years with a value of -0.2 points until 2016 and -0.3 in 2017, followed by a period of decrease in 2018 to -0.12 points. The Coc indicator for Italy shows large variations. If at the beginning of the period, in 2009 it has a maximum value of 0.20 points until 2014 it has a downward trend and reaches a negative value of -0.03 points, year in which it intersects with the value reached by the Coc indicator for Romania (-0.03 points). From 2014 to 2018, the values of the indicator show a constant increase up to 0.24 points. Given that the values of this indicator are negative for Romania, the values show a constant compared to Italy and a tendency to improve on the control of corruption. In Italy there is a sharp decrease between 2009 and 2014, then a steady increase between 2010 and 2018.

ANALYSIS OF CORRELATIONS BETWEEN PROFIT TAX, GOVERNMENT EFFECTIVENESS AND CORUPTION CONTROL VARIABLES

Table 4 Analysis of correlations between PrTx, GE and Coc variables

		RO			IT		
		TxPr	GE	Coc	PrTx	GE	Coc
1. ProfitTax	Coef.	1			1		
	Sig.	-			-		
2. Government effectiveness	Coef.	0,177	1		-0,226	1	
	Sig.	0,624	-		0,529	-	
3. Corruption control	Coef.	0,721	0,653	1	0,187	0,019	1
	Sig.	0,018	0,040	-	0,604	0,958	-

Source: Own projection

Interpretation for Romania: In the case of Romania, it is observed that between the PrTx and the Coc there is a significant link for a risk of 5%, positive (the value of the Pearson correlation coefficient is positive, 0.721) and of medium intensity (the value of

the Pearson correlation coefficient is included in range [0.5; 0.75]). At the same time, the correlation analysis shows that there is a weak link (0.177) between the PrTx and the GE, which is statistically insignificant.

Interpretation for Italy: It can be seen that between the PrTx and the Coc there is a significant link for a risk of 5%, positive (the value of the Pearson correlation coefficient is positive, 0.187) and of low intensity, (the value of the Pearson correlation coefficient is included in the range [0; 0.50]). The correlation analysis shows that there is a weak, negative link between the PrTx and the GE (-0,226).

REGRESSION ANALYSIS FOR ROMANIA AND ITALY

- For Romania:

Table 5 Regression analysis for Romania for the variables GE and Coc

Variable	Coefficient	Standard error	t statistical	Sig.	R^2
Constant	11,703	0,360	32,443	0,000	0,671
Government effectiveness	-3,577	1,991	-1,796	0,115	
Corruption control	9,007	2,436	3,696	0,007	

Source: Own projection

R^2- represents the determination ratio, what percentage of the profit tax variation is returned by the corruption control

Regression model equation:

$$PPPPPPPPPP\ TTTTTT_t=11,703-3,577\cdot Govemment\ Effectiveness_t+9,007\cdot Coruption\ control_t \quad (2)$$

Since the coefficient for Government Effectiveness is not statistically significant (Sig = 0.115> α = 0.05), the variable is removed from the model and it becomes:

Table 6 Regression analysis for Romania for the variable Coc

Variable	Coefficient	Standard error	t statistical	Sig.	R^2
Constant	12,011	0,358	33,457	0,000	0,520
Corruption control	6,144	2,084	2,947	0,018	

Source: Own projection

The equation of the final regression model:

$$Profit\ Tax_t=12,011+6,144\cdot CCPPPPPPCCCCPPPPPPCC\ ccPPCCPPPPPPcc_t \quad (3)$$

Interpretation of results: The average value of the profit tax in Romania is 12.011% when the Coc is equal to zero. At a one-unit increase in the Coc score, the PrTx increases, on average, by 6.144%. The value of the determination report indicates that 52% of the change in corporate PrTx is explained by the change in Coc.

To validate the estimated regression model between PrTx and Coc, we verified the hypotheses: the non-correlation hypothesis of errors (Breusch-Godfrey Serial Correlation LM Test-Sig = 0.473); the homoscedasticity hypothesis (Heteroskedasticity

White Test – Sig = 0.206) and the normality hypothesis (Jarque-Bera - Sig = 0.962). Since each of the 3 his Sig values, is higher than the significance level of 5%, we can validate the regression model.
- For Italy:

Table 7 Regression analysis for Italy for the variables GE and Coc

Variable	Coefficient	Standard error	t statistical	Sig.	R^2
Constant	25,633	8,446	3,034	0,019	0,087
Government effectiveness	-12,116	19,026	-0,636	0,544	
Corruption control	5,696	10,721	0,531	0,611	

Source: Own projection

Since both the coefficient of GE and the coefficient of Coc are not statistically significant (both Sig values are higher than the 5% significance threshold), we can admit that the Profit Tax in Italy is not significantly influenced by GE and Coc.
Following the analysis of the results, the following are presented:

For Romania - having as dependent variable the PrTx indicator, this it registered a maximum value in 2016 - 2018 of 12.3 points and a minimum value in 2009 of 10.2 points. The independent variable the GE of registered in 2016 and 2017, -0.17 points, at half compared to the variation interval of the indicator, and in 2009, -0.36 points, reaching the minimum value. In the period 2016-2018, when the value of the PrTx indicator registered a maximum value of 12.3 points,the value of the GE indicator registered an average value of -0.17 points. And in 2009, when the value of the PrTx indicator registered a minimum value of 10.2 points, the value of the GE indicator also registered a minimum value, respectively of -0.36 points. In conclusion, when the indicator GE is low, registered value of the PrTx is low. When GE increased, the value of Profit Tax reached a maximum. The variable Corruption control had in 2016 the value of -0.02 points when was registered the lowest level of corruption , in 2017 it had the value of -0.03 points and in 2017 the value of -0.12 points. Conclusion: When in Romania was registered the lowest level of corruption, of -0.02, the value of the PrTx registered a maximum value of 12.3 points. And in when was registered a maximum value of the Coc indicator of -0.26 points, the value of the PrTx was registered by a minimum value of 10.2 points.

For Italy - having as dependent variable the Profit Tax indicator, this it registered a maximum value in 2017 of 23.3 points and a minimum value in 2018 of 16.8 points.

The variable the GE registered in 2017 the value of 0.50 points, close to the max.value of 0.53 points and in 2018 it registered 0.41 points, close to the min.value of 0.38 points. In 2017, when the value of the PrTx indicator registered a max.value of 23.3 points, the value of the GE indicator registered a value close to the max.value, respectively 0.50 points. And in 2018, when the value of the PrTx indicator registered a min.value of 16.8 points, the value of the GE indicator registered a value close to the min., respectively 0.38 points. In conclusion, when the value for the GE indicator decreased, the recorded value of the PrTx indicator decreased. When the recorded value of the GE indicator increased, the recorded value of the PrTx indicator peaked. The variable Coc registered in 2017 the value of 0.19 points, close to the max.value of 0.24 points from 2018. Conclusion: When in Italy was registered an average level of

corruption (0.19 points), the value of the PrTx registered a max.value of 23.3 points. And when the Coc registered a max.value of 0.24 points, the value of the PrTx registered a min.value of 16.8 points. The influence of this indicator was lower for Italy compared to the influence of the Coc indicator for Romania.

VALIDATION OF HYPOTHESES AND CONCLUSION

Higher order linear models are incorporated to track all details of changes in tax evasion over time.These models test whether the rate of change in tax evasion has been accelerated or decelerated using several covariance variants of the error term structures. LMM allows treating the interception of linear slopes as fixed or random between countries. Under the random coefficient-modeling framework, the proposed model was progressively constructed with appropriate explanatory variables for different variations. Because the true error structure is usually unknown, a criterion for comparing models with different variations is required. Thus, were followed the variables and their interactions up to the final model. The results obtained from the analysis of the data at the level of the proposed sample lead to the validation of the three research hypotheses. Thus, with the help of the regression analysis of the variables for the two countries, it can be appreciated that there is a significant association between PrTx,GE and Coc on the phenomenon of tax evasion.

We validate the first hypothesis by which the tax rate corresponding to the PrTx influences the degree of tax evasion. The max.value of the PrTx indicator for Romania was registered in the period 2016 - 2018, with a value of 12.3 points. Period in which the GE indicator registered two of the highest values, respectively 0.53 points in 2016 and 0.50 points in 2017. Under the conditions of a good management of fiscal policies, the value of the taxable base on declared and registered revenues of companies has grown.

We validate the second hypothesis, the higher the GE, the lower the level of tax evasion. The best score of the GE indicator for Romania in the analyzed period was obtained in 2014, respectively by -0.03 points. Reported to the dependent variable the PrTx, this registered a value of 10.7 points in 2014, which was increasing compared to the minimum of the analyzed period of 10.2 points.

We validate the third hypothesis, the lower the Coc, the higher the level of tax evasion. Reported to the analyzed period, in 2009 when for Romania was registered for the Coc indicator the lowest percentage of -0.26 points, for the PrTx indicator the lowest value of 10.2 points was registered. Under the conditions of a low Coc, the tax base declared and registered by companies was lower, compared to the value that was registered for the PrTx during the period when a high Coc was registered.

The main limitation of the research is represented by the small number of indicators. In order to increase the number of observations, the extension of the sample with the period 2004-2007 will be considered. We will also consider other factors influencing the non-financial variables.

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THE IMPACT OF ENVIRONMENTAL, SOCIAL AND GOVERNANCE FACTORS ON INVESTORS' BEHAVIOR - AN EXPERIMENTAL STUDY IN THE REALM OF SUSTAINABLE INVESTMENT

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Abstract: *Sustainability has become in recent years one of the major challenges for society as a whole and for the business world. This study examines the relationship between environmental, social, and governance (ESG) factors, corporate financial performance (CFP), and investing behavior. Using a sequential 2 × 2 between-subjects experiment, the goal is to investigate how various investors incorporate into their judgement and decision-making process, the financial and sustainability information presented to them in four different combinations. Results indicate that integrating sustainability and responsible business behavior into an organization's corporate strategy does not significantly influence investors' stock price assessment or allocation of funds. This conclusion holds irrespective of how the company's financial evolution looks like (improving/declining revenues and earnings). Age and other various demographics do not affect the results, while investors' view on the relevance and the reliability of the ESG material provided to them has a mediating effect on their long-term investment approach.*
Keywords: *ESG; socially responsible investing; sustainable investing; corporate strategy; ESG reporting*
JEL Classification: *M14, G11.*

INTRODUCTION

ESG has emerged at a global level to describe sustainable issues that participants in the international market consider in the context of corporate behavior. No definitive list of ESG issues exists, but ESG typically displays one or more of the following characteristics: issues that have traditionally been considered non-financial, within a medium to long-term horizon, mostly related to climate change, waste and pollution, working conditions and local, national or international communities, governance, executive pay, bribery, and corruption.

Society, in general, has reached a point where carrying for the environment, having concerns for labor, human rights, and corruption is not just good to have, but takes the form of necessity. Sustainability is vital for the survival of our Planet and if future generations are to be around and prosper, corporations must come on board. It is unethical and harmful to have large manufacturing businesses produce at the expense of working conditions and increase pollution. In today's world, there is rising pressure from the public, governments, activists, customers, and employees to act in good faith. In fact, an increasing number of financial professionals as the way forward regards becoming a sustainable company if one expects to improve a firm's bottom-line. In the business environment, sustainability seems to be the new competitive advantage and investors

today are more concerned than ever with the topic when it comes to their investment decision (Gates, 2013). Consequently, in recent years, the number of corporate reporting on ESG has increased, and the topic has gained further attention from the business and the academic world (Hahn and Kühnen, 2013).

In 2017, over 1750 professional investors from over 50 countries and representing a total global assets base of over $70 trillion, signed the United Nations Principles for Responsible Investment (UN PRI), evidence that the international financial markets are starting to commit towards ESG (United Nations, 2018). Nevertheless, mainstream investors are slow at embracing sustainable investment practices, with just 20% of them considering extra-financial information when deciding on an investment (Ernst & Young, 2018) and fewer than 10% having formally participated into training on how can ESG influence the investment process (CFA Institute, 2019).

Knowledge of the financial effects of implementing ESG initiatives into the long-term strategy of a firm is still fragmented, and thus, moral aside, the business case of strategic and responsible investment is not obvious. There is no clear-cut conclusion on how being ESG responsible impacts corporate financial performance and investors' behavior. The mix of results, coming mostly from analyzing different ESG ratings, financial statements, credit conditions, and stock performances give support both to the Stakeholder and the Shareholder theories. When studies depict that a company's net earnings take a hit due to moving funds into sustainable behavior, the conclusions back-up Friedman's position of always having a fiduciary duty just towards the shareholders and improving their wealth. On the other end, when businesses ranked high on ESG issues outperform the market and results show increasing earnings, stakeholder theory is praised.

In this study, I examine whether there are investing consequences when an organization decides to adopt and report on its ESG activities and plans. The overall purpose of the paper is to shed light on the investment decision when the company in question has a corporate body that, in addition to reaching financial performance, voluntarily integrates into their corporate long-term strategy environmental and social policies.

To the best of my knowledge, there are rather few survey-based decision experiments conducted to show a relationship between corporate financial performance and ESG position, and all I found were carried out in the United States (US).

I conducted my research by opting to use a 2 x 2 between-subjects experimental design. To test the hypothesis, I performed a sequential experiment where participants were presented with a company from the medical technology industry and they were asked to price the company's stock in the short and long run, given different financial positions. In addition, they had to decide how much of their extra funds they would invest in the business. Further, different ESG commitments were provided for the same organization, and participants were asked to repeat their stock price assessment and investment allocation.

The research performed showed that integrating sustainability into a company's corporate strategy has no significant effect on investors' stock price valuations and investment allocations. This is true irrespective of the financial performance trend (improving/declining financial results for business), but there is indeed a moderating

effect in the end. In addition, the results hold across various demographics and the levels of investment knowledge and experience.

LITERATURE REVIEW

Literature shows that the ever-growing discussion on sustainability is almost 70 years old, and there is still no clear consensus on what responsibility should be put on corporations and investors. In 1953, Howard Bowen, considered the father of Corporate Social Responsibility (CSR) mentioned for the first time that there is a moral obligation for all businessmen to give back to society (Bowen, 1953). Bowen and his followers argued that in the long-run socially responsible firms have better financial performance. Milton Friedman publicly disagreed with the idea in 1970. The Nobel laureate believed that a firm's sole objective is to maximize shareholder value. Involving a company into CSR actions destroys shareholder wealth, as in its simplest form, sustainability acts as an agency cost, creating a higher cost structure and reducing competitiveness. While others agreed with the "Friedman doctrine" of management's fiduciary duty only towards its shareholders (Navarro 1988), starting from the ideas of Bowen, Edward Freeman, introduced in 1984 the "stakeholder theory", challenging companies to consider all stakeholders and not just the shareholders. He argued that a business cannot exist in a vacuum, and it should never lose sight of everyone and everything involved in order to get financial success. This idea of good, responsible management is considered desirable, but some as diffuse and confusing perceive the theory. Mansell (2013) argues that without a clear goal, managers will still only target bottom-line increases and their actions will only be in their self-interest. Further, Key (1999) proposes a restructuring of the theory where stakeholders as separate entities are not the pivot elements of corporate behavior. In her view, common interests should dictate the business's sustainable strategy. E.g. less pollution is important to suppliers, employees, governments, clients, and setting it as a common goal would capture the complexity of all stakeholders while uniting forces.

Advocating for the stakeholder theory, in 2004 the United Nations Secretary-General, Kofi Annan, asked the world-leading financial institutions "to develop guidelines and recommendations on how to better integrate environmental, social and corporate governance issues in asset management, securities brokerage services, and associated research functions" (United Nations, 2005). This is how in 2005 the term ESG made its first appearance in the financial sector initiative "Who cares wins: connecting financial markets to a changing world". The report stated that ESG's purpose is to cover a spectrum of issues that traditionally do not make part of a financial analysis but have financial relevance.

The 27 members of the initiative (financial institutions such as international investment companies and global banks), came out with a list of ESG operations and argued that there is a need for both companies and investors to acknowledge that there are financial opportunities and risks arising from the three pillars of ESG. They also pointed out that correct corporate governance and sound risk management are essential for successfully implementing ESG policies and measures to address challenges and benefit the organization (United Nations, 2005).

The global financial crisis took the world by surprise just two years after "Who care wins" initiative, questioning the motives and reliability of the ESG information an increasing number of businesses and investors were reporting on. Lehman Brothers was one of the financial institutions mentioned in the Acknowledgement section of the Global Compact (GC) document, as it pioneered the idea of ESG portfolio management and advocated for responsible business (United Nations, 2005). However, the simple fact that Lehman Brothers was the first financial institution to fail during the economic meltdown is enough to generally doubt the company's commitment to sustainability and moral practices.

The whole incident raised a question of governance, as, despite the rising number of corporations and financial institutions publishing sustainability reports at a rapid pace, the presented information lacked uniformity, consistency, comparability, and auditing. ESG scores can play a key role in determining the winning stock or even how much firms pay on loans, but with ESG reporting still a matter of voluntary commitment, there is a challenge to overcome "greenwashing" and personal interpretation (Laufer, 2003). It took decades until financial reporting was standardized, and an international audit model was accepted by the market.

Accuracy, completeness, and standardization of ESG information are important factors when considering the sustainable investment (Bailey, 2016). ESG reporting is still in its early days, and consequently, researchers and finance professionals have asked for increased regulation of ESG disclosure, together with investigations on the matter and actions enforcements against deceiving businesses. In 2010, the United States (US) Congress passed the Dodd-Frank Act stipulating a few environmental disclosure requirements, and in 2017 a European Union (EU) directive ruled that ESG matters and results of large public interest companies must be annually reported. In addition, the Global Reporting Initiative (GRI) the leading authority in ESG reporting guidelines, recently published a manual, to ensure international comparability and standardization of corporate sustainability reporting. However, if the United States Securities and Exchange Commission (US SEC), the financial regulator for the world's biggest economy, does not demand standardized and audited corporate disclosure of material ESG data, as in the case of financial results, it is hard to believe that in the world's largest economy consensus will be reached in terms of ESG reporting.

Still, based on the disclosure guidance and regulations currently in place around the world, companies are being evaluated and rated on their ESG performance by various third-party providers of ratings and reports. Most rating agencies such as The Domini 400 Social Index (the first-ever index to measure socially responsible stocks, now MSCI KLD 400 Social Index), Bloomberg ESG Data Service, Dow Jones Sustainability Index, S&P 500 Environmental & Socially Responsible Index or Thomson Reuters ESG Research Data measure the firm's position in the market in terms of sustainability and responsible corporate behavior.

Investors are increasingly relying their judgment calls on ESG information, but ESG ratings are far from perfect. Due to distinct methodologies used in computing the ratings and the lack of explanations behind the results, the same company can be granted divergent grades. One prominent example is the now-bankrupt PG&E Corp, which for its ESG activities and long-term strategies was given by Sustainalytics a 4 (on a scale of 1 to 5, 5 being the highest risk) in 2019, while Opimas Pierron gave it a 1 (Bloomberg, 2020).

In goodwill and for political reasons regulators have an increased appetite for information regarding a company's ESG performance, but how this is useful to investors to better grasp CFP is still under debate. The traditional capitalistic theory of returns is losing ground, facing a legitimacy crisis and reduced acceptability (Gaurav and Gagan, 2019). Available literature provides many examples of a positive relationship between ESG and CFP (Holm and Rikhardsson, 2008; Martin and Moser, 2016). Eccles et al. (2014) found considerable outperformance of ESG responsible firms in comparison to low sustainable ones and draw attention to the fact that such outperformance will further expand, as strategic sustainable companies will be better equipped in terms of efficiencies, costs, knowledge, reputation, and trustworthiness. Other papers, mostly experimental research, concluded that on average there is no difference regarding the expected returns of companies involved in ESG activities and those that do not, and thus an investor's choice of stock should still to a higher extent be based on financial performance (Bello, 2005).
However, even with the world becoming more assertive on the importance of keeping the environment clean, on having a sustainable social behavior and sound governance there is a vast pole of research claiming there is a lack of clear, conclusive quantitative evidence that responsible, sustainable investment delivers alpha and pays dividends. The meta-analysis of Friede, Bush and Bassen (2018) looking at over 2000 empirical studies from 1970s onwards resumes results are inconclusive, somehow ambiguous, but traditional profit-oriented businesses show more interest in grasping and managing the broader impacts of their companies over its stakeholders because it is the new way of doing business stakeholders like and not abiding to the new rules would result in long-term financial loses. Nowadays stakeholders believe in sustainability and firms could destroy shareholder value because of consumer boycotts, the inability to hire the most talented people, and by paying potentially punitive fines to governments.

Promoting a sustainable and responsible behavior is the altruist thing to do, but apart from the feel-good factor whether investors actually consider environmental, social, and governance dimensions when making their investment decision, is still a subject of many research papers and experimental studies.

The practice of considering ESG issues in investing has evolved significantly from its origins in the exclusionary screening of listed equities based on moral values. BlackRock CEO, in its annual 2020 letter to clients, announced that the largest fund manager in the world will analyze firms' ESG areas, with as much rigor and attention to detail, as the one paid in assessing traditional measures such as liquidity and credit risk (BlackRock, 2020). In this view, he stated that the goal of long-term profitability couldn't be achieved if companies and governments do not fundamentally reshape finance by understanding the importance of serving all stakeholders and reallocate capital to address sustainability risks.

Connecting to the idea of long-term profitability, researchers have discovered that an important and recurring theme linked to ESG factors is that they are mostly excluded when opting for short term investing. The culture of financial incentives for one year triggers a lack of attention to long-term sustainable value creation. Most of ESG dimensions do not fit too well with this short view as they mostly influence financial performance over longer periods, as ESG investment increases the bottom-line results in the end (Renneboog et al., 2008). Most often, poor company governance will negatively influence the firm, not in the few months, but most likely over the long term, and

investing in alternative green energy will result in lower energy costs, not tomorrow, but in the years to come.

HYPOTHESIS DEVELOPMENT

To draw on the literature review, it is difficult to assign a quantitative value to ESG factors and include them into mathematical models, but investors show an increasing interest on the topic of sustainability and thus they inflict the idea that ESG strategies positively influence investment decision and stock performance. The degree to which ESG information touches on investment decisions can depend on multiple elements such as the financial performance of the company, the publication of an ESG report, the reliability and transparency of the sustainability information provided or the inclusion into an ESG rating top by an independent third-party organization (Brown-Liburd and Zamora, 2015).

Providing credible ESG reporting and eliminating the greenwashing effect of too optimistic marketing communication is crucial in order to positively drive an investor's decision-making process. Most of ESG disclosure is standardized, touching similar topics and using the same embellished language. The credibility arguments must stand for ESG reports to influence investors' perception of the company they are scrutinizing. I expect that a responsible ESG conduct, disclosing on the sustainability issues and being ranked on ESG factors by a respectable third party are all elements, which will have a strong effect on one's investment decision.

In addition, past financial company performance coupled with limited or strong ESG priorities may influence investors' allocation of funds. I believe that when sales and earnings are increasing, a strong integration of ESG factors will result in a higher price revision and increased investment allocation, versus when the company shows a weak ESG strategy. On the other hand, a declining financial performance coupled with ESG priorities would lead to lower negative price revisions and higher investment allocation, as opposed to non-integration.

However, some might have the view that there is a trade-off between sustainable corporate behavior and financial performance, with ESG reducing shareholder value. Investing in alternative sources of energy might raise the quality of the environment and provide the prospect of saving, but in the short run, it will most definitely raise costs. The time horizon of ESG strategies may limit their appeal to investors, as many are short spanned, looking for returns now, and it is my view that investors will have greater faith in the long-term evolution of ESG strategic stock returns versus its immediate progression.

Formally, my hypotheses are as follows:

H1: Investors' stock price valuation will be higher when a company has strong ESG priorities integrated into its corporate strategy versus when it does not focus on them.

H2: Investors' positive reaction to ESG priorities will be stronger when there is an improvement in the firm's financial performance.

H3: Investors' positive reaction to ESG priorities will be stronger in the long run.

H4: Investors will invest higher amounts when a company has strong ESG priorities integrated into its corporate strategy versus when it does not focus on them.

H5: Investors' positive allocation of funds due to ESG priorities will be higher when there is an improvement in the firm's financial performance.

RESEARCH METHOD

Experimental Design, Procedure and Material

The research I performed must be seen as an investigation into behavioral finance and for testing my hypothesis, I decided to use an experimental design. The goal was to investigate how various participants incorporate into their judgement and decision-making process, the financial and sustainability information presented to them in different combinations of financial performance and sustainability strategy. I opted for a 2 x 2 between-subjects design, for which an overview is presented below.

Figure 1. The experiment's design (2 x 2 between-subjects design)

	Positive (improving) financial performance	Negative (declining) financial performance
ESG incorporated into company's strategy	Group A	Group C
ESG not incorporated into company's strategy	Group B	Group D

This figure presents the experiment's design, which is a 2 x 2 between-subjects structure, where I randomly allocated 10 participants per group, and each group received slightly different material to go through, but the same set of questions to answer to. For example, both Group A and Group B were offered scenarios where the company was doing well financially, with all financial indicators on an improving trend. However, Group A got material which showed that the firm was sustainable with a powerful ESG incorporated in the organization's strategy, while Group B discovered the business did not have a culture of corporate sustainability, and mainly focused on increasing shareholder value, with no clear involvement in ESG actions.

In the context of Covid-19 and lock-down measures, all participants were involved in a field experiment, eliminating the artificial environment and aiming to enhance the external validity of the actual real-life decision-making process. A completely randomized design was used to assign participants to one of four groups.

As with most experiments, part of the subjects in the experiment were influenced in a certain way, while the others in a quite different matter. All participants received by email study material to go through. The pack included industry, company, and financial information for an information technology business with a favorable/or not ESG report. The company Pentacorp is a fictional one so the participants' decisions could not be affected by prior knowledge of the business, even if part of the financial information of the company is an excerpt taken from the annual report of a real company from the same medical technology industry.

Following the instructions section, the material received by the participants included three sections. The first section presented a company overview and financial information altered to show increasing or decreasing results for the firm (revenue and profit-wise) the selected hypothetical company ("Pentacorp") operates in the information technology business. I chose an industry with a positive impact in the world (as opposed to tobacco, weapons, sugar-related, etc.). I decided to not opt for a financial institution as

the business model of such an organization is more difficult to comprehend, making the financial information presented to the participants harder to evaluate. Participants were next provided the following financial statements: the balance sheet, profit and loss statement, and the cash flow statement, each providing a five-year history of the firm's financial results. In order to reduce the effort needed to analyze the financial statements, the statements were aggregated and simplified. As stated in the Experiment's Design, Group A and Group B received positive financial information with increasing sales and earnings, while the last two groups were presented with a negative evolution 2019 vs. 2018, by simply trans positioning the initial data of the two years in question. In addition, I changed the narratives accordingly for Group C and Group D.

To continue, participants were asked to evaluate the business' stock price both in the short and long run. The short-term horizon was intended to measure behavior due to more profit-oriented, speculative motives, while the long-term strategy had the scope of seeing the strategic reaction given the longer spanned ownership of stock. All participants were given a closing stock price of $100 from the day prior to the assumed publication day of the financial statements, with the scope to decrease the chances that they would incorporate factors into their stock price assessments other than those manipulated in the experiment. Further, they had to decide how much of an additional $1000 they will be willing to invest in the context in which they already own a perfectly diversified portfolio.

Even if in reality no company has a pure differentiating ESG strategy, in the next section of the material, the participants had to repeat their previous stock price assessment and investment allocation based on a manipulated ESG report, which for two of the groups had sustainability priorities integrated in the company's strategy, while for the other two it did not. Once again, judgement comments were accepted. The ESG factors presented conveyed reliability via the fact that I made three references to international recognized rating agencies (NASDAQ Sustainability World Index, Dividend Channel Socially Responsible Dividend Stock, and Human Rights Campaign Corporate Equity Index). Next, all involved in the experiment were asked to answer a final questionnaire, which apart from requesting demographic details, contained three manipulation questions, with dichotomous answers "True" / "Not true" to test understanding of the material presented. And also included a section asking participants to rank on a 1-5 Likert scale (with 1 being very low and 5 being very high) the company's ESG on a couple of pillars and their investment knowledge and expertise.

The Participants

For the purposes of this study, the definition of a "participant" or "investor", is not that of a real shareholder or professional investor but an individual who possesses the necessary knowledge and skills to evaluate financial statements, ESG information, and investments. Therefore, I included in the experimental control group working finance professionals with more than 10 years' experience, and Finance and Risk Management students from a large Romanian public university at the end of their two years of Master studies. For the experiment, I did not grant any incentives to motivate participation.

Using "students as subjects provides a resource-efficient way to give insights into how practitioners perform sustainability-related judgment and decision-making" (Espahbodi et al., 2018). The finance Master students are characterized by an

understanding of both financial and non-financial information for investor decision making, but no actual practical work experience. Espahbodi et al. (2018) argue that there are no significant differences in between the investment's decisions of students vs. finance professionals.

For the experiment, I sent the material to 56 individuals and 42 replied. Out of these, 2 did not pass the verification questions, so I ended up with 40 questionnaires as a base for my analysis. 60% of all participants are females and 40% are students. The participants' average age is 31.6 years old, with no extreme observations. 30% (48%) of the contributors to this research have above (below) average knowledge of investment, as compared to only 13% (60%) of those who have higher (lower) than average investment experience. Looking at the groups, Group C has the highest number of females 80%, followed by group B with a share of 70%, both presenting much higher levels versus Group D where less than half (40%) are females. Group A is balanced 50-50 in terms of gender but has the youngest participants. In terms of investment knowledge, the self-assessment revealed that on average women are more knowledgeable than men (3.25 points vs. 2.88), but also less experienced (2.25 vs. 2.38 points). I also built a correlation matrix between these characteristics and the ones worth mentioning are a high-positive correlation between investment knowledge and investment experience (76.3%), a moderate positive correlation between age and investment knowledge (66.0%), and age and experience (56.7%).

Considering the above-presented characteristics, I believe the pool of individuals used in this research is a good proxy for non-professional, reasonably informed investors, consequently allowing rigorous testing of this paper's hypothesis.

The Independent and Dependent Variables

I used two manipulated (independent) variables in my experiment. The positive or negative financial evolution of the company was the first independent variable. The second one was the inclusion or exclusion of an ESG commitment in the company's strategy. Manipulation of the above is expected to influence participant's short- and long-term stock price predictions and the amount they are willing to further invest in the corporation on a scale of $0 to $1000. I opted for the stock price evolution to be presented in terms of percentage change versus the absolute amount in order to get magnitude information regardless of what the initial stock price level was. The decision to investigate both short- and long-term stock price evolution came as a result of prior research conclusions which state that different time horizons influence future estimates (Rikhardsson and Holm, 2008). Another independent variable in the study is the investment decision of how much of an additional $1000 would the participants in the study invest in the firm, while already owning a perfectly diversified portfolio. The scale I used of $0, $300, $600, and $1000, is better suited in experiments with lower numbers of participants, as it provides robustness to results.

DATA, DESCRIPTIVE STATISTICS AND RESULTS

Descriptive Statistics

Relevance, Reliability and Strength of ESG Performance

The conclusions of this study are influenced in great part on whether the participants to the surveys recognize and accept Pentacorp's sustainability information disclosure as relevant and reliable. These were verified through a manipulation check in Section 3 of each questionnaire where respondents were asked to rate the presentation of the company's ESG factors along those two dimensions. In two different questions participants had to rank on a Likert scale of 1 to 5 (with 1 being very low and 5 very high) the strengths of the two mentioned attributes. The mean scores of the results range from 3.7 to 4.1 for relevance and 3.9 to also 4.1 in terms of reliability, all being means being lower in the negative financial performance groups versus the ones with improving financial results. This shows that in a positive business evolution, when prospects for the bottom—line are looking good, investors have a slight tendency of being more interested in the other aspects of the business, such as the sustainability strategy of the firm, and not just the financials. In other words, there is a bit more interaction between financial performance and ESG disclosure when revenue and net earnings look better.

Furthermore, also using a 5-point Likert scale I questioned participants regarding the strength of ESG performance. Group A and C have means (3.9 and respectively 4.1) above the midpoint of 3, and Group B and D means (1.7 and respectively 1.6) are below the midpoint, concluding that participants' perception of the ESG strategy is in line with the objective of each questionnaire.

In general, the results show that participants of this experiment understood the firm's ESG position, did not consider it subjective, nor did they perceive it to be scoped as a marketing tool. Their stock valuation integrated the ESG factors presented and linked with the next analysis it can be concluded the participants' investment decisions are consistent with their relevance and reliability assessment.

Table 3 Perceived relevance and reliability of ESG disclosure

Perceived relevance of ESG disclosure	ESG priorities integrated into strategy			ESG priorities not integrated into strategy			ALL		
	No. of observations	*Mean*	*Standard deviation*	*No. of observations*	*Mean*	*Standard deviation*	***No. of observations***	***Mean***	***Standard deviation***
Positive financial performance	10	4.10	0.43	10	3.80	0.58	**20**	**3.95**	**0.50**
Negative financial performance	10	4.00	0.47	10	3.70	0.57	**20**	**3.85**	**0.52**
ALL	**20**	**4.05**	**0.45**	**20**	**3.75**	**0.58**	**40**	**3.90**	**0.51**
Perceived reliability of ESG disclosure	**ESG priorities integrated into strategy**			**ESG priorities not integrated into strategy**			**ALL**		
	No. of observations	*Mean*	*Standard deviation*	*No. of observations*	*Mean*	*Standard deviation*	***No. of observations***	***Mean***	***Standard deviation***
Positive financial performance	10	4.00	0.47	10	4.10	0.52	**20**	**4.05**	**0.49**
Negative financial performance	10	3.90	0.47	10	3.90	0.53	**20**	**3.90**	**0.50**
ALL	**20**	**3.95**	**0.47**	**20**	**4.00**	**0.53**	**40**	**3.98**	**0.50**

This table presents the perceived relevance and reliability of ESG disclosure in all the four questionnaires. The data for this table was gathered from the answers received on the relevance and reliability questions from Section 3 of the questionnaires. On average, for relevance, the scores are slightly higher when ESG are integrated into the corporate strategy, while for reliability these are almost in line between adopting a shareholder vs. a stakeholder position. All means are above the center point of 3, depicting that investors view ESG disclosure as an important element of their investment decision-making process.

Stock Price and Investment Allocation Revisions

The below stock price revision tables depict the descriptive statistics for my dependent variables, the participants' stock price assessments and their investment decisions in the short and long run. The tables show in detail the mean percentage changes (pp) from Section 1 of each questionnaire when participants were only presented with Pentacorp's financial performance, to Section 2 where they were provided with the ESG details. In example, looking at the short-term perspective, in Section 1 of the questionnaire A participants were given material presenting Pentacorp as a firm that is financially healthy and has great bottom-line perspectives. At this stage, the respondents evaluated the firm's stock price to raise by 2.56% in the next 5 months. Further, participants were offered additional material, which showed that Pentacorp is highly committed to ESG; proof being the fact that it was ranked for many years now, and by various third-party organization as one of the top 10% sustainable businesses of the industry. This time participants answered that on average they expect the firm's stock price to raise by 2.73%. The difference between the two percentages, this being 0.17pp, is what is presented in the below table as the Mean percent revision for the short-term horizon when Pentacorp is enjoying a positive financial performance and it has ESG priorities integrated into its corporate strategy.

Table 4 Short and long-term stock price revisions

Difference in percent revisions in SHORT-term stock price assessment	ESG priorities integrated into strategy			ESG priorities not integrated into strategy			ALL		
	No. of observations	*Mean*	*Standard deviation*	*No. of observations*	*Mean*	*Standard deviation*	***No. of observations***	***Mean***	***Standard deviation***
Positive financial performance	10	0.17pp	0.17pp	10	-0.35pp	0.64pp	**20**	**-0.09pp**	**0.41pp**
Negative financial performance	10	1.75pp	0.82pp	10	-0.59pp	1.28pp	**20**	**0.58pp**	**1.05pp**
ALL	**20**	**0.96pp**	**0.49pp**	**20**	**-0.47pp**	**0.96pp**	**40**	**0.25pp**	**0.73pp**

Difference in percent revisions in LONG-term stock price assessment	ESG priorities integrated into strategy			ESG priorities not integrated into strategy			ALL		
	No. of observations	*Mean*	*Standard deviation*	*No. of observations*	*Mean*	*Standard deviation*	***No. of observations***	***Mean***	***Standard deviation***
Positive financial performance	10	0.45pp	0.19pp	10	-0.77pp	-0.11pp	**20**	**-0.16pp**	**0.04pp**
Negative financial performance	10	2.89pp	4.57pp	10	-3.03pp	1.19pp	**20**	**-0.07pp**	**2.88pp**
ALL	**20**	**1.67pp**	**2.38pp**	**20**	**-1.90pp**	**0.54pp**	**40**	**-0.12pp**	**1.46pp**

In Section 1 and 2 of the questionnaire I asked the participants to evaluate, for both the short and the long-term time frame, how they view the stock price level (to go up or down – percentage wise) before they discovered Pentacorp was committed to ESG or not, and after finding out where the company stood from a sustainability point of view. The average differences in the stock price valuation levels are presented above, together with the standard deviations to the mean points. The data in presented in percentage points (pp) as I am presenting percentage differences.

The first hypothesis of this experiment was built on the idea that those stock price assessments will be higher when a company has strong ESG priorities versus when its focus is mainly profit. In addition, hypothesis two and three require further investigation to see if indeed investors' positive stock price revision mentioned above will higher when the firm's financial performance is improving and respectively when we are analyzing investor's reactions in the end.

With improving financial performance and a strong ESG position (Group A), the percentage change from before to after viewing the ESG information is of 0.17pp (from

an increase in stock of 2.56% to an increase of 2.73%) in the short term and 0.45pp (from an increase in stock of 3.24% to an increase of 3.69%) in the long run. When ESG is not embedded into the corporation's strategy even if earnings are increasing (Group B), it determines investors to lower their vote of confidence for the firm's stock evolution by 0.35pp (from an increase in stock of 2.72% to an increase of 2.37%) in the short run and lower it by a lightly higher amount of 0.77pp (from an increase in stock of 4.52% to an increase of 3.75%) over the next two years.

I end up with the same conclusion, after analyzing the cases where Pentacorp is going through financial difficulties. In Group C participants saw Pentacorp's financial performance decreasing, but also saw that Pentacorp is betting on a strategy for further improving the firm's sustainability position. This situation resulted in a short-term stock price revision of +1.75pp (from a decrease in stock of 4.76% to a lower decrease of 3.01%) and a revision of the stock in the end of +2.89p (from a decrease in stock of 1.82% to in fact an increase in stock of 1.07%). It shows that even if financially things are not as expected, investors gained a slight faith things will turn around once they saw Pentacorp is investing in ESG. In Group D where Pentacorp, did not perform neither well in the financial aspects, nor in sustainability, investors lowered their bets from Section 1 to Section 2 of the questionnaire. In the short run their stock price revisions lowered by 0.59pp (from a decrease in stock of 4.09% to an even greater decrease of -4.68%) and in the long run it lowered by 3.03pp (from a decrease in stock of -0.37% to an even greater decrease of -3.4%). The degree of the drop in stock price is slightly higher when ESG is not embedded in the firm's culture and the business is not performing, versus when the business is doing well financially. In terms of standard deviations, these are also higher for Group D and C versus A and B.

As expected, the long-term perspective has better outcomes as investors consider sustainability requires time to translate into financial benefits. The participants to this experiment forecast that a corporation's decision to integrate or not ESG elements into the strategy will cause higher percentage changes in the long-term versus the immediate future (2.89pp vs. 1.75pp or -3.03pp vs. -0.19pp), supporting the theory that ESG factors fit best with a long-term investment strategy. So, it seems that the participants to the questionnaires acted in line with those professional investors from Blackrock I mentioned in the literature review who trust sustainability will in the long-run lower costs, help discover risks in time and reveal business opportunities which otherwise would not have been caught. The reciprocal is also valid.

The above descriptive analysis, helps me prove that revisions of stock prices in Group A and Group C are slightly higher than those in Groups B and D, and also show that in the face of negative finance performance when dealing with a company committed to an ESG strategy, investors have a bit more faith in an improving financial position versus when financials are already great.

Table 3 reveals that the improving/declining financial evolution of Pentacorp impacts the investment decision. Results show that ESG integration has a beneficial effect (a +10pp raise in allocation) even when profit is declining, moderating the effect of the negative financials. Participants in the experiment do not perceive ESG negatively as an additional cost, but rather view it as a competitive long-term advantage.

When the financial trend was ascending and after finding out that Pentacorp has ESG factors integrated into its corporate strategy, on average a participant raised its investment

allocation from $590 to $840. Next, with ESG still embedded into the company's behavior, but this time with sales declining, the firm also received a positive revision, only this instance it started from a lower base (from $180 to $280). The times that Pentacorp was mainly focused on profit, no matter how the financial statements presented the participants lowered by an average of 30% their investments.

Table 5 Investment allocation revision

Average investment allocation revision	ESG priorities integrated into strategy		ESG priorities not integrated into strategy		ALL	
	No. of observations	*Average investment allocation revision*	*No. of observations*	*Average investment allocation revision*	*No. of observations*	*Average investment allocation revision*
Positive financial performance	10	250	10	(220)	**20**	15
Negative financial performance	10	100	10	(90)	**20**	5
ALL	**20**	**175**	**20**	**(155)**	**40**	**10**

Difference in percent revisions in investment allocation	ESG priorities integrated into strategy			ESG priorities not integrated into strategy			ALL		
	No. of observations	*Mean*	*Standard deviation*	*No. of observations*	*Mean*	*Standard deviation*	*No. of observations*	*Mean*	*Standard deviation*
Positive financial performance	10	25.00pp	-4.93pp	10	-22.00pp	6.40pp	**20**	1.50pp	0.74pp
Negative financial performance	10	10.00pp	11.27pp	10	-9.00pp	1.37pp	**20**	0.50pp	6.32pp
ALL	**20**	**17.50pp**	**3.17pp**	**20**	**-15.50pp**	**3.89pp**	**40**	**1.00pp**	**3.53pp**

This table presents for both the short and the long-term time frame, how much of their funds would investors like to further invest (out of an allocated amount of $1000) in the conditions of already owing a perfectly diversified portfolio, before they discovered Pentacorp was committed to ESG or not, and after finding out where the company stood from a sustainability point of view. In example, in the context of Pentacorp's improving financial position, on average participants to my research want to invest $250 more in the firm's stock when they discover that the company is ESG dedicated (in Section 1 of the questionnaire they answered they want to invest $590 and in Section 2 the amount raised to $840). This can be translated into a 25-percentage point (pp) increase as $590 represent 59% out of the allocated $1000 and $840 represent 84%.

In general, results reported in Tables 2 and 3 convey the message that ESG influences investors' decisions, to a higher, but very modest degree in the long-run and with a moderating effect in the case on negative financial performance.

T-test Analysis

The differences presented above seem modest in degree so therefore I decided to perform a T-test on the information gathered from the questionnaires (stock price valuation and investment allocation). The scope of my two-sample t-test is to infer properties of the populations when discussing increasing and decreasing financial performance groups separately.

Table 6 t-Test for Groups A and B

t-Test for Groups A and B	*ESG included*	*ESG excluded*
Mean	102.550	102.640
Variance	2.212	1.114
Observations	20.000	20.000
Pooled Variance	1.663	
P(T<=t) two-tail	*0.827*	
t Critical two-tail	2.024	

The table present the t-Test results when looking into Groups A and B stock-price assessment, as both groups have the firm go through positive financial evolution and just different ESG strategies.

In Groups A and B, with positive financials, when performing the independent t-test (as I use the different participants in the two groups) the means of the two groups turn out to be 102.5 and 102.6, with a p-value of 0.827 high above the significance level of 0.05, we accept the null hypothesis, which states that the population means are the same. This is consistent with the results from the later presented two-way ANOVA analysis, showing that the integration of sustainability information into the strategy of a corporation is not very important for investors, and thus not meaningful enough to their investment decisions.

Table 7 t-Test for Groups C and D

t-Test for Groups C and D	*ESG included*	*ESG excluded*
Mean	96.155	95.575
Variance	6.720	4.570
Observations	20.000	20.000
Pooled Variance	5.645	
P(T<=t) two-tail	*0.445*	
t Critical two-tail	2.024	

The table present the t-Test results when looking into Groups C and D stock-price assessment, as both groups have the firm go through negative financial evolution and just different ESG strategies.

For the other two groups in the experiment, p-value is also higher than the alpha, only this time the value is lower than the one in the first t-test, in line with the argument from the descriptive statistics section that when faced with decreasing financial performance ESG integration moderates to a higher degree investors' negative perception of the stock.

ANOVA Analysis

My research design is a 2 x 2 factorial experiment in which I collected primary data on two continuous quantitative dependent variables (stock price and investment amount) at multiple levels of two categorical independent variables (improving/declining financial results and ESG strategy type). As I want to investigate in the short and long run

how my two independent variables, in different combinations, influence my dependent variables, the right choice of a statistical test is the two-way ANOVA with the F-test for statistical significance. F-tests are used at the group level to statistically compare the means and assess the equality of variances. If the variance within groups is smaller than the variance between groups, the F-test will find a higher F-value, and therefore a higher likelihood that the difference observed is real and not due to chance. Moreover, for the two-way ANOVA, I decided to perform the test with replication as for each group I have multiple observations. In addition, my two-way ANOVA with replication will be balanced as each group contains the answers from exactly 10 questionnaires.

Only after checking that my data meets the following assumptions, I was able to perform the two-way ANOVA. First, my data is homogeneous, as the descriptive analysis and a boxplot show that the means of the groups are within a similar range. Further, the experimental design proves my independent variables are not connected to one another and the dependent ones represent unique observations of a randomize allocation process. The alpha knew, as the significance level I considered in the two-way ANOVA testing with replication is 0.05, the one common level used in statistics. As shown by the financial performance p-values from the next three tables there is indeed a significant effect of financial performance (increasing or decreasing results) on both the stock price valuation and the investment allocation. P-values are below 0.5% and the F-value is higher than the F critical (83.6 > 2.7, etc.) However, all of the below panels reflect the fact that stock valuation and allocation of funds are not significantly impacted by the integration of ESG factors. This is shown by the p-values which are higher than 0.05 and F-statistics are lower in value versus the F critical.

Table 8 Two-way ANOVA results for the short-term stock assessments

Short-term					
Source of Variation	*SS*	*MS*	*F-statistics*	*P-value*	*F crit*
Financial performance	905.858	905.858	247.890	0.000	3.967
ESG integration	1.200	1.200	0.329	0.568	3.967
Interaction	2.245	2.245	0.614	0.436	3.967

This table presents the results of the two-way ANOVA performed on the short-term stock price valuations, by looking at how the two independent variables (financial performance and ESG integration) connects to the stock price assessment. On the columns side financial performance was the dependent variable, why on the row level this was the ESG element. The significant level used of 0.05.

In terms of the short-term interaction of the financial performance and ESG factors, the results of the two-way ANOVA indicate that with a p-value of 0.436 considerably above the significance level of 0.05, and with a F-statistics of 0.614 lower than the F critical, no matter if the financial performance of the company is improving or declining, integrating or not ESG factors into the corporate strategy of a company does not significantly affect the stock assessment. Not the same thing can be said about the financial performance which with a p-value of 0 most definitely has a significant effect on the investors' behavior.

Table 9 Two-way ANOVA results for the long-term stock assessments

Long-term					
Source of Variation	*SS*	*MS*	*F-statistics*	*P-value*	*F crit*
Financial performance	486.098	486.098	31.960	0.000	3.967
ESG integration	0.264	0.264	0.017	0.495	3.967
Interaction	0.040	0.040	0.003	0.359	3.967

The above table depicts the conclusions of the two-way ANOVA performed on the long-term stock price valuations, by looking at how the two independent variables (financial performance and ESG integration) connects to the stock price assessment. On the columns side financial performance was the dependent variable, why on the row level this was the ESG element. The significant level used of 0.05.

When looking at the long-term interaction of the two dependent variables, once again the stock price valuation is shown to not be influenced by them. The statistics show a p-value of 0.359 higher than the alpha used in this paper. Still, the no significance level is lower than the one we discovered in the short-run (p-value of 0.359 versus 0.436).

Table 10 Two-way ANOVA results for investment allocation

Source of Variation	*SS*	*MS*	*F-statistics*	*P-value*	*F crit*
Financial performance	3,052,500	1,017,500	12.583	0.000	2.732
ESG integration	2,000	2,000	0.025	0.875	3.974
Interaction	643,000	214,333	2.651	0.055	2.732

This snapshot presents the conclusions of the two-way ANOVA performed on investment allocation, by looking at how the two independent variables (financial performance and ESG integration) connect to what participants to the research plan to further invest in the company when already owning a perfectly diversified portfolio. On the columns side financial performance was the dependent variable, why on the row level this was the ESG element. The significant level used of 0.05.

The short and long-term stock price assessments were not significantly impacted by the integration of financial performance and the ESG position of Pentacorp, and investment allocation follows the same lines, but to a much lower degree as the p-value of 0.055 is just slightly higher than the alpha level and the F-statistics almost the same to the F critical.

The analysis conducted on the interaction element of Tables 4, 5, and 6, help me conclude that I have to reject all of the hypotheses of this research. The conclusion is that, although there are differences in respondents' answers to short and long-term stock valuation and investment allocation, due to the different mix of the two dependent variables, these differences are not significant. This is somehow inconsistent with the participants' self-reflection on the perceived relevance and reliability of the ESG information.

SUMMARY AND CONCLUSIONS

The scope of this research was to advance knowledge on ESG by examining the investment effects of adopting a sustainable business position when dealing with different

financial performances and time horizons. The scope was to see which of the two theories the study's findings will support (the stakeholder or the shareholder doctrines) and see if they can bring some clarity throughout the contradictory conclusions available in the literature today.

I used a sequential 2 × 2 between-subjects experiment, where both graduate students and finance professionals acted as respondents. The participants in the research were provided with reading material that presented a company operating in the medical technology industry in combinations of positive or negative earnings, with ESG integration or exclusion. They were asked to answer the same set of questions in two different moments of the study in order to capture their view when dealing with distinct levels of information.

The results show that while there is an investment impact, mostly in the long run, being a sustainable organization is not significantly influencing investors' decisions. This is not the conclusion I was expecting, as I believe sustainability has considerable benefits for a company's profit and loss statement, but it does back Friedman's theory of maximizing wealth for the company's owners.

This study backs-up the findings of Espahbodi et al. (2018) and other experimental studies on this topic, but contradicts the survey findings of the CFA Institute 2015 research. The difference between my research and CFA's one is the fact that CFA only questioned investors if ESG is consistently present in their investment decision-making process, versus the questionnaires I built where in addition participants were asked to quantitatively evaluate their decisions. This underlines the distinction between wishes and actions, between perceived relevance and reliability of what is sustainable and correct responsible business and what we actually do in that respect.

LIMITATIONS AND OUTLOOK

In terms of limitations, my experimental research is not without them. It most definitely is an over-simplification of the real decision-making process; it is limited in the number of participants and most definitely was performed during a stressful Covid-19 lock-down environment. Moreover, although the approach of using students is common and even if the finance professionals who acted as participants are all ACCA accredited professionals, the results may not be generalizable, as these are not perfect substitutes for investors.

Further research could complement my paper by testing investors' behavior, when faced with outside of the organization ESG negative information or in the context of different financial and ESG performances, in other developing countries as Romania and on larger numbers of participants.

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POTENTIAL SOLUTIONS FOR RURAL POVERTY IN ROMANIA THROUGH EDUCATIONAL AND ENTREPRENEURIAL IMPROVEMENTS

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Abstract: *The levels of poverty indicators in Romania, but especially the ones regarding the rural space, analysed including the chronological perspective, denote substantive vulnerabilities and indicate a low national and local capacity of managing and overcoming this problem. We highlighted that poverty is more than a theoretical concept being in reality associated with a large variety of problems, like lack of: development, security, determination, trust, health, social inclusion etc., that tend to become its facets when this phenomenon has a persistent character. In this regard, we analysed the possible solutions for the problem of poverty considering (1) education and investment in its quality, and (2) entrepreneurial initiative, as principle vectors of breaking the vicious circle of rural poverty.*
Keywords: *Poverty, rural space, education, entrepreneurship.*

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INTRODUCTION

Both poverty and its theoretical debates represent key issues in the "equation of development" (Sen, 1999: XI). The classical definition of poverty is the one of Townsend (1979: 31), with Ricardian classical roots, emphasizing the individuals' impossibility to imply in diverse activities, to benefit of the same life conditions and of usual facilities commonly detained or at least encouraged by the most part of the members of a society. This definition addresses the social exclusion's role in the poverty's daily reality, explained by the lack of resources that determines it (Beduk, 2018). The poor people feel it even more profoundly, also including in its meaning the components related to education, health, employment, personal security (Samuel *et al.*, 2018). In this context,

we can emphasize the fact that poverty is not only a theoretical concept, but it is also a practical one, showing, from the day by day reality, that it is the main problem of a large part of the society, who has to confront with the lack of material and financial resources and with the burden of not being capable of obtaining them.

For better emphasizing the severity of this phenomenon regarding the way it is felt, we point out a series of concepts associated to poverty, such as: lack of security, pressure, lack of determination, limitation, lack of development, frustration, incapability, lack of trust, quarrel, social exclusion, insanity, lack of health, of recreation, of peace, stress, lack of sense, dehumanization, sadness, concern, worry etc. It can therefore be observed the variety of negative issues that go hand in hand with poverty and, when it is persistent, they become its facets. A part of them represents states of spirit or inabilities in terms of emotional component; other parts refer to positioning in front of the society as a whole in the context of these inabilities or emphasize physical outside conditions that are able to define the low quality of life generated by poverty. Thus, it can be observed the fact that the deprivations may take different forms and may affect diverse parts of individuals' life. They mark negative elements, or deficiencies, diverse types of inabilities, including the annihilation of some personal aptitudes that cannot be developed anymore because of poverty. This is a situation in which the Pyramid of Maslow (1954) is reconfirmed as its principles clearly show the way in which the individual's needs are satisfied in a logical order. Taking into consideration the fact that the basic needs are not fulfilled in the context of poverty, there is a low possibility that those poor people to develop themselves through increasing knowledge, tending to attain diverse superior needs while the basic ones have not been yet satisfied.

Is it acceptable to have people living in poverty? This is a question debated along several centuries. The answer to this question was quite contradictory, especially in the mercantilist period, with theoreticians like Petty (1899) or Townsend (1817), but now it is evident, inclusively from the point of view of the scientific results, that the negative consequences of poverty do not impact only the life of the ones that confront with it, but also affect the general wellbeing of the society as a whole, obstructing in some ways its progress (Costanza *et al.*, 2015; Ravallion, 2016). These results demonstrate that Adam Smith (2011), in an inspired manner, anticipated the negative influence of poverty on the society as a whole, synthetizing this idea as follows: no society could really prosper in the conditions in which the majority of its members are poor and unhappy.

In this way, we have partially answered to the question related to the importance of approaching such a theme. In addition, other motivations (including our personal ones) that determines a contemporary inclination towards poverty in the scientific field, although it was carefully analysed even from the oldest times, is the fact that it puts in the centre of interests the individual, with his quality of life and wellbeing, ultimately representing the basic goal of all the actions made by the human factor over time. Wellbeing is a relative notion, defined considering uneven reference points in space, although contested from the ethical point of view, but especially in time. Depending by the entire evolution of the society in general (Ravallion, 2016), a maximum level of wellbeing is not achievable by all the individuals or at least by the majority of them. In other words, besides any important progress, no matter how significant it would be, way of improvement and openness to find out solutions for it will exist anywhere and anytime. This means that, in the words of Teffo (2008), "relative poverty can only be

alleviated because what is minimally accepted today may vary over time, from rural to urban areas and from country to country". Even today, we are assisting to substantial changes regarding the improvement of life conditions, and searches for amelioration are still present. On the other hand, although these improvements are certainties, there are still some segments of population that daily fight with major shortages that affect their quality of life and determine a kind of social disability enabling them to liberate from it. Consequently, the inducement of this paper was the orientation toward the human component, with its needs and, for this reason; we attempted to better understand the poverty issue in the context of the actual society and to highlight some possible solutions. Concretely, the main aims of this paper are:

(1) to observe the state and evolution of poverty in Romania within the European Union context after its accession;

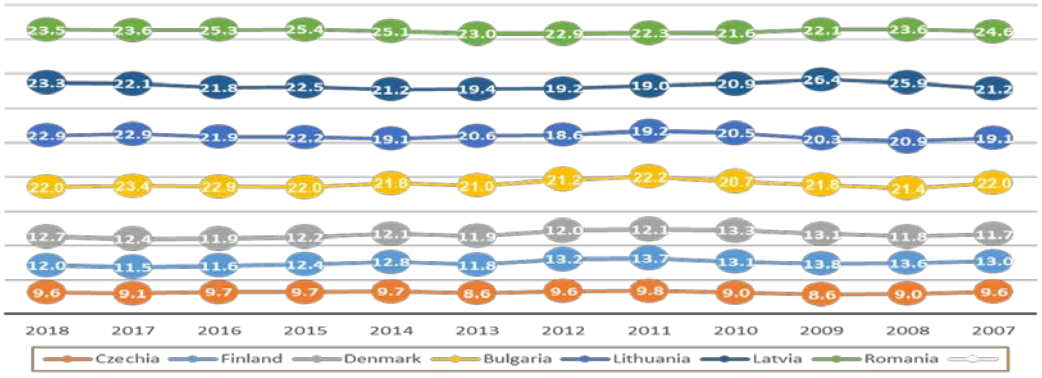
(2) to compare the state of rural poverty with the ones of the other EU member states;

(3) to analyse possible responses to poverty in the rural space.

POVERTY IN ROMANIA WITHIN THE EUROPEAN CONTEXT

In order to emphasize the severity of Romanian poverty, we have selected the three countries with the highest levels of poverty from the European Union (Bulgaria, Latvia, Lithuania) in 2018, excepting Romania, and, also, the three ones with the lowest levels among the member states (Czechia, Denmark, Finland). In this context, we can observe the fact that Romania is on the top of the list, with a higher level than the ones of the three poorest member states, this critical position being maintained in all the years taken into analysis, in the period between 2007 and 2018. Comparing to the least poor countries from European Union, Romania registers alarming higher values of *At-risk-of-poverty rate*, with differences up to 15.7% that, practically analysed, mean an important number of citizens belonging to this category (see Fig. 1). Trying to understand what these percentages represent, we can imagine the social problems derived from the lack of an acceptable income level, referring here to all the associated negative issues, summarized in the first part of the paper, like: lack of security, pressure, lack of development, incapability, lack of health, worry etc.

Figure 1. *At-risk-of-poverty rate* in Romania compared to the highest and the lowest levels of this rate in the EU member states (2007-2018)

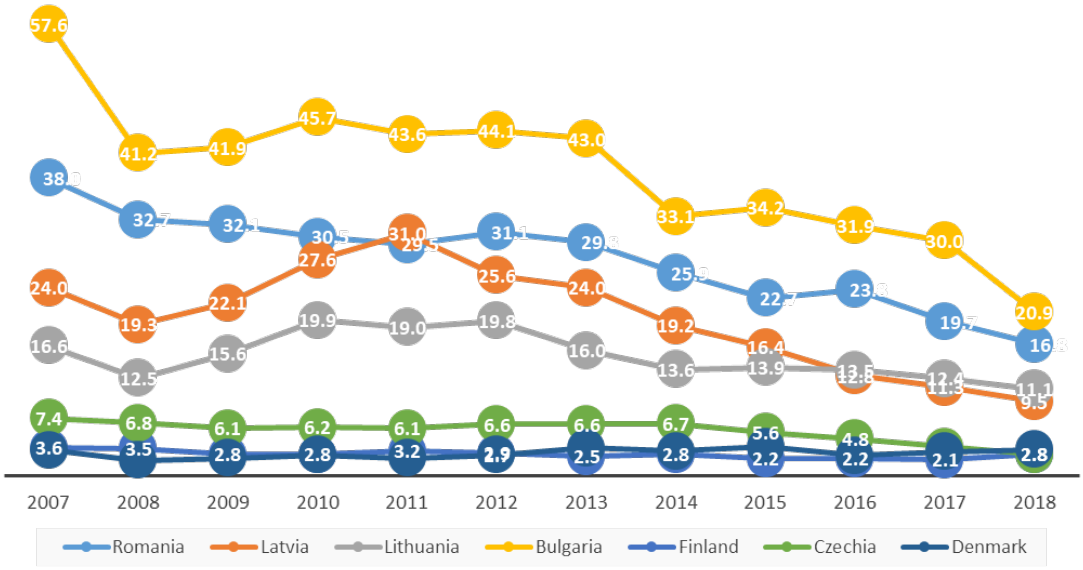


Source: Authors' work, using the data provided by Eurostat, https://ec.europa.eu/eurostat/en/web/products-datasets/-/TESSI010.

Contrary to the above indicator, that is approximatively constant in this period, the evolution of *Severe material deprivation rate* is descendant, especially in the more disadvantaged group of chosen countries (Bulgaria, Latvia, Lithuania, Romania), while in the case of the other nations, the levels are very low and approximately constant. There can be seen huge differences in terms of severe material deprivation rates between the two groups of countries. The major difference is registered in 2007, between Denmark and Bulgaria, equal to 54.6%, while in 2018, the major difference is between, on one hand, Czechia and Finland, with the same levels of deprivation rates, and Bulgaria, equal to 18.1%, on the other hand. These results confirm the decreasing of the poverty gap in the European countries, at least in the case of this indicator.

Romania is also in a critical position in terms of severe material deprivation rate, being the second most disadvantaged country, after Bulgaria, regarding this important official poverty indicator among the European Union member states, in the analysed period, between 2007 and 2018. It can be observed the constant decreasing of severe material deprivation rate along the twelve analysed years in the Romanian context, revealing an important national progress of this indicator, with the highest difference of this rate, equal to 21.2%. In terms of comparison between the seven countries taken into analysis, Romania is the second most affected country and the major difference of severe material deprivation rates is in comparison to Denmark, in 2007 (34.4%). In 2018, the last year with available data, this gap significantly improves, becoming equal to 14% and confirming the improvement of this indicator across the last twelve years.

Figure 2. ***Severe material deprivation rate*** **in Romania compared to the highest and the lowest levels of this rate in the EU member states (2007-2018)**



Source: Authors' work, using the data provided by Eurostat, https://ec.europa.eu/eurostat/web/products-datasets/product?code=tespm030.

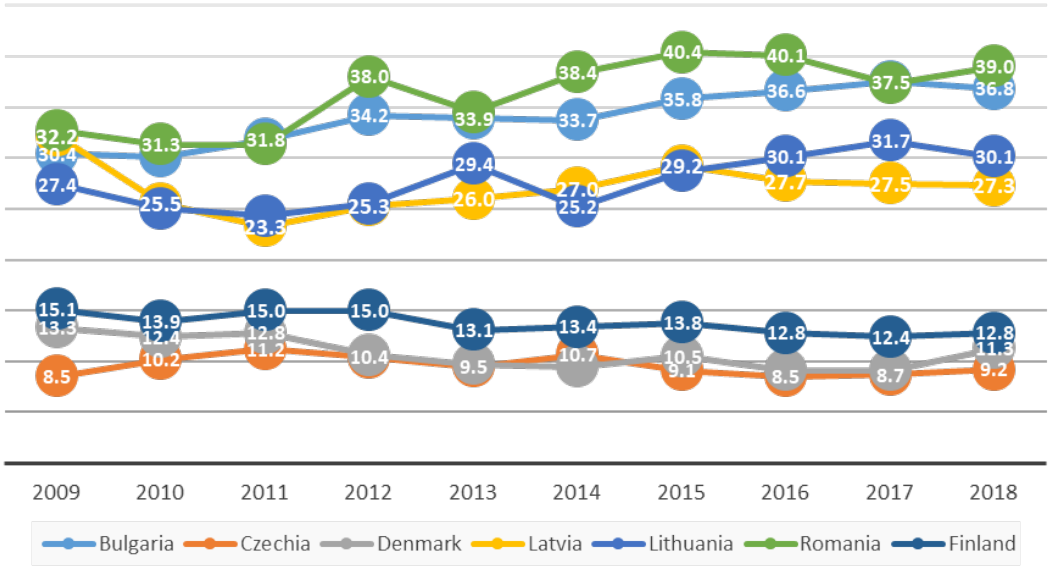
As we can observe both the national percentages per se and, also, the comparison between them and the most favoured, on first hand, and the most affected EU countries, on second hand, poverty in terms of income, but, also, in terms of material deprivation

represents a major concern in Romania. Moving on and being aware by the fact that better understanding of the most effective determinants of rural development remains one of the main policy issues even our days in the context in which it seems that the rural areas suffer of lack of development comparing to the urban ones, and, also, having the critical situation of Romanian poverty in mind, we continue our discussion, directing it on the analysis of the Romanian rural poverty in the same EU comparison manner. For this understanding, there is also pursued the aim to learn about the importance of individual factors fostering development and reducing poverty like education, employment, entrepreneurship.

POVERTY AS A MAJOR CONCERN IN THE ROMANIAN RURAL AREAS

Some specific disturbances of the rural space were registered along the latest periods of time, causing a kind of reconfiguration of it, Cikic *et al.* (2015) discussing even about a new identity of rural, with a cultural and economic restructuring. In addition, it has been observed that the average standard of living is generally lower in villages than in urban areas, phenomenon generically called rural poverty, being foreseen a potential disadvantage in the rural context comparing to the urban one (Eurofound, 2017). This observation is also evidenced by the European Commission (2019) that draws attention to the high disparities between rural and urban in Romania. Moreover, the rural space represents a major part of the Romanian society both economically, socially and demographically, and the aim of understanding the rural poverty phenomenon is not devoid of practical spirit, but relevant and achievable. So, going deeper, and also being aware by the fact that poverty has different characteristics depending on the belonging place, we consider that possible responses to the poverty problem have to be assumed in the context of distinct discussions regarding the degree of urbanization.

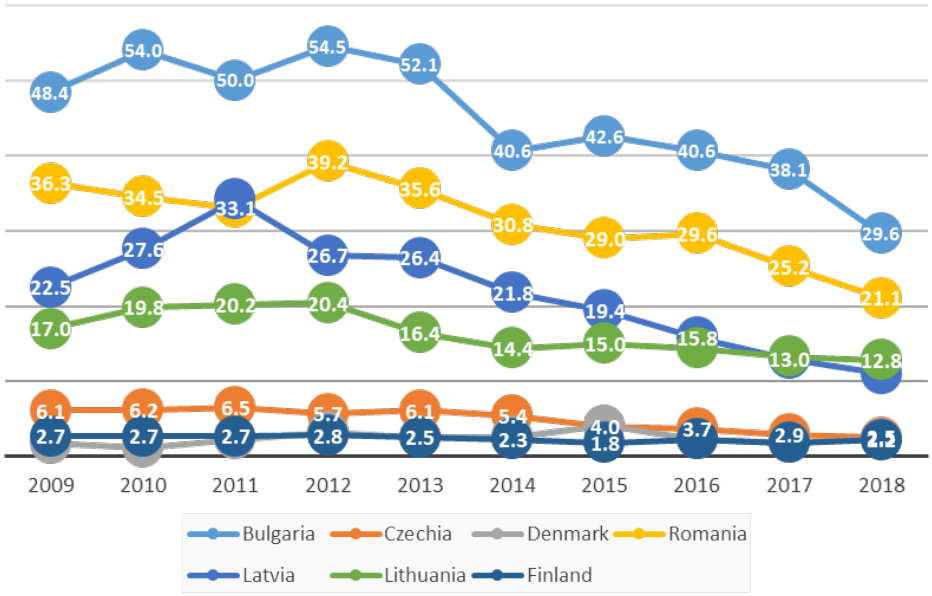
Figure 3. ***At-risk-of-poverty rate*** **in the rural space in Romania compared to the highest and the lowest levels of this rate in the EU member states (2007-2018)**



Source: Authors' work, using the data provided by Eurostat, https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=ilc_li43&lang=en.

We assist to an evident grouping of countries in terms of levels of rural poverty measured through *At-risk-of-poverty rate*. If, initially, at the general level, such a grouping does not occur, in the case of the rural, the homogeneity of the countries in terms of income poverty is much higher. In other words, the worst positioned countries at this indicator register almost similar rural rates, as it can be observed in Figure 3, the difference between their levels being approximately similar. This is not the case when referring to the national levels of the same countries that are lower and less homogenous, meaning that rural income poverty represents a major problem with the same intensity, needing to be improved with certain specific solutions especially targeted for it. It can be also observed that a continuous descending trend is not registered, as it would be expected from our first step of analysis, in which the poverty improvement is clear. In Romania, we observe the fact that, in 2018, comparatively to 2009, the percentage of people at risk of poverty, from the rural area is with 6.8% higher. This means that poverty in these areas tends to deepen in the context in which it also registers the lowest levels of this indicator in all the analysed years, although, as we mentioned above, the situation is quite similar in the group of countries with low levels of rural income poverty. So, although at the national level, the registered trend was a descendent one, when we deepen our analysis and direct it to the rural space, this trend is no more present and the only conclusion to get from this is the one of a major gap between rural and urban progress in terms of poverty rates improvement.

Figure 4. *Severe material deprivation rate* in the rural space in Romania compared to the highest and the lowest levels of this rate in the EU member states (2007-2018)



Source: Authors' work, using the data provided by Eurostat, https://ec.europa.eu/eurostat/en/web/products-datasets/-/ILC_MDDD23.

Regarding severe material deprivation rate, the grouping of the countries with low levels has to be mentioned, while in the case of the ones with high levels, the rates and trends are quite different. In Romania, it can be noticed the fluctuations of this indicator across the analysed years, with increasing and decreasing rates, but, in average, a certain amelioration of material situation is met in the rural area, contrary to the income one, following the national trend.

These numbers reveal the critical position of Romania among the other EU countries regarding poverty, especially in the rural area, and impose finding solutions for improving these extremely high levels for a European country in 2018. Next section is dedicated to discussing potential solutions addressing the problem of poverty in the rural space.

EDUCATIONAL AND ENTREPRENEURIAL INITIATIVES AS POSSIBLE SOLUTIONS FOR RURAL POVERTY

We direct our attention on two essential factors, possibly representing the ways of breaking the vicious circle of poverty in rural areas: education and employment through local entrepreneurial initiatives. We opted to analyse these two main solutions following Sen's approach who considered the human capital development in the form of education as an effective tool for successful entrepreneurship and poverty alleviation (Sen, 1980).

In this regard, Maile (2008) also states that the educational attainment determines the type of work an individual is engaged in and his earnings potential, meaning that the level of education an individual achieves influences his current income and the future opportunities. In addition, it is generally agreed within the modern literature (Appleton, 2001; Fields, 1999; Sen, 1999; Maile, 2008) that the most powerful instrument known to reduce poverty is good quality education. Besides this common agreement, it is also recognized the fact that this link between education and poverty alleviation is a complex one, neither linear nor a simple cause and effect relationship (Sayed, 2008).

As other important factor influencing the state of poverty, also closely linked to education, work, in the words of Adam Smith (2011), is the principle value creator and, in this context, apart from a continuous promotion of the cult of work, is it necessary to have the entire amount of sophisticated policies, directed on diverse issues, being integrated and innovative, as they are now promoted by the experts in the political domain?

Starting from the basic problems of the rural space, we initially appeal the return to simplicity and follow the idea of Adam Smith (2011), that was convinced by the fact that work done in self-interest, without prejudicing the other individuals, meaning the guidance of conscience and the respect of moral rules and principles as basis for the entire appropriate organisation of society, is the main engine of human development. Moreover, the improvement of work efficiency and ethics (Marshall, 2013), nearby employment as treatment for poverty (Keynes, 2013), both with roots in the theoretical discourse of Smith, come to respond to the necessity of development of the rural space. In which way may the labour culture be promoted and fully assumed by individuals in order to be integrated in the collective subconscious? One answer definitively has to be education. Again, as the main path to progress, closely linked to education, it is the call of John Stuart Mill (1966) for appropriate moral principles, values, beliefs, behaviours (the

so-called ”wisdom of the society”, defined as healthy judgement, practical wisdom and individuals’ prudence). In this context, the call for returning to classical roots is also (later) observed by Ernest Bernea (2011), that emphasizes the situation in which, in the context of modern world crisis, thousands of pages were written by analysts from different parts of the world, that discussed about causes, way of action and its effects without being aware by the crisis’ roots: ”They speak about the trunk, branches, crown and fruits, but do not remind anything regarding the roots”. According to Mill (1966), these are: education, nearby the correct habits and the cultivation of moral sentiments, strongly determining the personal, but also common good. Having these statements in mind, we also share them and call for returning to these basic roots, expressing, in this way, the need for orientation toward a more appropriate individual development within the society, especially, in the rural area. But we also have to bear in mind that education is not an end in itself, “it is a vehicle for bringing about changes in knowledge, values and behavioural patterns” (Teffo, 2008: 77).

Besides the improvement in the quality of education and the promotion of the idea that it plays a fruitful role in the personal wellbeing on the long run, that have to determine personal motivation, financial and time investment, and, also, constant involvement and trust in personal chances, nearby the responsibility of fully aware labour activities, employment opportunities positively contribute to concreting the educational efforts, that fulfil one of their main aims in this way and allow them to become agents in their own lives and communities (Alkire and Deneulin, 2009: 27).

In the rural space poverty is regarded as “the lack of economic, socio-cultural and educational capabilities of individuals to be able to convert opportunities into profitable business ventures to improve their living conditions” (Naminse and Jincai, 2018: 3). Still, Bruton, Ahlstrom and Si (2015) emphasize the fact that research in economics did not especially focus on entrepreneurship as o solution to poverty. However, recent literature increasingly argues that it represents a critical means of alleviating poverty (Bruton, Ketchen and Ireland, 2013).

In this context, because of the complexity of the rural space, entrepreneurship is influenced by the nature of markets, existence of innovation systems, the local culture and communities, revealing different types of opportunities and constraints (Huggins, Morgan and Williams, 2015). In this way, the entrepreneurial initiatives should be adapted to the local context, such as, for example, helping the promotion of local food production through short supply chains or some forms of small producers’ association in order to form a homogenous group with similar interests and activities. These entrepreneurial endeavours based on cooperation also (1) encourage the increase of competitiveness of the agriculture in the context in which the village has (or is indicated to have) the mission of being one of the main food suppliers of the urban centres nearby it; (2) represents the interests of the rural residents; (3) have the main role of facilitating and sustaining the innovation process development as basic determinant of wellbeing. For this, it is important to emphasize the role of appropriate rural policies, that may positively contribute to the amelioration of the problems of rural space, including poverty. Thus, in order to avoid limitations and failings, it is necessary, also according to Huggins, Morgan and Williams (2015: 3), to establish proper policies and support mechanisms.

CONCLUSIONS

The state of fact regarding the level of national poverty, but especially the one of the rural space, also analysed from the chronological perspective, denotes substantive vulnerabilities in Romania and indicates a low national and local capacity of managing and overcoming this problem. Even more, when we compare it with the European context, the figures reveal the most critical situation for Romania as it was shown in this paper.

In this regard, having in mind two important arguments appropriate for the Romanian context, such as: (1) the high level of rurality and (2) the much higher level of rural poverty compared to the national one, we have to emphasize the importance of including the degree of urbanization distinction in the discussions and explanations regarding poverty, especially the one of income. This fact-finding translates into the fact that the poverty analyses, but also policies, should concentrate on the distinction between rural and urban particularities and try to differently answer to each of them.

Consequently, in this paper, we particularly analysed the problem of poverty and expressed our point of view regarding the fact that we consider that the principle vectors of rural development and, also, of diminishing the level of rural poverty are (1) education and investment in its quality, offering, in this way, equal opportunities for those that attain the first levels of education in the rural schools and (2) employment, through developing the entrepreneurial initiative and attraction of external investments, depending on the strengths of the local context, these solutions being also potential ways of breaking the vicious circle of rural poverty.

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SMALL BUSINESS TAXATION IN ETHIOPIA: A FOCUS ON LEGAL AND PRACTICAL ISSUES IN INCOME TAX CATEGORY

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Abstract: *The expenses, which are incurred by the government in carrying out its inherent duties, are covered by imposing tax to its citizens. Thus, a business, small or large, is obliged to contribute its share to cover the government expenses in the form of 'tax'. This article analysis the legal and institutional framework of small business taxation in Ethiopia. It identifies and examines the types and mode of calculation of the different types of taxes imposed on small business entities; income tax, turn over tax and excise tax. Beyond that, it examines the tax treatment of small business on termination, and post-cessation income tax. Moreover, it examines the tax administration issues of small business taxation in Ethiopia. In the end, the article forwards a recommendation to address the ongoing problems of small business taxation in Ethiopia. The authors employed empirical qualitative research methodology.*
Keywords: *Small Business, Business Income Tax, presumptive Income Tax Assessment, Tax Administration, Legal Framework, Tax Payer*

CONCEPTUAL UNDERPINNING ABOUT SMALL BUSINESS AND IT'S TAXATION

Principally there is no conventional or conceptually clear-cut dividing line that distinguishes businesses that are small from those that are not. It is common to find different meaning for the term small business depending on for which purpose the law is defining. Economist, legislatures and international organization commonly employ quantitative indicators such as the size criterion of number of employees and economic criterion of annual turnover (Berisha, et al 2015). However, literally Business Dictionary define small business as "*designation for firms of a certain size which fall below certain criteria (that varies from country to country) in terms of annual turnover, number of employees, total value of assets, etc (*http://www.businessdictionary.com/definition/small-business.htm).

When we come to the case of Ethiopia under the Federal Urban Job Creation and Food Security Agency Establishment Council of Ministers Regulation No. 374/2014 small and micro enterprises are defined *as an enterprise having a total capital of up to 500,000 in the case of service sector up to 1,500.000 in the case of urban agriculture, artisanal mining and construction sector engages from 5 to 30 workers including the owner, his family members and other employees (*Federal Urban Job Creation and Food Security Agency Establishment Council of Ministers Regulation , 2016, Federal Negarit Gazeta, Reg. No. 374, 22nd year, No. 41, Article 2 (3) and (4). [Here in after Regulation No. 374/2016). This proclamation employed size criterion and economic criterion of number of employees and annual turnover respectively. Coming to the Ethiopian income tax proclamation (Federal Income Tax Proclamation, 2016, Federal Negarit Gazeta, Pro.

No.979, 22nd Year, No.104. [Here in after Proclamation Number 979/2016), there is no any single provision which directly define as to what is small business and small business taxpayers. Rather the law divided business taxpayers in to categories as category "A", "B" and "C." Category "C" taxpayer is contextualized as small business taxpayers. Accordingly, as per the recent income tax proclamation (Ibidem) of Ethiopia, sole proprietor whose annual turnover is below five hundred thousand (Ibid, Article 3) and small and micro enterprise whose annual turnover is below five hundred thousand birr are regarded as small business taxp ay er (Ibid. Article 48). In fact, small business is very important economic sector in every nation ranging from developing to developed countries and commonly they are considered as the socio-economic indicators of a given country.

Having this as to the meaning of small business lets proceed to the very important issue regarding to small business; that is taxation of it. The very nature of small business triggers different issues when a government think about taxation of it; for instance, to tax or not to tax? Special regime of taxation or the ordinary one? Issues of compliance and administration cost? Design of taxation of small business? Being developing or developed nation? Small business is commonly regarded as the "hard to tax" sector of the economy though by now there as consensus as to taxation of them. The issue would become very problematic in case of developing countries, as administration capacity of the tax authority as well as the tax awareness of the sociality is weak and at the baseline. Tax policy experts have consistently argue to give emphasis for the simplification of the tax structure for small business in order to decrease compliance costs for small taxpayers (Parthasarathi 2004).

Worldwide in order to address the taxation issues of small business, policy makers developed different methods of taxing small business (Parthasarathi, 2004). The first one is simplified application of general regime: It is adopted by those states, which prefer not to have special regime of small business taxation. It is characterized by simplification of tax forms, filing and payment process, arrangement of payments, reduced direct tax rates and simplified Value added tax (VAT) (Parthasarathi, 2004). The other one is designing a special regime for small business. This special regime can be designed in different ways (Parthasarathi 2004).

The first one is Turnover system; it would be done by either applying uniform tax rate for all small business or it may be progressive turnover based tax or may be by applying different tax on turnover for different sectors based on average profit.

Secondly, Indicator Based System: Tax will be imposed based on indicator-based measures, which can be of the following forms. First, it may be in the form of the classic French Forfait system (Pashev 2006; Bucci 2019) which depend on a variety of indicator like purchases, sales, number of employees, and number of cars owned by the taxpayer. Then by the agreement of the tax authority and individual taxpayers the amount would be determined and going to be applied for two years as of the assessment. Secondly, it can be in the form of Standard assessment system (Yitzhaki, 2007; Bucci 2019; Pashev 2005). Here, like the French forfeit system range of indicators of activity, which can be specified in detail, are used though unlike the forfeit system, it is not subject to the negotiation between taxpayer and the authority. In this regard the Israeli *tackshivim* system is the best example. *Tackshivim* system covered the assessment of income in 130 economic branches, specifying within each the parameters to

be used (Yitzhaki 2007).

The third one is Combined Turnover/ Indicator Based Tax: in this case, the tax system is principally turn over based however, the tax authority can employ indicators to avoid possible tax evasion (Thuronyi, 1996; Bucci 2019). The other option is Cash based arrangement: Special record procedure for gross income and expenses (Bucci 2019, Thuronyi 1996). In fact tax simplification for small business has lots of benefit such as reduction in compliance cost, better understanding of legislation and policy aim, reduction of administration cost for the custom authority, may be to bring fairness (Small Business tax review, https://www.gov.uk/government/publications/making-tax-easier-quicker-and-simpler-for-small-business. (Last accessed, Jan 6, 12018).

Developing countries mostly use special regime for small business taxation, presumptive taxation, though it is also used by the industrialized nations. For instance out of 17 Central and Latin American countries 14 of them adopted a wide range of special regime of taxation for taxation of small business (Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, Mexico, Nicaragua, Honduras, Paraguay, Peru, and Uruguay). Exceptions are El Salvador, Panama and Venezuela. In sub Saharan African countries, almost three fourth of them adopted presumptive taxation (Taube et al 1996).

As to the types of presumptive regime, there are many types developed since the inception of the concept of presumptive taxation. Initially the culture was to use occupation and sector based standard assessment in which the taxpayer is obliged to pay a fixed lump sum payment in a specific trade and professions (Taube et al 1996). Ghana was the first African country to introduce this form of small business tax system. Afterwards including Ethiopia (Ethiopia has adopted standard assessment for about 150 different business and professions as of 1960), Nigeria, Lesotho, Sierra Leone and Mozambique adopted such system in 1960's and 70's.

The paper is structured as follows. Section 1 deals with the deals with conceptual underpinning of small business and its taxation. Section 2 discusses with the legal framework of small business taxation, mainly the type of taxes imposed on small businesses and their respective assessment methodology, section three discuss the tax administration issues of the small business and the last section provides with the conclusion and recommendation.

THE LEGAL FRAMEWORK OF SMALL BUSINESS TAXATION IN ETHIOPIa

Once we identify the taxpayers in our cases the small business as per the Ethiopian context, the next question is what type of taxes are imposed on such specific taxpayers. The legality element of taxation not only identified the taxpayers but also the type, percentage and calculation of the tax imposed to the small businesses. Small businesses are subject to different taxes including to business income tax, windfall income tax, other income tax, turnover tax and excise tax. In addition to the main taxes imposed to the small businesses, the paper also tried to analyze the tax treatment of termination of a small business, aggregation of income, post cessation income tax and lease disposal of business asset.

Business Income Tax

Small businesses are not different from the other businesses of the country, the reason why they are called small business is not to relieve them from tax liability rather to have them a simplified tax system that is convenient and less costly. The less cost for payment of tax and creation of convenience tax system to small businesses empowers them to stay on the business and through time to become medium size business in the end. Cannons of economy and progressivity back the reason behind the separate treatment of the small business for tax purpose. For this reason, in principle, the income tax proclamation provides a presumptive business tax to small business and as exception, it allows for the voluntarily keeping of accounting records for the determination of tax liability based upon the financial statements made from the accounting records. Therefore, the Income Tax Proclamation provides three modes of assessment of small business income tax liability: *first,* based on the voluntarily keeping of accounting records; *second,* standard presumptive business tax assessment; and *third*, indicator-based presumptive tax assessment. These three modes of assessment of tax liability of small businesses have their own distinct features and the paper examines and analyze the similarity and difference of the three modes of assessments in the below sections.

Based on the Voluntary Recorded Books of Account

However, the proclamation provides presumptive business tax assessment method for small businesses in principle but as an exception, it provides a room for the voluntarily keeping of accounting records by the small businesses. Art 82(4) of the Income Tax Proclamation states, "*Category 'C' taxpayers [small businesses] may keep a record of gross income and shall keep such other records as may be specified in the Regulations* (Emphasis ours)." This indicates that though it is not obligatory but if the small business need to keep accounting records the law recognizes it and taxed accordingly. However, it also delegates Council of Ministries to determine how and what type of accounting records can be kept by small businesses to determine their tax liability using the accounting records instead of the presumptive tax assessment. The Council of Ministries defines that the small business which voluntarily likes to keep accounting records should maintain the accounting records provided for Category 'B' taxpayers (Federal Income Tax Regulation, 2017, *Federal Negarit Gazeta*, Reg. No. 410, 23rd Year, No. 82, Art 49(1)&(2) [Here in after Federal Income Tax Regulation No.410/2017], Art 59(1). As to what is obliged to keep the book of account of Category 'B' taxpayers apply for small business (Category 'C') taxpayers, the small businesses are obliged to keep the following accounting records: records of daily incomes and expenditures; records of all purchases and sales of trading stock; payroll; and other relevant documents that helps to determine the tax liability of the small business (Cumulative reading of Art 59(1) of the Federal Income Tax Regulation and Art 82(2) of the Income Tax Proclamation). No more issue of presumptive tax assessment in this case, and the small business declare its tax liability based upon the profit and loss statement and pay it within two months from the end of the tax year (Federal Income Tax Proclamation No. 979/2016, Art 82(4) (b) & 82(5)(b).

Presumptive Income Tax Assessment

As cited by Muuz Abraha presumptive taxes were began since 18th century and the tax liability of the then taxpayers were calculated based upon the properties and other parameters than the actual income of the taxpayers (Muuz 2015). The assets and other indicators were taking into account to determine the tax liability of the taxpayers in the early time as the science of accounting were not as such developed to determine the actual tax liability of the then taxpayers. It is very hard to think of the modern book keeping system and tax accordingly to the then taxpayers and it is for this reason that the then governments were imposing tax based on the assets and other parameters of their citizens. As it cited by Muuz Abraha the renowned tax scholar Victor Thuroyni defines presumptive tax as:

The term "presumptive" is used to indicate a legal presumption that the taxpayer's income is no less than the amount resulting from the application of the indirect method. The concept covers a wide variety of alternative means of determining the tax base ranging from method of reconstructing income based on administrative practice, which can be rebutted by the taxpayer, to true minimum taxes with tax base specified in legislation (Thuronyi 1996).

As per the scholar, the word 'presumption' in the tax assessment is used similarly to the other legal presumption, which can be rebutted by a contrary proof. The presumption tax is not final and conclusive rather it is subject to review where there are contrary proof. The prerequisite for presumptive taxes is the reconstructed income based on the tax authority. Whatever the case the tax base is defined under the tax relevant laws, the tax authority is entrusted only to determine the income of the taxpayer for presumptive tax collection purpose. As it is mentioned in the above, it is when the small business does not keep accounting records that the presumptive tax assessment is applied and the justifications for the incorporation of the presumptive tax assessment is defined in introduction section of this paper. Once we say presumptive tax assessment is applied when there is no obligation to keep accounting records, we should also identify the types of the presumptive tax assessment that Ethiopia incorporates under its income laws.

In Ethiopia, the small businesses income tax liability is determined based upon presumptive business taxes (Federal Income Tax Proclamation No. 979/2016, Art 49). The legislator does not say about the details of the presumptive tax assessment rather it delegates to the Council of Ministries to issue a regulation as to the detail mode and type of presumptive tax assessment methodologies. And the Council of Ministries issued a directive as to the details of the presumptive tax assessment methodologies; it recognizes two types of presumptive tax assessment methodology these are standard presumptive business tax assessment and indicator based presumptive business tax assessment methods. The presumptive business tax liability of small businesses is calculated in accordance with the schedule attached with the income tax regulation. The annual taxable income of a small business taxpayer is calculated based upon the maximum annual turnover in the income bracket with in which the annual gross income of the taxpayer falls (Federal Income Tax Regulation, Reg. 410/2017, Art 49(1) & (2). The Minister is delegated to revise the Schedule attached with the regulation at least every three years.

Standard Assessment

The Income Tax Regulation provides standard tax for the 99 types of small business. It is the Council of Ministries, which determines the annual taxable income of the 99 businesses and then determines the final tax liability of the small business based upon the tax rates of Schedules 'B' and 'C'. The role of the tax authority is to determine the status of the small business based upon the daily sales income of the small business. To determine the status of the small businesses from among the 99 categories of annual taxable income the Ethiopian Revenue and Customs Authority issued a directive that applies only to Addis Ababa small business taxpayers (Addis Ababa City Administration Category "C" Taxpayers Daily Revenue Estimation Information Collection Implementation ERCA Directive, 2017, No. 123. [Here in after, Category "C" Taxpayers Daily Revenue Estimation Directive]. The scope of application of the directive is for all businesses, which have annual turnover not exceeding 500,000 Birr. Though it looks like to assess the daily income of the small businesses in which their tax liability is determined by indicator-based assessment, when you indulge in to the provisions of the directive it is intended to determine the daily income of the small businesses in which their tax liability is determined pursuant to the standard presumptive tax assessment methodology. The 33 business sectors that are stated under Art 28 of the directive to show the indicators that should be taken into consideration to calculate their daily income are small businesses in which their tax liability is determined by standard assessment method, but not by indicator-based assessment. What is provided under Art 27 and 29 of the directive evidenced that the directive is intended to determine the daily income of the small businesses in which their tax liability is assessed by standard method.

The general indicators to find the daily income of the small businesses are trade status, location, convenience to customers, good will, expenditures, documents of daily income receipts, the number or amount of goods supplied or services provided, sales price, business sector, demand of the goods or services in the market, size of business premise, life span of the business, status of warehouse, quality of goods or services, source of supply of goods or provision of services, consumers level, private assets of the business owner and the number of employed workers of the business. In addition, the sector specific indicators are provided in Art 28 of the directive, you can see the directive for further knowledge as it is very hard to include the indicators of each sector in this paper. The Committee the next job is to calculate the annual turnover of the small business with the annual working days of the small business and after calculating the annual taxable income, the status of the small business from among the 19 statuses will be identified, calculates once the daily income of the small business. Once the status of the small business is identified, it will be obliged to pay the standard tax provided in the regulation for the next three years. Here the role of the tax authority is to calculate the daily income of the small business to know the annual turnover of the small business and to which status it lies and all other things are determined by the regulation.

II. Indicators Based Assessment

The Ethiopian income tax provides indicators-based assessment for five small business sectors only; these are public transport service, dry freight transport service,

tanker trucks, flourmills with single hopper and agricultural vehicles. The indicators that are used to estimate the tax liability of the businesses is specified in the Schedule attached with the Federal Income Tax Regulation. The Council of Ministries not only determines the indicators for taxation of such sectors but also the annual taxable income and the annual tax liability of the sectors. The tax authority does not have any say but to tax only the presumed taxable income with the presumed income tax liability provided within the Schedule. Even the tax calculation part is determined by the regulation what is the role of the tax authority for indicated-based tax assessment methods is only to collect as per prescribed by the regulation. However, the Minister shall revise the Indicator-Based Schedule at least every three years (Federal Income Tax Regulation No. 410/2017, Art 49(3). It is very clear that the tax authority does not have any say over the tax assessment of the five sectors as the indicators; annual taxable income and tax liability of the five sectors are determined by the Council of Ministries and are revised by the Minister at least every three years.

Employment Income Tax

What we want to discuss on this section is the obligation of the small business in relation to withholding of employment income tax and its related matters. Small business usually run by a single person that is the owner of the business. However, rarely small business employ employees in running their business and in that time the small businesses as any other business owners have the obligation to withhold employment income tax. Not only that but also self-employment tax is one obligation of the small businesses to declare such self-employment income tax with their respective tax obligation; with the business or rental tax of their business.

Obligation to Withhold Employment Income Tax

As it is mentioned above repetitively, the small businesses do not have the obligation to keep books of accounts for different policy reasons. In principle small business are not obliged but if, they want to keep books of account the allows for the voluntary keeping of accounting records for tax purpose, once they make accounting records the small business has the obligation to declare their tax liability based upon the financial statements of the accounting records. However, the tax law provides one exception to the discretion of the small business to keep or not to keep accounting records and other financial related documents. Art 59(2) of the income tax regulation obliges the small business to keep documents of withholding of employment income. Art 59(2) of the regulation states, "*Notwithstanding the provision of sub-article (1) of this Article, a Category "C" taxpayer employing a worker shall keep documents showing any amount of employment income paid to the employee and any amount withheld in tax from such income*" (Emphasis ours). This is the exception to general principle of the right to determine the small business themselves to keep or not to keep books of account. However, on the case of employment income tax the small business has the obligation to keep the necessary accounting records of payment of wages and withholding of the employment income tax. The income tax proclamation obliges all business irrespective of their size to withhold employment income tax (Federal Income Tax Proclamation Proc. No.979/2016, Art 88). How the withholding obligation is to be carried out is one of the sensitive area where tax avoidance issues arises. For large and medium size business and a small business

which voluntarily keeps books of account there is less avoidance and abuse of employment income tax but when it comes to a small business, which does not keep books of account the issue of collection and reporting of employment income tax, becomes very sensitive. This is due to the silence of the tax laws to oblige the small business to issue serially numbered receipts for the collection of employment income tax by withholding. This is not an issue in large and medium sizes businesses, as they are obliged to issue serially numbered receipts that are registered by the tax authority (Federal Income Tax Administration Proclamation, 2016, *Federal Negarit Gazzeta*, Proc. No. 983, 22nd year No. 103, Art 19(1). [Herein after, Income Tax Administration Proclamation Proc. No.983/2016], in collecting employment income tax by withholding. The printing presses are also obliged to make sure that such serially numbered receipts are registered and approved by the tax authority. This all-strict regulation of issuance and use of receipts is intended to minimize the abuse of the tax withheld that could be made by the business. The income tax administration obliges all business irrespective of their size to provide receipt of withholding tax to the payer pursuant to the directive issued by the ERCA. By the reading of Art 96 of the Tax Administration Proclamation all business including the small business which do not have the obligation to maintain books of account has the obligation to issue a serially numbered receipt for withholding employment income tax. However, the issue is different when it comes to the small businesses, which do not keep accounting records. This is even worse as the tax authority failed to force the small business to issue serially numbered receipts for collecting employment income tax from their employees by the schemes of withholding. The tax authority should wake up and enforce the provisions of the law and even creates awareness to the small businesses regarding their obligation of issuance of serially numbered receipts for collecting employment income. Moreover, the tax authority should also create awareness for the employees engaged with in small business to request for the receipt of the withheld employment income tax. Unless the tax authority regulated the issuance of the serially numbered receipt for collection of employment income by the small businesses, the employment income tax withheld by the small business may not be reported to the tax authority.

Large and medium size business has the obligation to report the employment income tax within 30 days to the tax authority. Art 97(1) of the Tax Administration Proclamation is a general provision, which obliges all business to submit the withheld tax to the tax authority within 30 days. However, Art 60(2) of the regulation states that the small business engaged in the transport services are obliged to report the withheld employment income tax with their principal business income tax. Due to this small business, which are engaged in transport, service has a different tax reporting of withheld employment income from all other business. The rationale behind this exception may be due to the inconvenience of the small business engaged in the transport service to submit the withheld employment income tax to the authority every 30 days from the time of collection of the employment income tax.

Self -Employment Tax

The new regulation of the income tax brings a new concept, self-employment tax. If a taxpayer derives, his car engaged in a small business transport service, such taxpayer

is obliged to pay his employment income to the authority together with its business income tax liability. The amount of the salary is the salary that could be paid had it been employed as driver. Art 49(4) of the regulation states, "*if a tax payer who is the owner of a vehicle, derives the vehicle he uses in the business of rendering transport services, the employment income tax that the deriver would have paid had the owner employed such deriver, shall be included in calculating the tax payable by the owner of the vehicle* (Emphasis ours)*."* This clearly indicates that the owner of the car who undergo small business by providing transport service has the obligation to withhold his own employment income tax and report it to the tax authority. As it is mentioned in the above, the vehicle owner has the obligation to submit such employment income tax together with the principal business tax (Federal Income Tax Regulation No.410/2017, Art 60(2). This self-employment income tax is applicable only to small business owners who are engaged in the provision of transport services and this raises the question of equity, which is one of the principal cannons of taxation. Why the other small business owners who run their business themselves are not obliged to pay self-employment tax is not clear? The policy reason behind the imposition of self-employment tax to small business owners of transport services is not clear.

Income Tax on Sale and Lease of Business Asset

As it is mentioned above, the gain on the sale of a business asset is one of the source of income that is taxable pursuant to the tax laws of the country (Federal Income Tax Proclamation 979/2016, Art 21(1) (b). The gain on disposal business asset and lease of business asset is part of the revenue that the tax authority takes into consideration in making the presumptive tax assessment methodologies; standard or indicator-based assessment. As the gain from disposal of part of the business asset is included in determining the tax liability of the small business taxpayer by presumptive tax assessment, no different question of taxation arises. Similarly, as the lease of part of the business asset is take into consideration in determining the tax liability of the small business taxpayer no problem of taxation arises. What is problematic is when the disposal of the business asset or the lease of the business asset is to the whole assets of the small business? The tax law is silent on the tax implication of the transfer of the whole business to third party by sale or the temporary transfer of the whole business to third party by lease. But the writers believe that as any other business the gain or loss of small business should be recognize at the time of disposal of the whole business and taxed accordingly. Similarly, the lease of the whole business asset should be taxed differently than the lease part of the business assets of the small business.

Windfall and Other Income Taxes

Windfall profit tax does not have a long history in the country. It is in 2010 that for the first time the windfall tax is introduced to tax the windfall profits of the financial institutions that is gained due to the devaluation of the Birr value by 20%. The new income tax proclamation also incorporates windfall income tax. As per the new income tax proclamation windfall, profit is defined as any *unearned, unexpected, or other non-recurring gain* (Federal Income Tax Proclamation 979/2016, Art 60(4). In addition, the Ministry of Finance and Economic Development is delegated to issue a directive as to the details of windfall income tax. The Ministry is delegated in particular

to determine the amount of income to be considered as a windfall profit, the business that are subject to windfall income tax, the manner and factors of assessment of wind fall and the date on which the windfall income tax becomes effective. The Ministry is also delegated to determine different rates of windfall income tax taking into consideration the nature of the businesses. So far, no windfall profit tax directive is issued and it is too early to discuss the detail implementation of this tax without having such directive. However, as any other business small business are liable to pay windfall income tax based upon the rate, which is to be specified by the Ministry.

Small businesses are also liable to pay other income taxes, which are not specified under the new income tax proclamation at a 15% flat rate. Art 63 of the income tax proclamation states, "*A person who derives any income that is not taxable under Schedule A, B, C, or the other Articles of this Schedule shall be liable for income tax at the rate of 15% on the gross amount of the income*." Other income tax is imposed to small business as any other business. However, what constitutes 'other income' is very vague. The legality element of tax may arise here; 'other income' is very broad and even difficult to demarcate it. The type of activity that could be taxed under the guise of 'other income' is not clear. We have tried to dig out if there are 'other incomes' which are taxed by 15% flat rate, but not yet other income tax in practice even the tax officers are new with this concept. This also violates one of the cannons of taxation, which is cannon of clear, and predictability of taxes. We think that the legislator intention is to tax all incomes whether they are prescribed under the new income tax law or not. However, the intention of the legislator my not be achieved as far as the provision of the law are vague and difficult for implementation. The legislator does not give a legislative delegation to the Council of Ministry or to the tax authority to issue a regulation or directive for the proper implementation of this vague provision; it only gives a general legislative delegation in the 'Miscellaneous Provision' section of the proclamation (Federal Income Tax Proclamation 979/2016, Art 99(1) & (2). In dead, the legislative delegation given to the Council of Ministries and tax authority in the 'Miscellaneous Provision' section of the proclamation may create an opportunity to issue a regulation and or directive for the effective implementation of the 'other income tax'.

What will happen if windfall profit is there before the issuance of the directive? Should it be taxed by 'other income taxes rate' 15% flat rate? Alternatively, no tax until the issuance of a directive? We believe that pursuant to the new income tax proclamation there is no any income, which is not taxable. Where the clear provisions of the tax law do not provide for the taxation of an income the inclusive 'other income taxes' provision applies and taxed such income at a 15% flat rate.

Aggregation of Income in Small Business

Aggregation of income of taxpayers is one of the means to achieve horizontal equity within the taxpayers. The separate treatment of incomes of taxpayers defeats the progressive tax system and for this reason, countries incorporate aggregation of income of a single individual taxpayer to ensure the equitable treatment among taxpayers. Dr. Tadesse Lencho states in his dissertation the following important points as to the need of proper implementation of the aggregation of income of taxpayers to ensure equitable tax treatment of citizens.

The rule of aggregation is ostensibly there to ensure at least intra-scheduler

horizontal equity of persons who derive income from one business and persons who derive income from multiple businesses. Since the tax rate structure for individuals is progressive, the requirement of aggregation is tremendously significant in ensuring the equitability of the income tax system at least among persons who are subject to the same schedule (Tadesse, 2014).

To ensure the equitable treatment of taxpayers the former income tax proclamation incorporates the aggregation of incomes of taxpayers for tax purpose. Art 70 of Proc No 286/ states; A taxpayer who derives income from different sources subject to the same schedule shall be assessed on the aggregate of such income.

Here from the reading of this article it is clear that aggregation of different source of income is only possible when the income is derived only from a same schedule, if it derives from different schedules the aggregation of income does not apply. Before the introduction of TIN, it was very difficult to think the aggregation of income of taxpayers who get different sources of income which lies in the same schedule but after the introduction of TIN taxpayers easily identifies if they have another source of income since they are obliged to get a license by one TIN for all of their business. And the new income tax proclamation incorporates similar provision for the aggregation different sources of income of the same schedule to be taxed by aggregation. Art 8(2) of the new income proclamation states;

Subject to Article 64(2) of this Proclamation, a taxpayer that derives income from different sources subject to tax under the same Schedule for a tax year shall be taxable under the Schedule on the total income for the year. What is different from the former income tax law is it added only that the different sourced income should be within the same tax year. As per the new law, there are three requirements for aggregation of income for tax purpose: *first,* there should be two or more business of a taxpayer; *second,* the different source of income or the businesses must lie within the same schedule; and *third*, it should be within the same tax year. However, Schedule "D' taxes are not subject to the aggregation of income for tax purpose. The main reason behind the exception is Schedule 'D' taxes are final taxes, which are not taxes is stated under Art 64(2) of the proclamation, "*Tax imposed on income under this Schedule shall be a final tax on the income*."

Small business taxpayers are not excluded from the aggregation of income of different sources of income, which lies under the same Schedule. As it is stated in the above, small business taxpayers are the small and micro enterprise and sole proprietors whose annual turnover is not exceeding 500, 000 Birr. Small businesses are Category 'C' taxpayers, which are either Schedule 'B' or Schedule 'C' business whose annual turnover is not exceeding 500,000Birr. Aggregation of income is only possible when the incomes are derived from the same Schedule which is to mean that small business which have different sources of income from either Schedule 'B' or schedule 'C' have the obligation to aggregate their incomes under the respective Schedules and pay their tax liability by the aggregated income.

As it is stated in Taddese Lencho dissertation, the tax officers were not allowing the aggregation of income of small business pursuant to the provisions of the former income tax law. The tax officers believe that the aggregation of small business incomes with the large and/or medium size business enables a taxpayer to avoid tax. As it is cited by Taddese Lencho, Demisse gebre submitted an aggregated income of his hotel and his

small business transport service to Lideta Sub- City Revenue Bureau but the Bureau denied the declaration of income by aggregating the income of medium or large size business and small businesses by arguing that the aggregation of the income of a business who have the obligation to keep books and account and small business is not allowed unless the aggregated income tax liability is greater than the tax which could be collected by separate treatment of the businesses. And finally, the case submitted for review to the Federal Supreme Court Cassation Division and the Cassation Division decided the case in favor of the tax- authority (As cited by Taddesse Lencho Federal Court Cassation File No. 58620, Sene, 02, 2003E.C. unpublished, in Amaharic). This all shows that before the coming of the new income tax proclamation, even though the law of aggregation of income applies to all businesses irrespective of their size but in practice, the income of small business was not aggregated in the earlier practices.

Tax Treatment of Small Business on Termination

Any business which ceases to run taxable activity (Activity is to mean any business or other activity giving rise to income subject to tax under the tax law but excludes withholding tax as a final tax (Art 23(6) ITAP), have the obligation to notify to the tax authority as to the termination of its business activity within 30 days of the date that the taxpayer ceased to carry on the activity (Federal Income Tax Proclamation No.983/2016, Art 23(1). The taxpayer who ceased the taxable activity has the obligation to file and pay its tax liability within 60 days after the taxpayer ceased to carry on the business activity or lesser period as the authority requires by notice. The taxpayer is obliged to file and pay both the tax liability of tax period in which the taxpayer ceased to carry on the activity and for any prior tax period for which the due date for filing has not arisen (Federal Income Tax Administration Proclamation No.983/2016, Art 23(2). If the taxpayer is to leave Ethiopia and his absence is unlikely to be temporary, the taxpayer has the obligation to file the tax liability of tax period and for any prior tax period for which the due date for filing has not arisen. The leaving taxpayer has the obligation to pay or make an arrangement satisfactory to the authority for the payment of tax due the tax filed by advance tax declaration. If the tax authority believe that a taxpayer will not file and pay his tax liability by advance tax declaration means, it has the discretion to order by notice to file and pay for both taxes that are due in the tax year and for the tax period would otherwise be due. In addition, if the taxpayer who is ceasing his business or leaving this country without ceasing the taxable activity is subject to more than one tax, the taxpayer has the obligation to file and pay such taxes separately.

Even when the business or any taxable activity is terminated due to the death of the taxpayer, it is liable to pay tax unless the Minister relief from the payment of tax. The Minister may relief the payment of tax if it causes serious hardship to the dependents of the deceased taxpayer. This includes the relief of the whole tax or part of it or the penalty and or interest of late payment of the tax of the deceased taxpayer. The Council of Ministries is delegated to determine the limits of the relief to be granted to a taxpayer or to its heirs by a regulation. In addition, the Council of Ministries determine that the maximum amount of relief, which can be granted by the Minister, is ten million Birr (Federal Income Tax Regulation No 407/2017, Art 7). Whatever the case a small business that is terminating due to the death of the taxpayer is in principle liable to pay tax at the time of termination but as an exception, it may be relieved from tax liability by the

decision of the Minister due to the hardship of the dependents of the deceased taxpayer. However, the transfer of the small business as a business asset to the heirs does not constitute a disposal of asset and there is no recognition of gain or loss at the time of transfer of the business asset to the executor or the beneficiaries of the succession (Federal Income Tax Proclamation No. 979/2016, Art 71(1) (b). For this reason, no tax due to the transfer of business asset to the beneficiaries of the succession.

The tax laws of Ethiopia are silent as to the tax treatment of divorce of spouses. In dead at Art 71(1) (a) of the income tax proclamation states that the division of common property of spouses due to divorce does not constitute as a disposal of asset or business asset and due to this there is no recognition of gain or loss at the time of division in kind of common property of spouses or at the time of sell of the common property for settlement purpose. For this reason, no tax is imposed upon the termination of the small business due to divorce of the spouses.

Post-Cessation Income Tax

As any other businesses small business are also subject to post-cessation income tax. This tax is a new type of income tax, which is incorporated in the new income tax proclamation and regulation; the earlier income tax laws of the country were not imposing this type of income tax to business. The reading of Art 74 of the income tax proclamation shows that post-cessation income tax applies for gains that are recognized after the cessation of the business. There are two requirements to impose post-cessation income tax to any business; first, any amount is derived by a taxpayer in a tax year from a business, activity, or investment that had ceased before the amount was derived (Federal Income Tax Proclamation No. 979/2016, Art 74(1)(a)); and second, if the amount had been derived before the business, activity, or investment ceased it would have been income subject to tax under this proclamation. The post-cessation gain is taxed pursuant to the proclamation as the business, activity, or investment had not ceased at the time the amount was gained. The post-cessation expenses which are incurred to derive the post-cessation gain are deductible to the extent allowed in the income tax proclamation. As it is stated above, small businesses are subject to post-cessation income tax as Art 74 of the proclamation applies to all business irrespective of their size and as there is no exclusionary provision that exempts small business from this type of tax under the proclamation.

Turn-over Tax

Any business which has annual turnover not exceeding 500,000 Birr has the obligation to pay turn-over tax. The very purpose of turnover income tax is ensuring the equitable distribution of tax burden among citizens. It is due to the cannon of equity and economy that turnover tax comes to birth. The preamble of the turnover tax proclamation states, "… *an equalization turnover tax imposed on persons not registered for value-added tax allows them to fulfill their obligations and also enhances fairness in commercial relations and makes complete the coverage of the tax system*." From the reading of the preamble, the very reason of incorporation of turnover tax is not to enhance the revenue of the government rather to equalize the taxpayers and protect the VAT registered taxpayers. The preamble also states that it is infeasible to register and oblige the business with annual turnover not exceeding 500,000Birr to VAT tax. As

the annual turnover of small business is below 500,000Birr, they are not obliged to register VAT but are obliged to pay TOT.
However, the VAT proclamation provides the voluntary registration of business to VAT though their annual turnover not exceeds 500,000 Birr.

Voluntary Registration of VAT

As it stated above the rationale behind the birth of turnover tax is equalize the tax-burden of the taxpayers. For this reason, when a taxpayer wants to pay the main tax (VAT) instead of the equalizer tax (TOT), it is encouraged to voluntarily registration of the main tax (VAT). It is for this reason that the Ethiopian VAT proclamation that allows the voluntarily registration of the small business whose annual turnover is below 500,000Birr. Voluntarily registration of VAT is possible only where 75% of the supplied goods or rendered services is regularly made to VAT registered persons (Value Added Tax Proclamation, 2002, *Federal Negarit Gazeta*, Proc. No. 285, 8th Year, No. 33, Art 17. [Here in after VAT Proc. No.285/2002]. There are two requirements for voluntarily registration; first, regular and non- interruptible supply or rendition of goods or services respectively; and second, at least 75% of the supply and/or rendition of service should be made to a VAT registered person. Once the small business voluntarily registered to VAT, it does not have the obligation to pay turnover tax. Art 3 of the Turnover Tax Proclamation States, "… *Turnover Tax shall be payable on goods supplied and services rendered by persons not registered for Value Added Tax*." The implied meaning of this indicates that once the small business voluntarily registered VAT, it does not have the obligation to collect and transfer turnover tax to the tax authority. Once the small business registered for VAT, the governing law is the VAT proclamations. To say a few about the VAT liability of a small business voluntarily registered for VAT, the small business pays by balance of what he has collected in selling goods and services and what he has paid in purchasing goods and services.

Small Business Not Registered to VAT but Obliges to Pay TOT

The small business, which do not voluntarily registered to VAT, are obliged to pay turnover tax. Turnover tax is collected on the supply of goods and rendition of services in the course of furtherance of taxable activity (Turnover Tax Proclamation, 2002, *Federal Negarit Gazeta*, Proc. No. 308, 9th Year, No.21, Art 2(3) [Here in after TOT Proc. No.308/2002]. Similar to the vat tax, the turnover tax exempts some supply of goods and rendition of services from the obligation of turnover tax but the turnover tax does not incorporate zero tax rate, which makes it different from the vat tax rates. The supply of goods and rendition of services provided under the vat proclamation and turnover tax proclamation have some differences particularly exemption and zero tax rate activities of vat taxable transaction and the exemption of turnover tax law. Turnover tax has two rates 2% to on goods sold locally and services rendered by contractors, grain mills, tractors and combine-harvesters and 10% on other services rendered (Proc. No. 308/2002, Art 4 TOT).

Why the law provides different rates is not clear and this may raise the equitability of turnover tax among the taxpayers. It is very hard to know the intention of the

legislator why it provides different tax rates but we can that the legislator may believe that the 2% rate is applied for business, which has low return when it is compared with the 10% taxable businesses.

Small businesses are obliged to pay turnover tax based upon the total annual gross receipt of their transaction. Gross receipt is the total annual revenue that is collected by the small business by supplying goods or rendition of services and without reduction of expenses. As small businesses are not obliged to keep accounting books and records the expenses incurred in gaining income shall be taken into account at the in determining the income of the business by standard assessment or indicator-based assessment. The income of the small business, which is calculated to determine the income tax liability of the business, are the base for calculating the turnover tax liability of the small business. The small business owner has the obligation to file and pay its turnover tax liability by himself (Turnover Tax (Amendment) Proclamation, 2008, *Federal Negarit Gazeta*, Proc. No. 611, 15th Year, No. 8, Art 2(2) [Here in after TOT Amendment Proc. No.611/2008]. The self-declaration of tax liability of the small business may be reviewed by the tax authority where the tax authority believe that the taxpayer understated its tax obligation (Art 11(1) TOT Proc. No. 308/2002). Where the small business does not file and pay his tax liability totally there is period of limitation to claim turnover tax against the small business taxpayer (Proc. No. 308/2002, Art 11(6) TOT).

Excise Tax

Like any other businesses small businesses engaged in the production or importation of luxurious and basic goods which are demand inelastic or hazardous goods are obliged to pay excise tax (The preamble of the Excise Tax Proclamation). The excise tax is applied only to the production and importation of goods listed in the Schedule attached to the excise tax proclamation and its subsequent amendments (Excise Tax Proclamation No. 307/2002. Excise Tax Proclamation, 2002, *Federal Negarit Gazeta*, Proc. No. 307, 9th Year, No. 20, Art 3&4 [Here in after Excise Tax Proc. No.307/2002]. In addition, the base of computation of the excise tax is cost of production for locally produced goods and the CIF for imported goods. The obligation to pay the excise tax lies with the producer for locally produced goods and with the importer for imported goods. When small businesses are engaged in the production of goods, which are specified under the attached Schedule, they are obliged to pay excise tax pursuant to the rate specified in the schedule. The time of payment of excise tax is at the time of clearance for imported goods and not later than 30 days from the date of production for goods produced locally.

Excise tax is assessed based on the books and records maintained by the businesses but in our case the small businesses do not have the obligation to keep accounting records and for this reason the excise tax liability of small businesses is assed based on the daily income assessment made for the purpose of business income tax. Once the annual taxable income of the small business is determined from the daily income assessed in accordance with Directive No. 123/2009, the excise tax will be calculated based on the annual taxable income of the small business. Similar approach will be applied for a handcraft small business, which is engaged in the production of traditional clothes.

The other issue that arises in relation to excise tax is time pf payment.

Though the excise proclamation obliges the businesses which keeps accounting records to pay the excise tax not later than 30 days from the date of production, the payment time for small business shouldn't be different. As we have tried to explain in the above, the small businesses pay their TOT on a yearly basis based on the annual taxable income, similarly small businesses should pay their excise tax obligation based on a yearly basis.

Tax Administration Issues of Small Business

Essentially the taxation of small business is subject to arbitrariness by the fact that the tax is determined by the human estimation of the turnover or other else. Therefore, this fact necessitates good tax administration in case of small business. Good tax authorities shall take due care while assessing the annual turnover of the taxpayer. It is vital to have adequate information to assess and determine the taxable income in fair and reasonable manner. Therefore, every action of the authority will determine the final output; issues like the personality of assessors, number of the assessors, criteria to select the assessors, decision making procedure, participation of the trader's representative in the assessment, the grievance handling procedure, composition and impartiality of grievance handling committees and other issues.

As per article 8 of Addis Ababa City Administration Category "C" Taxpayers Daily Revenue Estimation, Information Collection and Implementation Directive (Addis Ababa City Administration Category "C" Taxpayers Daily Revenue Estimation Information Collection Implementation ERCA Directive, 2017, No. 123. [Here in after, Category "C" Taxpayers Daily Revenue Estimation Directive], there are eight committees established in order to conduct the assessment. This committee includes committee average daily income assessing committee, inspection committee, awareness creation committee, information evaluator committee and objection review committee. Regarding. The law provides criteria's for nominating the members; except some differences, the law recognizes some common criteria for the selection of member of each committee.

However, from the criteria provided under the directive, the inclusion of having advanced development thought as criteria for the selection of members of the above committees does not be fair. This criterion is to indicate the political commitment of the would-be member of each committee. Therefore, we argue that the criteria will make the committee partial and in effect would affect the overall assessment process.

Moreover, regarding to the composition of average daily revenue assessment committee the law fails to include trade representatives. In this regard, the experience of Amhara Regional State is outstanding. According to an interview the writers had with one of the tax officers of Amhara National Regional State Revenue Authority (Interview with Ato Zemenu Abebe, Tax Education Officer of the Amahara Revenue Bureau, *on the issue of small business tax administration*, Tahisas 27, 2010E.C), chamber of commerce is included as member of the assessing committee.

Coming to the objection review mechanism, as per article 23 of Addis Ababa City Administration Category "C" taxpayers Daily Revenue Estimation, Information Collection and Implementation Directive no. 123/2009, a review committee is established in order to handle an objection on the decision of the assessment committee. This review committee is defined under article 2/ 17 of the above directive as committees

to be established at the word and branch office of the tax authority to handle any objection that will arise from the act of the assessors notwithstanding those taxpayers has the right to bring the objection as per article 54 of the tax administration proclamation.

However, the law enacted by ERCA for the Establishment of the Review Department and to determine its Working Procedure clearly excludes the application of this law for the case at hand (Directive for the Establishment of Tax Decision Objection Review Department and Determination of working procedure, ERCA, 2017, No. 127. [Here in after, Directive for the Establishment of Tax Decision Objection Review Department). It also provides the criteria for selecting the member of review committee (Category "C" Taxpayers Daily Revenue Estimation Directive, Art 23). However, of all the criteria's listed out under the law, still the law sets having advanced development thinking as a criteria to select the member of objection review committee (Directive for the Establishment of Tax Decision Objection Review Department Art 2(6)&(7). The inclusion of these criteria deteriorate the impartiality of the review committee.

Moreover, the taxpayer has only a single appeal option available under the assessment implementation directive. The objection can be brought before the word objection review committee and one more appeal only to the local ERCA branch office review committee. Can we take the decision of the branch office review committee as final? If so, what will be the remedy for the taxpayers who are aggrieved by the decision of the branch office review committee knowing that the review department established by ERCA as per directive no. 129/2017 is excluded from entertaining tax decision defined under article 2/ 34/ A/ of the tax administration proclamation that is cases regarding to presumptive assessment. Besides, the average daily income assessment directive fails to regulate procedural issues like how and what should be included while the objection is brought, procedures for rendering decision, content of the decision, period of limitation, who shoulder burden of proof and other procedural issues.

CONCLUDING REMARKS

The current tax laws and practices on small business taxation have many drawbacks and we have tried to organize the recommendations that the tax authority should take to address the ongoing implementation problems as follows:

First, the power to revise the Schedules of Standard Assessment and Indicator-Based Assessment is given to the Minister as an individual not as an institution. As per the income tax regulation, the Minister can review and write a circular letter to the ERCA for implementation at least every three years. This is impracticable as a single individual, the Minister, lonely without the involvement of experts cannot adequately revise the Schedules. The delegation given to a single Minister is improper, it should be given to the Ministry at least, and the composition and qualification of the committee, which could review the Schedules, should be properly named under the regulation.

Second, in large and medium size businesses, the pre-trading expenditure of such businesses is taken into consideration in determining the taxable income of such businesses but in small businesses, the pre-trading expenditure does not take into consideration in calculating the taxable income of the small businesses. In dead the life-span of the business is one of the indicators for the assessment of daily income of the small businesses but this is not enough and even in the Indicator-Based Assessment

Schedule the pre-trading expenditure of the five sectors of the business is not taken into consideration in calculating the taxable income in which their tax liability is determined by the Second Schedule of the income tax regulation. The failure to take into consideration pre-trading expenditure in small business taxation is one of the drawbacks of the current regulatory framework.

Third, excise tax is not collected pursuant to the provisions of the Excise Tax Proclamation. In practice, the small businesses, which are engaged in the production of luxurious or hazardous goods, are not paying excise tax though the law obliges every business, which is engaged in the production of the luxurious or hazardous goods to pay excise tax regardless of the size of the business. The excise tax law obliges every business to pay its excise tax liability pursuant to the accounting records but in case the where tax authority believe that the taxpayer underestimated its excise tax liability, it can assess the tax liability of the taxpayer by itself and notify to the taxpayer to pay accordingly. The problem is small business are not obliged to keep accounting records from the very beginning and this is addressed by the Daily Income Assessment Directive No. 123/2009E.C and as per Art 7(1) of the directive the annual taxable income assessed shall be used for the collection of indirect taxes including the excise tax; as excise tax is the family of indirect tax. But in practice the tax-authority is not collecting excise tax from small businesses.

Fourth, small business which are engaged in the provision of transport services are obliged to pay self-employment tax if the owner himself derives the car himself but no such type of self- employment tax to other small businesses and this rise the equitability of the tax system. The separate and discriminatory treatment discourages the transport service sector and violates the cannon ofequity.

Fifth, no recognition of loss in small business taxation though the small business may get loss in doing its business. The tax law always presumes that small business are profitable only and this is a big drawback and even does not take the market fluctuations as the daily income assessed once applied for the next three or five years without changing the taxable income though there are changes in annual taxable income due to changes in the market.

Sixth, aggregation of income of small business with the other medium or large size of business of the owner is not properly handled in Ethiopia. As it has tried to explain above the standing of the tax-authority was against the aggregation of the income of the small businesses with other business incomes of the owner. Even, the Cassation Bench of the Federal Supreme Court gave a ruling against the aggregation of the income of small business with other business incomes of the person. Both the former and the new income tax proclamation does not have any difference on the issue of the aggregation of income, but what we have observed is the standing of the tax authority is changed and currently the income of the small businesses is aggregated with the income of other businesses of the person if they lie within the same Schedule. For federal taxpayers the income all business irrespective of their size is aggregated and determine the tax liability of the person running different businesses (Interview with Ato Minale Atalay, Customer Tax Education Officer of the ERCA Bahir Dar Branch, *on the issue of small business tax administration*, Tahisas 27, 2010E.C).

Seventh, post-cessation income tax is not collected pursuant to the provisions of the income tax law. Post-cessation income tax is incorporated in the new income tax

proclamation to tax that business who recognizes profit after they cease business. The income tax law not only recognizes post-cessation profit but also recognizes post-cessation tax and the taxpayer is expected to pay tax though it has ceased business if it recognizes profit due to the business, which is ceased. Small businesses are not different in this case, and are obliged to pay post-cessation income tax. The federal taxpayers are using the post-cessation income tax to abuse it to sale or transfer an immovable or a vehicle that was owned by the name of the ceased business. The true meaning and intention of the post-cessation tax is diverted and used for abusive purpose. We recommend that the ERCA should not revive the license and the TIN of the ceased business for collecting post- cessation income tax, as the proclamation not mandates for the revival of the license and TIN of the ceased business to collect post-cessation income tax. We also recommend that the post- cessation income tax should not be used for abusive purpose rather those who truly recognize gain after of the cease of the business should only pay tax by the scheme of post-cessation income tax. Those who come to sale or transfer to third party an immovable and or vehicle owned by the ceased business should pay tax with penalty as they were intently hide the material fact at the time of cessation of the business.

Eighth, the Income Tax Proclamation does not properly address the tax implication of the death of the taxpayer, whether the provisions provided for tax treatment of cessation of a business applies by analogy or not is not clear. The tax treatment of the cessation of a business ceased due to the death of a taxpayer should be adequately addressed by amending the provision of the Income Tax Proclamation. However, when we asked what is done on the practice, the standing of the ERCA Bahir Dar Brach and the Amhara Revenue Bureau is far different. The standing of ERCA is when a large or medium size business is ceased due to the death of the taxpayer, the heirs of the deceased taxpayer bring the evidence for the death of the taxpayer and the tax liability of the deceased taxpayer is write-off. In addition, the standing of the Amhara Revenue Bureau is when a business is ceased due to the death of the taxpayer, the tax liability of the deceased taxpayer is calculated up to the date of his death and the heirs are obliged to pay accordingly. The tax treatment of small business up on the death of the taxpayer is the same with the other business and are obliged to pay the tax liability. But what is different is the tax liability of medium and large size business up on death of the taxpayer is calculated by auditing the accounting records and the tax liability of deceased small business taxpayer is determined by taking into account the number of months it stay in business within thetax year.

Ninth, the other loophole that may lead to the avoidance and or abuse is the withholding of employment income tax by small businesses. As we have stated earlier though the tax administration proclamation obliges all business to issue serially numbered receipts for any withholding tax but in practice the small businesses are not issuing serially numbered receipts that could be used to know the real employment income withhold from their employees. We recommend the tax authority to issue a directive as to the way small businesses should withhold employment income tax and give receipt for the employees. Another that may raise in relation to employment income tax is the legality of 'experience letters' wrote by private businesses entities, some institutions which wants to employ workers request the competing employees to bring an evidence that an employment tax is paid to the tax authority. This is intended to tackle

forged experience letters that may come from some irresponsible private business entities. However, the ERCA tax officer Ato Minale Atalay told us that the ERCA is not responsible to write a write to every worker of an institution who pay employment income tax by withholding of its employer. This is explained in a circular letter and the letter of experience wrote by a private institution should be accepted without any prerequisite of a letter of payment of employment income from the tax authority. However, we believe that the circular letter, which relieves the tax authority from giving letter evidencing the payment of employment income, creates a loophole for forged experience letters. For this reason, the tax authority should repeal the circular letter and works against forged experience letters.

Tenth, regarding tax administration of small business, there are many problems that should be addressed for instance the composition of committees established to administer the overall assessment of average daily income is not participatory and impartial by the fact that the trade representatives are failed to be represented and also there are so politicized criteria of selecting the members of committees. Moreover, procedural issues like how and what should be included while the objection is brought, procedures for rendering decision, content of the decision, period of limitation, who shoulder burden of proof are not regulated which in effect open the door for maladministration.

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LAW

THE LEGAL POLITICS OF THE DISSOLUTION OF MASS ORGANIZATIONS: AN ANALYSIS OF GOVERNMENT REGULATION IN LIEU OF LAW NO. 2 OF 2017 (PERPU ORMAS)

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Abstract: *Government Regulation in Lieu of Law No. 2 of 2017 (Perpu Ormas) is contrary to the rule of law, especially in relation to the principle of due process of law. Under this Perpu, the dissolution mechanism of mass organizations carried out directly by the government without going through the judicial process potentially leads to abuse of power and is contradictory with the basic principles of the rule of law. In a country with the rule of law, which respects human rights, the dissolution of any organization should be in accordance with the due process of law. Government restrictions on freedom of association and assembly should be measured by considering the legitimacy and social needs of the level of restrictions on the rights, which is the duty of the court and not the government. In addition, the grounds for dissolving mass organizations as regulated in Law No. 16 of 2017 are dangerously multi-interpretative. These multi-interpretative grounds make the government able to easily dissolve any existing mass organization under the pretext of conflicting with Pancasila, and so on. The legal politics behind the issuance of Perpu Ormas cannot be separated from government's political interest to exercise control over its political opponents and to maintain the regime from pressures coming from its political opponents, particularly Islamic groups that are in opposition to the government. It appears that the democratic process in Indonesia does not necessarily have a positive impact on the protection of human rights in the country.*
Keywords: *Dissolution of mass organizations, human rights, freedom of association and assembly, rule of law, legal politics, Hizbut-Tahrir Indonesia, constitution, democracy.*

INTRODUCTION

The democratic process in Indonesia does not necessarily have a positive impact on the protection of human rights in the country. Normatively, the amendments of the Indonesian 1945 Constitution recognize human rights as an important part of the

constitution, but in practice, various human rights restrictions arbitrarily imposed by the state continue to occur today. One serious problem in limiting the human rights of citizens happening today is the restrictions on their freedom of association, assembly, and to organize.

The issuance of Government Regulation in Lieu of Law No.2 of 2017 concerning Amendment to Law No.17 of 2013 on Mass Organizations (Perpu Ormas) which has now been ratified by the Parliament into Law No.16 of 2017 concerning the Establishment of Government Regulation in Lieu of Law No.2 of 2017 concerning Amendments to Law No.17 of 2013 on Mass Organizations has caused resistance among the public. Perpu Ormas is now considered a threat to protection of freedom of association and assembly in Indonesia.

The government's rationale for issuing Perpu Ormas is that there are urgent, emergency situations and conditions due to the existence of a number of mass organizations in Indonesia considered being in conflict with the State's ideology, Pancasila, and which embrace radicalism, consequently endangering the integrity of the state. In addition, the government also perceived Law No. 17 of 2013 on Mass Organizations to be no longer sufficient to prevent the spread of ideologies that are contrary to the Pancasila and the 1945 Constitution (https://news.detik.com/berita/d-3557090/ini-alasan-pemerintah-terbitkan-Perpu-ormas).

The implication of the issuance of Perpu Ormas is the dissolution of Hizbut-Tahrir Indonesia (HTI). On July 19, 2017, the government officially dissolved HTI through the revocation of its legal entity status based on the Decree of the Minister of Law and Human Rights No.AHU-30.AH.01.08 of 2017 concerning the Revocation of the Decree of the Minister of Law and Human Rights No.AHU-0028.60.10.2014 on the Ratification of the Establishment of the Legal Entity of the Association HTI (http://nasional.kompas.com/read/2017/07/19/10180761/hti-resmi-dibubarkan-pemerintah).

In addition, the government is currently reviewing and discussing a ban on the Islamic Defenders Front (Front Pembela Islam or FPI). President Jokowi said in an interview with the Associated Press (AP) that it was "entirely possible" to ban FPI in the last five years in office. Jokowi also stressed that the prohibition of FPI might be done if FPI is not in line with the ideology of the state (Pancasila) and threatens the security of the Republic of Indonesia (https://news.detik.com/berita/d-4642436/jokowi-bicara-pelarangan-ormas-fpi-ini-bukan-soal-yuridis-tapi-politis).

The country's efforts in dealing with intolerant groups are indeed necessary. However, the government's firm steps in doing this would still have to be within the rule of law and the corridors of a democratic country, which respect human rights. The wrong step in addressing this problem of radicalism will lead to an arbitrariness that potentially threatens the freedom of association and assembly in Indonesia.

This paper will explain the legal politics of the dissolution of mass organizations that are based on the regulations within Perpu Ormas as well as their implications on human rights. Before discussing the Perpu in details, this paper will first discuss the essence of freedom of association and assembly in a democratic country and the possible limitations on human rights in a democratic country as a basis for dissecting and analyzing the Perpu Ormas itself.

LEGAL MATERIALS AND METHOD

The method and type of research used in this paper are normative law research, which is similar to a doctrinal research. Such legal research puts legal studies as a normative study, which examines the law as a normative system with a legal dogma or legal system. The approach used in this paper is statute approach, which is done by examining laws and regulations related to freedom of association and the dissolution of mass organizations, as well as case approach, which is done by examining a specific case related to the issue of limitations on freedom of association, such as the dissolution of mass organizations by the government (Amirudin & Asikin, 2016).

In addition, this paper further analyzes the perspective of legal politics behind the issuance of this regulation. The law is seen as a political product, which perceives the law as a formalization or crystallization of political interests that interact and compete with each other (Mahfud MD, 2009). The law is not autonomous or free from intervention of political interests. For that reason, the issuance of Law No. 16 of 2017 on Mass Organizations cannot be separated from the political interests surrounding it, which are responsible for the emergence of the Law in the first place. The study of legal politics encompasses three things: First, the state policy (official line) regarding the laws, which will be enforced in order to achieve the political objectives of the state. Second, the political, economic, social, and cultural backgrounds behind the formulation of a legal product. Third, the implementation of law enforcement ((Mahfud MD, 2009).

RESULTS AND DISCUSSION

Freedom of Association and Assembly and the Limitation of Human Rights

In general, freedom of association can be interpreted as "the right of people to be together and to form and join organizations that serve a common, lawful purpose (Rohde, 2005)," while freedom of assembly is defined as "the individual rights or ability of people to come together and collectively express, promote, pursue, and defend their collective or shared ideas" (McBride, 2005). Freedom of association and assembly (often abbreviated as FOAA) are part of human rights protected by various national and international legal instruments. In the perspective of international law, freedom of association and assembly are protected among others by the Universal Declaration of Human Rights (article 20), International Covenant on Civil and Political Rights (articles 21 and 22), European Convention on Human Rights (article 11), and the American Convention on Human Rights (articles 15 and 16).

While in the context of national law, freedom of association and assembly which are guaranteed in the International Covenant on Civil and Political Rights (ICCPR), are protected by Indonesian law as Indonesia has ratified the ICCPR through Law No. 12 of 2005 on the Ratification of International Covenant on Civil and Political Rights, especially article 21 relating to freedom of assembly and article 22 paragraphs (1) and (2) regarding freedom of association.

The freedom of association and assembly are often referred to as an "extension" of freedom of speech and expression (Bresler, 2004), as they are an important part of a person's right to express themself. In expressing themselves, people as political beings

(*zoon politicon*) tend to gather (assemble) and unite themselves with other people who have the same ideology or objective and thus forming a union (association).

Freedom of association is substantial in preventing the establishment of an authoritarian or a tyrannical state. It has become "a necessary guarantee against the tyranny of the majority" (Tocqueville, 2000). Freedom of association also provides two important instruments to a stable democracy, which are "social reciprocity" and "citizen efficacy". Both of these things, if integrated into the cultural system of a society, are effective tools in countering various disruptions to the state (Bresler, 2004).

In a democratic life, freedom of association and assembly are a vessel or a tool for a person (citizen) to express himself or herself and interact with other elements of the society (freedom of association and assembly in relation to freedom of speech and expression). In essence, democracy means a political freedom to speak, to organize, as well as freedom of the press. In a democratic country, everyone has the opportunity to express himself or herself based on his or her rights as a citizen, both the right to speak and to organize. Without these two rights, democracy simply does not work (Sorensen, 2003).

Although it has an essential meaning, freedom of association is not an absolute human right. In human rights perspective, there are two classifications of human rights: derogable rights and non-derogable rigths. From the perspective of international law, certain human rights are considered to be so important that they cannot be reduced under any conditions or circumstances and categorized as non-derogable, which is based on the principle of peremptory norm or jus cogens (ius cogens) in international legal norms.

In the International Covenant on Civil and Political Rights (ICCPR), there are four human rights that are classified as non-derogable: 1) the right to life, 2) the right to be free from torture and other inhumane or degrading treatment or punishment, 3) the right to be free from slavery or servitude, and 4) the right to be free from retroactive application of penal laws. On the other hand, other human rights that go under "derogable" classification include the right to liberty and security, freedom of association and assembly, as well as freedom of speech and expression, which means that these rights are not absolute and can be limited by the state in certain situations and conditions.

In human rights perspective, the limitation of some human rights is possible in certain circumstances or situations. Based on the International Covenant on Civil and Political Rights and the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, the limitation of human rights can indeed be imposed, although it must be done under very strict rules: if it is necessary in a democratic society, it must be prescribed by law, and it must be done on the basis of national security, public health, public safety, public order, public morals, as well as the rights and freedoms of others.

The government's limitations on freedom of association and assembly must be measured by considering the legitimacy and social needs of the limitation itself with the level of limitations on these rights, which is the duty of the court (Bresler, 2004). In a country with the rule of law like Indonesia, any limitations on the rights of citizens must be carried out through due process of law to guarantee the objectivity as well as to prevent arbitrariness of the state. The state as an entity that has legitimacy coming from the people (citizens) thus has a moral and constitutional obligations to protect the rights of its citizens.

The limitation of human rights, as mentioned earlier, must be based on the principles of legality, necessity, and proportionality. The principle of legality requires that any limitation or restriction on human rights by the state to be based on the law (prescribed by law). This means that such limitations have passed through the legislative process in parliament and thus having the legitimacy which comes from the people (citizens) themselves, not is not based on the arbitrariness of the state. On the other hand, the principle of necessity states that any limitation of a right must be necessary in a democratic society. This means that any limitation of human rights are only justified if they are needed to maintain the survival of a democratic society. Furthermore, the principle of proportionality requires any limitation or restriction on human rights to be in proportion to the purpose of the limitation itself. In Indonesia, a limitation of this freedom can be done by the state for certain reasons as intended in article 28J of the 1945 Constitution and article 22 paragraph (2) of the International Covenant on Civil and Political Rights (ICCPR).

Accidents The Regulation for the Dissolution of Mass Organizations under Perpu Ormas

In less than five years, the Indonesian government amended Law No. 17 of 2013 on Mass Organizations through the issuance of Government Regulation in lieu of Law No. 2 of 2017 concerning Amendments to Law No. 17 of 2013 on Mass Organizations, or better known as Perpu Ormas. The issuance of the Perpu was carried out under the consideration that the existing Law No. 17 of 2013 had not comprehensively regulated the mass organizations that were in conflict with Pancasila and Indonesia's 1945 Constitution. Thus, the government's argument that there had been a legal vacuum. In addition, the existing Mass Organization Law (Law No. 17 of 2013) was also deemed insufficient to crack down on organizations adhering to radical ideologies. Consequently, Government Regulation in lieu of Law No. 2 of 2017 has been passed by the DPR into Law No. 16 of 2017.

As record shows, at the time of the hearing in the Parliament (DPR), a number of factions stated that, they refused to ratify the Perpu into law. These factions are the Gerindra Party Faction, the Prosperous Justice Party (Partai Keadilan Sejahtera or PKS) Faction, and the National Mandate Party (Partai Amanat Nasional or PAN) Faction. However, during the voting process, a number of factions agreed to ratify the Perpu albeit "with notes" that certain subtances of the Perpu to be immediately revised. They were the Democratic Party Faction, the National Awakening Party (Partai Kebangkitan Bangsa or PKB), and the United Development Party (Partai Persatuan Pembangungan or PPP). Therefore, there were only four factions that agreed to fully ratify the Perpu at the time, i.e. the Indonesian Democratic Party of Struggle (Partai Demokrasi Indonesia Perjuangan or PDIP), Golkar Party, Democratic National Party (Partai Nasional Demokrat or Nasdem), and the Hanura Party.

Under Perpu Ormas, the government reclassifies the grounds for dissolution and prohibition of a mass organization within article 59. The prohibitions set in article 59 paragraph (1-4) are as follow:

- using the same name, symbol, flag, or attribute as the name, symbol, flag, or attribute of a government institution;

- using without permission the name, symbol, flag of any other country or international institution/body to become the name, symbol, or flag of the mass organization; and/or
- using the name, symbol, flag or image that have similarities in principle or in whole with the name, symbol, flag, or image of any other organization or political party;
- receiving from or giving any contribution in any form to any party that is contrary to the provisions of the law; and/or
- raising funds for political parties.
- conducting acts of hostility towards ethnicity, religion, race, or groups;
- committing abuse, sacrilege, or blasphemy against religions practiced in Indonesia;
- committing acts of violence, disturbing public peace and order, or damaging public and social facilities;
- and/or carrying out activities which fall under the duties and authority of law enforcement in accordance with the law;
- using the name, symbol, flag or symbol of organization that have similarities in principle or in whole with the name, symbol, flag or symbol of a separatist movement or banned organization;
- conducting separatist activities that threaten the sovereignty of the Unitary State of the Republic of Indonesia (NKRI);
- and/or adhering to, develop, and spread any teachings or ideologies that are contrary to Pancasila.

Mass organizations that violate these provisions are subjected to administrative and/or criminal sanctions as affirmed in article 60 of Perpu Ormas. This type of administrative sanction is also shortened compared to the previous law (Law No. 17 of 2013) which regulates written warnings to mass organizations allegedly violating the provisions in the Ormas Law. On the other hand, under this Perpu, administrative sanctions in the form of written warnings are only given for a period of 7 (seven) days as stipulated in article 62 of Perpu Ormas (Government Regulation in lieu of Law No. 2 of 2017 on Mass Organizations).

Perpu Ormas clearly intends to summarize the mechanism for dissolution of mass organizations by removing all provisions regulating the stages of it, including through due process of law. In total, there are nineteen articles within Law No. 17 of 2013 that were removed by Perrpu Ormas, ranging from article 63 to article 81.

Under the Perpu Ormas, the government can dissolve mass organizations directly without going through a judicial process. This is different from the previous law (Law No. 17 of 2013) in which the mechanism for dissolution of mass organizations with legal status must be done through court. Article 61 paragraph 3 points a and b jo article 80A of Perpu Ormas states that the dissolution of any mass organization is carried out by the government through the Minister of Law and Human Rights by revoking its legal status. Most importantly, article 80A states that the revocation of legal status of an organization as referred to in article 61 paragraph 1 also automatically means its dissolution. Meanwhile, for mass organizations that do not have legal status, article 60 paragraph 2 regulates the revocation of their registration certificate by the Minister of Law and Human Rights.

Under Perpu Ormas, the provisions on criminal sanctions are also expanded to be life imprisonment or imprisonment for a minimum of five years and a maximum of twenty years. Article 82A paragraph 1 of Perpu Ormas regulates "any person who is a member and/or organizer of a mass organization that intentionally and directly or indirectly violates the provisions as referred to in article 59 paragraph 3 letter c and d, namely carrying out acts of violence, disturbing public peace and order, or damaging public and social facilities; and carrying out activities which fall under the duties and authority of law enforcement in accordance with the provisions of the legislation, shall be sentenced to a minimum of 6 (six) months and a maximum of 1 (one) year in prison." Moreover, article 82A paragraph 2 of Perpu Ormas regulates the punishments: "any person who is a member and/or organizer of a mass organization who intentionally and directly or indirectly violates article 59 paragraph 3 letter a and b, i.e. it is prohibited to carry out acts of hostility based on ethnicity, religion, race, or groups; committing abuse, sacrilege, or blasphemy against religions practiced in Indonesia; and paragraph 4, which is carrying out separatist activities that threaten the Unitary Republic of Indonesia and/or adhering to, developing, and spreading teachings or understandings that are contrary to Pancasila, according to this Perpu, is convicted with a life sentence or imprisonment for a minimum of 5 (five) years and a maximum of 20 (twenty) years".

THE PRETEXT OF "COMPELLING URGENCY"

Legislation is one of the principal elements within the national legal system of the Republic of Indonesia that is arranged hierarchically and culminates in the Constitution as the highest law. In every phase of the constitutional history of Indonesia since the proclamation of its independence on 17 August 1945, there have always been constitutional provisions containing rules for establishing a type of statutory regulation, which is enforced only when the country is in a state of "compelling urgency". This type of statutory regulation is now commonly known as the Government Regulation in lieu of Law (Perpu) in Bagir Manan (2003).

Perpu is a type of statutory regulation in Indonesia's legal norm system that reflects the power of the executive in dealing with a state of "compelling urgency". The Perpu is stipulated by the executive power, in this case the President, when and as long as the state administration system is in an abnormal condition (exceptional condition) in Taliziduhu Ndraha (2005). The abnormal state administration, which in article 22 paragraph (1) of the Indonesian 1945 Constitution is referred to as "compelling urgency", can generally be caused by situations of legal crisis, socio-political crisis, economic crisis, or natural disasters.

Under article 22 paragraph (1) of the Indonesian 1945 Constitution, it is stated, "In the case of a compelling urgency, the President has the right to establish government regulations in lieu of laws". Furthermore, it is also regulated in article 22 paragraphs (2) and (3) that "such government regulation must obtain the approval of the Parliament in the following session" and "If the government regulation does not obtain such approval, it therefore must be revoked".

Based on article 22 of the Indonesian 1945 Constitution above, there are special characteristics of xPerpu, which distinguish it from other types of legislation, which among others require certain conditions, are subjectively stipulated by the President, and

has a relatively short period of validity. In practice so far, the benchmarks of "compelling urgency" as the basis for the establishment of a Perpu are very dependent on the subjectivity of the President. This results in the background for the stipulation of a Perpu that is generally different from one another and often not clearly drawn for either the stipulation of a Perpu that is generally different from one another and often not clearly drawn either under the "weighing" consideration or for general explanations of each of the Perpu. This leads to the slogan among the public that Perpu is sometimes established not because of "compelling urgency", but because of "compelling interests" instead (Febriansyah, 2009).

Constitutional Court Decision No.145/PUU-VII/2009 further provides three objective conditions for a state of "compelling urgency": first, there is an urgent need to swiftly resolve a legal issue under the Law, second, the required Law does not yet exist therefore, there is a legal vacuum, and third, the required Law exists but it is inadequate to resolve such issue. Such legal vacuum cannot be tackled by passing the law under a normal procedure, as it would require much longer time, while the urgent situation needs to be swiftly resolved. In that context, the pretext of "compelling urgency" for the issuance of Perpu Ormas has in fact not been fulfilled, as the government already had Law No. 17 of 2013 on Mass Organizations, which already regulates the reasons as well as the process of dissolving mass organizations, including in dealing with organizations considered to be in conflict with Pancasila.

Article 59 of Law No.17 of 2013 regulates the reasons for dissolving mass organizations, including for carrying out acts of hostility towards tribes, religions, races, or groups; committing abuse, defamation, or blasphemy against religions adhered to in Indonesia; conducting separatist activities that threaten the sovereignty of the Unitary State of the Republic of Indonesia (NKRI); committing acts of violence, disturbing public peace and order, or damaging public and social facilities; carrying out activities which fall under the duties and authority of law enforcement in accordance with the provisions of the legislation; and adhering to, developing, or spreading the teachings or understandings that are contrary to Pancasila. Furthermore, regarding the dissolution process of a mass organization, Law No. 17 of 2013 has also already set the procedure for it, which is done through the court and not by the government (article 68 paragraph (2)).

It was very likely for the Parliament and the administration to revise Law No. 17 of 2013 on Mass Organizations through a normal procedure at the time. On the other hand, it was easy to refute the notion that it was not possible for the Parliament to pass or revise a law under the normal procedure for a number of reasons: first, the Parliament was still in session at the time and there was sufficient time to discuss a bill, second, there was no disruption whatsoever to the functions of the Parliament, and third, there was no shift in power within the Parliament in the near future. In fact, when the Perpu was issued by the President, the Parliament was actually in session, not on recess. This means that there was actually enough time for the President to propose an initiative bill to the Parliament to discuss the revision of Law No. 17 of 2013 on Mass Organizations if it was deemed insufficient.

The Legal Politics of the Government Regulation in Lieu of Law No. 2 of 2017 on Mass Organizations (Perpu Ormas) and Law No.16 of 2017

In the study of legal politics, law is valued as a form of political product that cannot be separated from various interests. Law is not something that is autonomous (Raharjo, 2008) or free from the intervention of the interests of power. Instead, law is a political product that perceives law as the formalization or crystallization of political wills which interact and compete with each other (Mahfud MD, 2009). Consequently, the establishment of Perpu Ormas is also heavily influenced by these interests.

Perpu Ormas and Law No.16 of 2017 Are Inconsistent with the Rule of Law and Threaten Freedom of Association

The rule of law or *rechtstaat* theory emerges as the antithesis of the power-state *(machstaat)*. A state with the rule of law has certain characteristics, namely 1) the existence of a constitution containing written provisions concerning the relationship between the authorities and the people, 2) there is a division of power, and 3) the freedoms and rights of the people are recognized and protected (Huda, 2005). In the rule of law, one of the most important elements is the guarantee and upholding of the principle of legal certainty. The principle of legal certainty as a foundation of the rule of law is affirmed in article 1 paragraph (3) and in article 28D paragraph (1) of the Indonesian 1945 Constitution.

Article 6 paragraph (1) letter i of Law No. 12 of 2011 states that "The material contained in the legislation must reflect the principles of legal certainty and order". Furthermore, this provision is later elaborated in the general explanation section as follows: "What is meant by "the principle of legal certainty and order" is that each material contained in the legislation must be able to implement order in the society through the guarantee of legal certainty". In a state with the rule of law, the legal norms contained in a regulation must be clearly formulated *(lex stricta)*, which means that any written law must be rigidly interpretated and it should not be extended to harm the subject of the act. Unclear norms will potentially lead to the violation of rights of the people, as state tends to interpret norms in accordance with its own interests.

In the context of Law No.16 of 2017 on Mass Organizations, there are multi-interpretative articles that can cause legal uncertainty. One of them is related to the reasons for dissolution. Based on article 60 of Law No. 16 of 2017, any mass organization can be dissolved if it violates article 21 and 59 of the Law. Article 21 of Law No. 16 of 2017 states that any mass organization is under obligation to: a) carry out activities in accordance with organizational goals, b) maintain the unity and integrity of the nation as well as the integrity of the Unitary Republic of Indonesia (NKRI), c) preserve religious, cultural, ethical, and moral values and provide benefits to society, d) maintain public order and peace in society, e) conduct financial management in a transparent and accountable manner, and f) participate in achieving the objectives of the state.

On the other hand, under Perpu Ormas (Government Regulation in lieu of Law No. 2 of 2017 on Mass Organizations), the government reclassifies grounds for dissolution and prohibition of a mass organization with article 59 paragraph (1-4) as follow:

- sing the same name, symbol, flag, or attribute as the name, symbol, flag, or attribute of a government institution;
- using without permission the name, symbol, flag of any other country or international institution/body to become the name, symbol, or flag of the mass organization; and/or
- using the name, symbol, flag or image that have similarities in principle or in whole with the name, symbol, flag, or image of any other organization or political party;
- receiving from or giving any contribution in any form to any party that is contrary to the provisions of the law; and/or
- raising funds for political parties;
- conducting acts of hostility towards ethnicity, religion, race, or groups;
- committing abuse, sacrilege, or blasphemy against religions practiced in Indonesia;
- committing acts of violence, disturbing public peace and order, or damaging public and social facilities;
- and/or carrying out activities which fall under the duties and authority of law enforcement in accordance with the law;
- using the name, symbol, flag or symbol of organization that have similarities in principle or in whole with the name, symbol, flag or symbol of a separatist movement or banned organization;
- conducting separatist activities that threaten the sovereignty of the Unitary State of the Republic of Indonesia (NKRI);
- and/or adhering to, develop, and spread any teachings or ideologies that are contrary to Pancasila.

The grounds for dissolving a mass organization as regulated in Law No. 16 of 2017 are numerous and multi-interpretative. These numerous and multi-interpretative grounds make the government able to easily dissolve any existing mass organization under the pretext of conflicting with Pancasila, not participating in achieving the state's objectives or in maintaining religious, cultural, ethical, and moral norms, providing benefits to the community, and others. These grounds for dissolution do not have clear indicators, making it very vulnerable for the government to unilaterally and arbitrarily dissolve any mass organization.

In addition, the mechanism for dissolution of a mass organization which is carried out directly by the government (not through the judicial process) as regulated by Law No. 16 of 2017 also potentially leads to abuse of power and is contrary to the basic principles of the rule of law. In a state with the rule of law that respects human rights, the dissolution of any organization must be in accordance with the principal of due process of law (Johnson, 2015). Due process of law is a principle, which aims to guarantee the procedural, and substance rights in order to obtain justice, where justice is not limited by procedures (Pennock, 1977). "Due process" must be interpreted as a principle that can encourage a number of specific rights, procedures, and practices (Resnic, 1977). There is no justification for the state to reduce the "due process" right.

Government limitations on freedom of association and assembly must be measured by considering the legitimacy and social needs of the level of restrictions on these rights, which is the duty of the court (Bresler, 2004). In a state with the rule of law,

all restrictions on the rights of citizens must be carried out based on due process of law to guarantee the objectivity and to prevent arbitrariness of the state. The state as an entity, which has legitimacy that comes from its people (citizens), thus has a moral and constitutional obligation to protect the rights of its citizens.

In addition, several Constitutional Court decisions have also interpreted the terms and mechanism of restrictions on human rights. Constitutional Court Decision No.13-20/PUU-VIII/2010 states, "That in a country with the rule of law such as Indonesia, there absolutely needs to be due process of law, which is the supremacy of law through the justice system. If there is an act categorized as an act against the law, the process must go through a court decision so that the prohibition of the circulation of an item, for example, a printed material considered to be able to disturb the public order, cannot be submitted to any agency without going through a court decision."

The ruling also affirms that the state's act of depriving or limiting civil liberties in the form of a ban carried out by the government without going through a judicial process is an act of a power-state (*machstaat)*, not a state with the rule of law like Indonesia, as affirmed in article 1 paragraph (3) of the Indonesian 1945 Constitution that Indonesia is a state with the rule of law. The Constitutional Court also states that the act of prohibiting or limiting civil liberties, "... especially without going through a judicial process, is an extra judicial execution which is strongly opposed in a state with the rule of law which requires the due process of law. Due process of law as elaborated above is the supremacy of law through the justice system". In addition, under the consideration section of its decision, the Constitutional Court clearly states that, "The granting of authority to prohibit something that constitutes a limitation of human rights without going through due process of law is clearly not included in the definition of freedom limitations as referred to in article 28J paragraph (2) of the 1945 Constitution".

Thus, it can be concluded that the dissolution of any mass organization by the government without going through the judicial process (court) is contrary to the principle of the rule of law as stipulated by the Constitution itself. A state with the rule of law should uphold the principles of supremacy of law as well as due process of law as the core objective of human rights protection. In a state with the rule of law, the act of dissolving an organization as a form of limitation of freedom of association (which is a form of civil liberty) must fully abide by the principle of due process of law, where the court plays a key role in the process.

Under Law No.16 of 2017, the government's argument that any organization dissolved by the government can submit objections to the Administrative Court, arguing that the judicial mechanism is therefore is available, is incorrect. The legal mechanism and dissolution process should have been carried out by the judiciary branch since the beginning and not only available after the organization has been dissolved. This is related to the principle of due process of law.

Perpu Ormas (Government Regulation in Lieu of Law No.2 of 2017 on Mass Organizations) which was then passed into law as Law No. 16 of 2017 that provides a vast and absolute power for the government to register, control, oversee, even dissolve any organization is contrary to the principle of protection of freedom of association, which is the heart of the democratic system. The issuance of Perpu Ormas and the passing of Law No. 16 of 2017 bring back the essence of Law No. 8 of 1985. Law No. 8 of 1985 was a notoriously repressive instrument of the New Order to unilaterally dissolve

any organization, done by the government without going through the judicial process. This undoubtedly threatens the freedom of association and assembly in Indonesia.

THE PRINCIPLE OF CONTRARIUS ACTUS

One of the government's rationale in establishing Perpu Ormas, which was passed into Law No.16 of 2017 that gives the government to dissolve any mass organizations directly without going through a court, is based on the principle of *contrarius actus*. The literatures who focus on this subject mainly use Philipus Hadjon's book entitled Legal Arguments as their main reference. In the book, unfortunately, there is no comprehensive explanation of this principle. The book simply explains that under the principle of *contrarius actus*, the state administration body or official, which issues the state administration decision, is also authorized to cancel it (Hadjon, 2005). This principle is then used as a basis for the government to regulate the dissolution of mass organizations directly by the government and not through the judicial process.

The principle of *contrarius actus* is a principle that has the meaning of formality or a procedure followed in the process of forming a decision and by the revocation or cancellation process. However, a principle is not a product of legislation that is absolutely binding (https://hukumonline.com). The government's argument that there is an absence of the *contrarius actus* principle within Law No. 16 of 2017 is incorrect, and even unfounded. There is no legal requirement for the institution, which approves the legal status of a mass organization to automatically have the authority to revoke or cancel it. There are many cases where institutions, bodies, or legal entities cannot be dissolved by the institution, which approved their legal status. On the contrary, the mechanism for dissolution or the revocation of legal status must go through a judicial process.

The principle of *contrarius actus*, which gives the government great authority in ratifying and revoking the legal status of a mass organization, is dangerous and cannot be legally justified. This is because granting a legal status is not merely related to administrative validity, but it also forms a new legal subject, while the mechanism for revoking rights and obligations attached to a legal subject must be carried out through a court decision. When comparing all regulations in Indonesia, which regulate the mechanism of dissolution of other organizations outside of mass organizations, then it is very clear that the dissolution of any organization should be carried out through the court and not directly by the government. These regulations include Law No.16 of 2001 on Foundations which states that the dissolution of foundations should be carried out by the court, Law No. 2 of 2008 on Political Parties which states that dissolution of any political party should be done through the Constitutional Court, Law No. 21 of 2000 on Trade Unions stating that dissolution of trade unions should be conducted through the court, and Law No. 40 of 2007 which also states the dissolution of a company *(Perseroan Terbatas)* should be carried out by the court.

THE LEGAL POLITICS OF PERPU ORMAS: ENCOUNTERING THE OPPOSITION GROUP

The issuance of Perpu Ormas cannot be separated from the two important events that preceded it. First, the protests against Basuki Tjahaya Purnama or Ahok as governor

of Jakarta by particularly Muslim Indonesians related to the blasphemy accusation, which he allegedly did, which led to his defeat in the Jakarta regional election of 2017. Second, Ahok's verdict on aforementioned case by the South Jakarta District Court. As a former governor and vice governor of Jakarta, Jokowi and Ahok, respectively, have a strong political closeness. The Muslim Indonesians' protests against Ahok were so massive, occurred repeatedly, and were not only seen in Jakarta. They were widespread and happened in several regions outside of Jakarta, allegedly contributing to a disturbed public trust in President Jokowi. A number of Islamic organizations largely took part in the protests, including Hizbut-Tahrir Indonesia (HTI). These protests, if left unfettered, were feared to lead to a political crisis, which could disrupt the government's political agenda, especially concerning the 2019 presidential and vice presidential elections.

Prior to the protests, there was no intention whatsoever by the government to establish any new regulations concerning mass organizations. In the National Legislation Program *(Prolegnas),* which is set together by the administration and Parliament and serves as the basis for the government to establish laws within the five-year legislative period, the bill on mass organizations was not included. Therefore, the issuance of Perpu Ormas is seen as a way for the authorities to put an end to any movements that could cause a prolonged crisis against the authorities, especially several particular Islamic groups that oppose the government.

The issuance of Perpu Ormas by the government cannot be separated from the its desire to dissolve HTI. However, the substance of the Perpu does not specifically target the dissolution of HTI, but it rather regulates all mass organizations in general. Legally, if the government wanted to dissolve HTI, it could have used the existing Law No.17 of 2013 to do so. Coordinating Political, Legal and Security Affairs Minister Wiranto himself had actually told the public that he would dissolve HTI through the court as according to Law No.17 of 2013 (https://news.detik.com/berita/d-3495286/wiranto-pemerintah-ambil langkah-hukum-untuk-bubarkan-hti). However, the government took a different path and did not use the dissolution mechanism as specified in Law No.17 of 2013 to dissolve HTI. It issued the Perpu Ormas instead.

In the context of security, HTI at that time was not an organization which use force, was carrying out an armed uprising, or had control over a territory of Indonesia so that it could jeopardize the state's security or sovereignty in the near future. The government saw the organization seen simply as wanting to establish an Islamic Khilafah State in Indonesia (https://nasional.kompas.com/read/2018/05/07/15542341/hakim-hti-terbukti-ingin-mendirikan-negara-khilafah-di-nkri?page=all). Therefore, the government had in fact enough time to take legal actions to dissolve HTI through court proceedings as regulated in Law No.17 of 2013.

The government seemed eager to speed up the dissolution process of HTI, so that the mechanism of dissolution of mass organizations is summarized under Perpu Ormas to be directly carried out by the government. This is why the dissolution process of HTI underwent a tug-of-war. First, it was going to be dissolved through the court as stated by the Coordinating Political, Legal and Security Affairs Minister, Wiranto (https://news.detik.com/berita/d-3495286/wiranto-pemerintah-ambil langkah-hukum-untuk-bubarkan-hti), and in the end, it was dissolved directly by the government under Perpu Ormas. Many political and legal scientists consider Perpu Ormas to be a political part of the Jokowi administration in dealing with opposition groups, especially Islamic

groups opposing the government. Thomas P. Power perceives the issuance of Perpu Ormas in 2017 as a clear proof of a repressive instrument used by the government to suppress civil society organizations. By misusing the security forces and law enforcement to suppress his political opponents, the Jokowi administration has merged state interests with those of his government's, whereas the existence of an opposition itself is fundamental in a democratic system (Power, 2018).

According to Thomas P. Power, since 2018, the Jokowi administration tends to restore the authoritarian pattern and accelerates the decline in the quality of democracy in Indonesia. This is marked by the rise of politicization of state institutions, such as using more open and systematic legal instruments in suppressing critical groups (Power, 2018). Furthermore, Gregory Fealy argues that the government does not have a compelling reason for issuing Perpu Ormas. In addition, the government cannot sufficiently answer the question of how significant the threat HTI poses so as it requires a legal umbrella at the level of a Perpu. As a result, the Perpu is seen more as Jokowi's attempt to suppress Islamic groups that do not support him, and the ban on HTI through the Perpu is seen as an abuse of state power for political purposes (https://www.lowyinstitute.org/the-interpreter/jokowi-s-bungled-ban-hizbut-tahrir).

For the government, the issuance of Perpu Ormas and the banning of HTI are efforts with political objectives. However, Burhani argues that one of the potential implications of the issuance of such Perpu is the return of an authoritarian regime. Admittedly, the strengthening of Pancasila by the Agency for Pancasila Ideology Education (*Badan Pembinaan Ideologi Pancasila* or BPIP) is often identified with the New Order policy through the P4 program (*Pedoman Penghayatan dan Pengamalan Pancasila*). In addition, through Perpu Ormas, the government is trying to cut democracy by bringing back the spirit of fighting the danger of latent right and left. This legal umbrella in a form of a Perpu gives the government an authority to prohibit all organizations that are seen to be in conflict with Pancasila without the need to notify or take legal actions (Burhani, 2017).

Edward Aspinal argues that on several occasions President Jokowi used undemocratic methods to manipulate and suppress opposition groups. Political manipulation of laws related to blasphemy, treason, and mass organizations occurred in the Jokowi administration (Aspinall & Warburton, 2017).

The background and objective of establishing Perpu Ormas reflects a political vision of an authoritarian state, where the government ignores the judicial process mechanism (due process of law) in dissolving mass organizations by carrying it out directly through the government (executive power). Even though the political system itself is democratic, the character of power is still thick with authoritarian dimension, where the government feels it can dissolve any groups perceived as interfering with the course of power using Perpu Ormas.

Table 1. Mass Organizational Setting Paradigm

Paradigm	State	Society
Authoritarian	State's control over society	Society is a threat
Democracy	Guaranteed protection of freedom of association and assembly	Society's political participation becomes essential

PERPU ORMAS: ILLIBERAL DEMOCRACY

Many contemporary studies, which have been conducted, argue that although a country has implemented democracy as its political system, it does not necessarily guarantee that the freedoms of its citizens will be protected or its legal products will be responsive. Fareed Zakaria (2007) argues that in a democratic country, civil liberties and human rights protection are not automatically guaranteed, and vice versa – in a country that is not a democracy, it does not automatically mean there is no civil liberties and protection of human rights. Moreover, Samuel P. Huntington (1991) in his book *The Third Wave: Democratization in the Late Twentieth Century* argues:

"Elections, open, free, and fair, are the essence of democracy, the inescapable *sine qua non*. Governments produced by elections may be inefficient, corrupt, shortsighted, irresponsible, dominated by special interests, and incapable of adopting policies demanded by the public good. These qualities may make such governments undesirable but they do not make them undemocratic.*"* Based on above arguments it can be said that the government formed because of elections (based on the aspirations of the people) does not necessarily produce a government that provides protection for human rights and freedom for its people. Fareed Zakaria (2007) further argues that in contemporary situation, democracy is increasingly embraced by many countries in the world, and yet freedom (especially civil liberties) declines and tends to be imperiled. In some cases, governments that are democratically elected by the people have a tendency to judge themselves as authorities with absolute power. This can result in a centralized authority, which is often obtained through unconstitutional methods. As a result, the products of such government (legislations, situation of pluralism, civil liberties, etc.) are not much different from an authoritarian (dictatorial) government, but with a greater legitimacy as they are elected by the people.

Countries with a democratic system but are not accompanied by a well-established constitutional liberalism are categorized as *illiberal democracies*. Illiberal democracies are often marked by these characteristics: 1) disregard for human rights, 2) failure to protect the freedom of its citizens, 3) a repressive regime, 4) often marked by the rise of identity politics which polarize the society, and 5) there is tyranny of the majority.

In the Indonesian context, the supremacy of law and protection of individual freedoms such as the right to life, the right to have an opinion, freedom of religion and belief, and freedom of association are still realtively fragile. For that reason, even though Indonesia has a free and fair electoral system and the right to vote for all citizens (universal adult suffrage), Indonesia is not a *liberal democracy*. Indonesia is considered to be in the category of illiberal democracies.

In Indonesia, the disregard for human rights and civil liberties is marked, among others, by the passing of legislations that suppress the freedom of expression, freedom of religion and belief, and freedom of association. This is seen from the issuance of Perpu Ormas (Government Regulation in lieu of Law No. 2 of 2017 on Mass Organizations) as well as the enactment of the Perpu into law through Law No. 16 of 2017, and also Law No. 11 of 2008 on Information and Electronic Transactions (ITE) which was later revised into Law No. 19 of 2016.

PERPU ORMAS AND THE ABSENCE OF SOCIETY PARTICIPATION

In a democratic country, the role of the society is important to influence the formulation of laws. A broad space of public participation in policy-making tends to produce responsive legal products. Mikuli & Kuca (2016) argues there are many variations of public consultation that can be done at various levels of policy- or law-making, and this public consultation or involvement is a form of evaluation by the public of a decision or policy that has been taken by the government. Therefore, a solitary parliamentary work in formulating the law is not enough. Hoecke (2001) further argues that the formulation of a product of legislation is a collective effort, which cannot be trusted to only one institution. Such public participation would then help lawmakers in providing important information needed in making legislations (Saurugger, 2008).

Moreover, Cohen and Roger (1995) believe the state essentially supports public involvement in the process of policy- and law-making. That way, the public provides their expertise and contribute to improving the efficiency of the process of making a political product of the state. Even though it does not provide any guarantee of a better legal product, public participation in the process of law-making has four potential impacts on the product quality: a) it would produce *pareto superior* decisions with a better solution, (b) the product would contribute to distributive justice by providing protection to vulnerable groups, (c) it could lead to a wider consensus in decision making, and (d) the product secures additional legitimacy derived from various group (Gambetta, 1998).

In the context of the formulation of a mass organizations law, public participation in the the law-making process gives a positive impact on the substance of the regulation, as seen in the formulation of Law No.17 of 2013 before it was changed through Perpu Ormas. Apart from its weaknesses, Law No.17 of 2013 as a legal product still contains responsive values in which the dissolution mechanism is carried out gradually and in stages. The dissolution mechanism is also carried out through court, especially for organizations with a legal status.

The issuance of Law No.17 of 2013 on Mass Organizations occurred with a substantial society participation in its formulation process. The role of the society in providing input to the discussion of the law was very substantial. It also involved numerous elements of the society, such as Nahdlatul Ulama (NU), Muhammadiyah, academics, and NGOs. This is significantly different from Law No.16 of 2017 which originated from Perpu Ormas that was formulated unilaterally by the government without society participation in the process, resulting in an orthodox legal product.

THE DISSOLUTION OF HIZBUT-TAHRIR INDONESIA (HTI)

After the issuance of Perpu Ormas (Government Regulation in lieu of Law No. 2 of 2017) which was subsequently passed by the Parliament into Law No. 16 of 2017, the Director General of the General Law Administration (AHU) of the Ministry of Law and Human Rights, Freddy Harris, announced the dissolution of HTI on 19 July 2017 through the revocation its legal status based on Decree of the Minister of Law and Human Rights No.AHU-30.AH.01.08 of 2017 concerning The Revocation of Decree of the Minister of Law and Human Rights No. AHU-0028.60. 10.2014 concerning The Ratification of the

Establishment of a Legal Status of HTI, (http://nasional.kompas.com/read/2017/07/19/10180761/hti-resmi-dibubarkan-pemerintah).

With HTI being dissolved, consequently, it no longer has any legal rights and obligations. In other words, the dissolution forced HTI to stop practicing their freedom of association, assembly, and freedom of opinion. After the dissolution, HTI offices in several regions were closed, it did not have constitutional rights in front of the Constitutional Court as a legal entity, it was prohibited from carrying out any activities in Indonesia, and various other restrictions on their freedom. The dissolution mechanism of HTI by the government is not limited to administrative issues, but it is a form of punishment resulting in the deprivation of rights and obligations as a legal subject. In a country with the rule of law, the government should go through the judicial process in dissolving HTI if it is considered to be in conflict with Pancasila. The dissolution should not be carried out directly and unilaterally by government.

The dissolution and prohibition of mass organizations during the Reformasi period are carried out directly by the government through no judicial mechanism. The dissolution of Hizbut-Tahrir Indonesia by the government is contrary to the rule of law because it disregards the due process of law mechanism. Government restrictions on freedom of association and assembly must be measured by considering the legitimacy and social needs of the level of restrictions on these human rights, which is the duty of the court (Bresler, 2004). In a country with the rule of law, any limitations on the rights of citizens must be carried out with regard to due process of law to guarantee the objectivity and to prevent arbitrariness of the state. The state as an entity that has legitimacy coming from the people (citizens) thus has a moral and constitutional obligations to protect the rights of its citizens.

CONCLUSION

The results of writing conducted by the authors in this study, several conclusions that can be submitted are:

- Government Regulation in Lieu of Law No.2 of 2017 (Perpu Ormas) threatens freedom of association, assembly, and opinion, which are vital elements in a democracy. Moreover, Perpu Ormas is also contrary to the rule of law, particularly in relation to the due process of law and the principle of separation or distribution of power.

If the government considers Hizbut Tahrir Indonesia (HTI) to be in conflict with the ideology of Pancasila and to threaten the security and sovereignty of the state, in a country with the rule of law like Indonesia, the government should dissolve HTI through the court as stipulated by Law No. 17 of 2013 on Mass Organizations. The government should not issue Perpu Ormas and use it to directly and unilaterally dissolve HTI.

The legal politics behind the issuance of Perpu Ormas cannot be separated from government's political interest to exercise control over its political opponents and to maintain the regime from pressures coming from its political opponents, particularly Islamic groups which are in opposition to the government..

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DEBRIEFING THE ROLE OF TRUTH, RECONCILIATION AND REPARATIONS COMMISSION IN THE GAMBIA'S HUMAN RIGHTS VIOLATIONS AND QUEST FOR JUSTICE

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Abstract: *The study examined the human rights violations under Yahya Jammeh and the Adama Barrow government's quest for justice through the recently established Gambian Truth, Reconciliation and Reparations Commission (TRRC) in the Gambia. It relied on secondary sources of data collection and adopted restorative and reparative justice as its conceptual framework for the overall understanding of the subject matter. It contented that categorising the Jammeh-led government as one of the worst regimes characterised by deliberate human-rights abuses is like stating the obvious. It further argued that establishing the TRRC and assigning it the role of healing the nation via searching for the truth in order to reconcile, restore justice and compensate victims of human rights abuse under Jammeh government is a welcome development. However, the findings of the study revealed that this is not an easy task given the likely impediments that have bedevilled similar commissions in South Africa, Sierra Leone, Ghana, Nigeria, among others in the past. It identified inter alia the challenge of funding, dilemma of bias accusation and politicisation, refusal to accept responsibility or demand for forgiveness by main perpetrators, inadequate publicity and absence' total community participation and delays or failure to fulfil reparation promises by the sitting government as major challenges that may prevent the TRRC from achieving its mandate. It therefore recommended Barrow government should be sincere and allow TRCC to work without any interference while it is imperative for all forms of media practitioners in Gambia to mobilise for total community participation in the exercise. Also, the donor countries and institutions should not leave any stone unturned to ensure that government immediately fulfil reparation promises at the end of the exercise.*
Keywords: *human rights, justice, democracy, Gambia, truth commission*

INTRODUCTION

Truth commission, which is one of the foremost policy instruments aimed at grappling with past human rights violations as once pervasive in the Gambia, has attracted wide interest among scholars (Usami, 2016). The Gambia remains one of the smallest and most heavily populated countries in Africa. After gaining independence

from Britain in 1965, its borders were created alongside the banks of Gambia River. The country had once become the epitome of workable democratic governance and the continent's longest multi-party democracy after its independence (D'Aiello, 2018).

However, this democratic continuum was truncated in 1994 when the nation's first president, Sir Dauda Jawara, was toppled in a military coup commanded by Lieutenant Yahya Jammeh (D'Aiello, 2018). The period the former president, Yahya Jammeh, seized power in 1994 and his forced departure in 2017, the Gambia witnessed turbulent period in terms of violations and human rights abuse in various dimensions and the citizens' prosperity was at bay (Tambadou, 2018). The coerced exit of the maximum ruler gave the country another rare opportunity for a new beginning put Gambia back on the path of responsive and responsible democratic state. However, the legacy of Jammeh's despotic rule, typified by deprivation, disgusting human rights violations, impunity, political and ethnic divisions (Media Foundation for West Africa, 2014) remains a challenge to the new government of President Adama Barrow to consolidate the Gambian democracy.

In a frantic effort to erase the stigmas of unceasing human violations, ensure justice and fulfil its electoral promise, Barrow's government in December 2017, inaugurated the Truth, Reconciliation and Reparations Commission (TRRC). Hence, "the TRRC is part of a broader transitional-justice process aimed at addressing past human-rights abuses and building a stable democratic future through justice moored to respect for the rule of law and human rights" (Jaw, 2018).

Thus, the major objective of the TRRC is to unravel the truth surrounding the violations and abuse of human rights suffered under Jammeh government, ensure justice probably through reparations and forestall in the future such similar human rights abuses. No wonder the Commission is promoting a "never again" campaign to transform the political culture in order to make it "hard for gross human rights violations and impossible for dictatorship to prevail" in the country again (Davies, 2019).

However, the establishment of the TRRC has been controversial. Under the new Gambia, there is a general belief that the inauguration of the TRRC is a welcome development towards calming the frail nerves and allowing communities' wounds to heal. This is in tandem with Freeman and Hayner's thought while stressing the indispensability of truth commissions (Freeman & Hayner, 2003). Others believe that it is a witch hunting exercise and it is politically motivated claimed by Jammeh's supporters championed by Yankuba Colley (Bah, 2018). Colley's position cannot also be entirely wished away given the fact that in a situation whereby truth commission is established with improper motives, achieving its many potential benefits may be a herculean task (Davies, 2019).

From the foregoing and given the TRRC's contested nature and the quest for justice in Gambia, to what extent can the Commission achieve its mandate? What are the lessons that can be learned based on the experiences of other countries? What are the likely impediments preventing the TRCC from achieving this onerous task? How can these impediments be mitigated? These are the informed questions that this article intends to answer.

CONCEPTUAL ISSUES

HUMAN RIGHTS VIOLATIONS

Based on the United States Human Rights Office of the High Commission (OHCHR), "human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status" (United States Human Rights Office of the High Commission (OHCHR), n.d.). In essence, human rights are the basic rights and freedoms being possessed by every person in the globe, commencing from birth to death. Thus, humans rights are the "basic rights and freedoms to which all human beings are entitled" and these include civil and political rights, such as the right to life, liberty, and property, freedom of expression, pursuit of happiness and equality before; and social, cultural and economic rights such as the right to participate in science and culture, the right to work, and the right to education (OHCHR, n.d.). These rights and freedoms are enshrined in the constitution of many countries in West Africa. For instance, chapter IV of the 1997 Gambian Constitution, chapter IV of the Nigerian Constitution (as amended), chapter V of the 1992 Ghanaian Constitution, title II of the 2011 Senegalese Constitution (as amended), title II of Togo's Constitution (as amended) among others emphasise the freedoms and protection of these rights

Human rights violations occur when any state or non-state actor breaches any of the already stated rights or a situation whereby basic human rights are trampled upon by dictators and political systems (Onwuazombe, 2017). Also, a human right violation can be committed by the state agents such as government employees at local and state levels, the police and other security forces, prosecutors, judges, among others and their conduct is then regarded as the conduct of the state (Onwuazombe, 2017). Thus, to violate the most of basic human rights is to deny individuals their fundamental entitlements and maltreat them as if they are less than human deserving no respect and dignity (Maiese, 2004). Instances of human rights violations are abound in many countries in Africa and across the globe whereby threats and torture, modern slavery, rape, deliberate starvation, unlawful arrests and detention, summary execution of those in custody, denial of free press, among others, are the order of the day.

CONCEPTUALISING TRUTH COMMISSION

Despite the avalanche growing of literature on the subject, there has been surprisingly no agreed meaning of truth commission or its variant. It is unassailable that many observers concur that a truth commission probes and reports immense violence occurring in an era of political repression or armed conflict. However, they differ on some of its characteristics and functions (Usami, 2016). As conceived by Hayner, truth commission:

...is focused on past, rather than ongoing, events...investigates a pattern of events that took place over a period of time...engages directly and broadly with the affected population, gathering information on their experiences...is a temporary body, with the aim of concluding with a final report...is officially authorised or empowered by the state under review (Hayner 2001 cited in Usami, 2016, pp. 56-57).

In a similar manner, a truth commission according to Freeman is:

An ad hoc, autonomous, and victim-centred commission of inquiry set up in and authorised by a state for the primary purposes of "...investigating and reporting on the principal causes and consequences of broad and relatively recent patterns of severe violence or repression that occurred in the state during determinate periods of abusive rule or conflict and...making recommendations for their redress and future prevention (Freeman 2006 cited in Usami, 2016, p. 57).

Usami (2016, p. 58) also averred that:

A truth commission is a temporary, independent commission of inquiry established for the primary purposes of...investigating and reporting broad patterns of violations of physical integrity rights that occurred in the society under review...covering a determinate period of the past oppressive regime or armed conflict...gathering information on sufferings of the affected population, and...making policy recommendations for redress and future prevention.

Similarly, Teitel (2003) viewed truth commission as an official body, often created by a national government, to investigate, document, and report upon human rights abuses within a country over a specified period. Thus, the commencement of a truth commission may indicate an official discontinuation with the past, and giving opportunity of transiting to a new open, nonviolent and democratic prospect (Bloomfied, Barnes & Huyse, 2005) as being envisaged in the Gambian situation within the context of the TRRC's challenging task. As maintained, truth commissions are to avert further occurrence of imminent violence and human rights abuses. (Hayner 2001 cited in Usami, 2016).

However, a better conception of truth commission, which appears to be all encompassing and most appropriate for this article, is offered by Bronkhorst as pointed out by Dancy, Kim and Wiebelhaus-Brahm (2010, p.48), when he described truth commissions as:

A temporary body set up by an official authority (president, parliament) to investigate a pattern of gross human rights violations committed over a period of time in the past, with a view to issuing a public report, which includes victims' data and recommendations for justice and reconciliation.

Thus, mandate given to some truth commissions, like the TRRC set up by Barrow government in the Gambia, is not only to probe past human rights abuse but also to announce recommendations regarding victims' reparation and necessary legal and institutional reforms undertaken including proposal for reconciliation process (Fombad, 2012). Meanwhile, truth commissions cannot be viewed as an alternative for judicial trials, but non-judicial bodies having considerably narrow scope of action; either primarily set up in transitional societies, transiting from war to peace or from undemocratic system to democracy. Nowadays, they are also utilised in historical events by investigating state cruelty, which ensued several years back and followed up with hindsight at present time (Fombad, 2012).

RESTORATIVE AND REPARATIVE JUSTICE: A CONCEPTUAL FRAMEWORK OF ANALYSIS

The adoption of restorative and reparative justice as our framework of analysis is based on their utility to strengthen our discourse. The concepts are not only appealing,

but also have the capacity to calm the frail nerves of those who have experienced injustice in form of human rights violations and suggests succour if necessary. Thus, for victims, restorative justice provides persons a more formalised role and a momentous right to be heard in the process, and lend credence to numerous decisive human needs, not leaving out the necessity to be consulted and to be empathised (Latimer & Kleinknecht, 2000). On the other hand, reparative justice has the material and moral advantages (Roht-Arriaza, 2004). It acts in response to the effects of repression via compensation of material things including land, and/or money (Quinn, 2013) and provides emblematic gains and acceptance of acts of violence through formal requests for forgiveness and remembrance (Minow, 1998).

As indicated by Dorne (2008), Horward Zehr is credited with being a pioneer and one of the first advocates of theory of restorative justice in his book, Changing Lenses- A New Focus for Crime and Justice, published in 1990. Aside this, Braithwaite (1997) asserted that restorative justice has been the dominant model of criminal justice throughout most human history. Thus, restorative justice is a theory of justice that emphasises mending the harm and damages caused or exposed by unlawful or criminal acts such as human rights violations, which transpired either between groups, communities or between citizens and the state. Basically, restorative justice focuses first and foremost on revealing what transpired and why, and prioritises the transformation of social bonds between injured parties, wrongdoers, and communities (Llewellyn & Howse, 1999).

Restorative justice lays claim to individual responsibility as it relates to community proceedings positioned it to tackle multifaceted networks of connivance and wider precedents of oppression (Minow, 1998). As Llewellyn and Howse (1999) have argued, the proceedings of restorative justice permit the investigation of agency and choice, upholding the prospect of free will in circumstances of apparently deterministic group evil. Therefore, "restorative justice encourages interrogation of the methods by which systems themselves produce evil citizens by avoiding diminutive framing that portrays individual acts as aberrations on otherwise just societies" (Howsam, 2015, p.11). Reparative justice also puts forward a robust theoretical framework for structural responsibility, connecting definite ill-treatments including cruel land capture, to extensive chronicles of economic denial (Howsam, 2015). As conceived by de Greiff (2004), there exist possibilities rationalising what makes up justice in reparations, what is fair and what is unfair. Within the context of international law and cognate areas, given the fact the model emanates from tort law, the measure of justice is the actual well-known one of full restitution or otherwise refers to as restitution in integrum. The idea behind this is to enable victims "whole," whereby the victim is compensated in proportion to the harm suffered.

Arguments among justice theorists have also arisen regarding the most suitable way to take care of survivors of mass cruelty and human rights abuse and violations in various dimensions. Restorative justice scholars have maintained that it is necessary for the victims to provide with sufficient platform, like inauguration of a commission, for sharing anguish so as to reclaim self-confidence and respect (Nino, 1996), including reconciling with the past with a sense of peace (Tutu, 2012). Thus, restorative mechanisms bring about respect for their action and establish the fact that survivors are the connoisseurs of their own ill-treatment, instead of requesting participation from

victims (Howsam, 2015). Minow (1998) further claimed that restorative justice offers more edifying approach to justice; surpassing schisms and laying the foundation of a new status quo via rehabilitation of offenders and setting up again dealings found on trust and respect (Govier, 2002). Problematising the truth/justice divide within the context of the restorative justice paradigm, Hayner (2003) also insisted that, on specific occasions, truth inquiries have absolutely given a boost to ensuing prosecutions and leveraged other accountability instruments. That is why Llewellyn and Howse (1999) rationalised that restorative justice presents more factual and useful insights regarding the dispositions of justice.

As regards reparative justice theory, it is believed that immediate material claims are a more fundamental method via restitution whereby survivor needs are necessarily addressed, even though it may be an inadequate response to the root causes of economic oppression (Fraser & Honneth, 2003). However, as attractive as reparative justice approaches appear, in practical terms, it has also steadily been unsuccessful to generate the needed gains for victims, as "governments have been slow to act on their proposals" (Roht-Arriaza, 2004). Nevertheless, reparative justice rejuvenates both the sufferers and offenders via resource compensation, and offers them another opportunity in the country's revival (Roht-Arriaza, 2004). However, if for anything, restorative and reparative justice models offer at any rate a theoretical direction toward a future with limited disagreements.

As a corollary from the foregoing theoretical discourse, it is to be noted that no measure of justice as espoused by the two models appears to be sufficient to really quantify, qualify and indemnify the victims especially in the context of human rights abuse violations as in the Gambian case under Jammeh government. That is why Minow (1998) essentially remarked that no response is enough in recompensing loss. Hayner (2001) also cautioned with a note of restraint that victims in different contexts would express wide-ranging wishes and needs in spite of limited available resources; it is up to the concerned truth commission to study the situation and act accordingly.

Given the doubt of accomplishing the onerous tasks before truth commissions, some scholars have advanced a context-dependent approach that rely on a combination of "prosecutions, truth-telling, restitution, and reform of abusive state institutions;" (Arthur, 2009) or a holistic approach combining varied techniques as the most effectual mechanism to bolster democracy and diminish human rights abuse and violations (Olsen, Payne & Reiter, 2010). Thus, there exists a nexus among human rights violation, truth cum reconciliation commission, restorative and reparative justice. Atrocities committed by individuals, communities or governments, for instance, in form of human rights violations (as in Jammeh's Gambia or Apartheid South Africa), typically resort to the inauguration of truth commission and it is expected to lead to reconciliation of victims with estranged parties and this may also bring about reparation in form of material or moral gains.

AN OVERVIEW OF STATE OF HUMAN RIGHTS ABUSE AND VIOLATIONS IN THE GAMBIA, 1994-2016

Gambia once functioned as the Africa's longest multi-party democracy after gaining independence from Britain in February 18, 1965. Sir Dawda Kairaba Jawara led

the country since independence and his People's Progressive Party (PPP) dominated electoral like colossus (Darboe, 2010). Thus, long before its removal in 1994, Jawara government had ruled for too long, had metamorphosed into ineptness, and went out of touch with Gambia's common citizens' struggles (Darboe, 2010). The International Monetary Fund (IMF) and World Bank's induced Structural Adjustment Programme (SAP) intensified job losses, unemployment and frustrations among Gambians. This emboldened the political opposition and its resonation and the overthrow of Jawara government by Yahya Jammeh and his junta on July 22, 1994 leading to street jubilations and hoping that this was the much-awaited revolution that the people had been yearning for (Darboe, 2010).

However, after Jammeh's led military coup, a Provisional Ruling Council was inaugurated to return the nation to democratic path after two years in 1996 and the military leadership led Jammeh himself formed a political party name Alliance for Patriotic Reorientation and Reconstruction (APRC) and participated in the 1996 elections. The outcome of the elections which was highly controversial and marred by irregularities and rigging as stated by the opposition groups and international observers gave the military leadership victory (Darboe, 2010). After the purported electoral success of 1996, it was sooner than later, that the Gambians realised that Jammeh was an authoritarian, erratic and insincere leader who rudely curtailed civil liberties and stifled opposition and he eventually became increasingly unpopular.

Though the government's human rights violations and abuse tendencies were first noticed when Jammeh government banned some politicians and political parties from election participation before the 1996 election. It became aggravated after 1996 elections whereby haphazard arrests, press suppression, appropriation of private properties devoid of required court orders, persecution of former public servants and average citizens (Darboe, 2010) continued unabated and numerous to mention. Due to these poor human rights records of Jammeh government, the Gambia was treated as a pariah state in the global arena and had poor diplomatic relations other countries and international bodies. For instance, Gambia-United States (US) bilateral ties were formerly damaged owing to U.S. disapproval of Gambia's poor human rights record and the participation of U.S. nationals in an aborted coup attempt against Jammeh in 2014 (Husted & Arieff, 2018). Jammeh also severed ties with the Commonwealth in 2013, and estranged donors through his spurious claims that he had discovered a cure for AIDS. In 2014, the European Union immobilise development aid to Gambia owing to concerns over anti-lesbian, gay, bisexual, transgender, and intersex (LGBT) legislation. The Jammeh administration also had strained ties with Senegal because of Jammeh's suspected backing of Senegalese separatist rebels (Husted & Arieff, 2018).

Thus, these human rights abuse and violations have metamorphosed into different dimensions and these included arbitrary or unlawful deprivation of life, disappearance, torture and other cruel, inhuman, or degrading treatment or punishment, harsh and life threatening prison and detention centre conditions, arbitrary arrest or detention, compromised role of the police and security apparatus, warped arrest procedures and bad treatment of detainees, denial of fair public trial, unfair trial procedures, bad treatment of political prisoners and detainees, arbitrary interference with privacy, family, home, or correspondence, curtailed internet freedom, absence of academic freedom and cultural events, inadequate to freedom of peaceful assembly and association, curtailed freedom to

participate in the political process, corruption and lack of transparency in government, uncooperative governmental attitude regarding international and nongovernmental investigation of alleged violations of human rights, discrimination, and societal abuses, acts of violence, discrimination, and other abuses based on sexual orientation and gender identity (US Department of State, n.d).

Few instances of Jammeh atrocities suffice here. Part of the intolerance and human rights abuses and violations under Jammeh regime is the violent crushing of a peaceful student demonstration in April 2000 leading to the deaths and maiming of several students by the country's police and military (Darboe, 2010). In 2005, 56 African migrants, who were bound for Europe, were captured and summarily executed in Gambia on the suspicion that they were mercenaries and 44 of these, were Ghanaian migrants. In spite of this violation, the Gambian security authorities refused to probe the murders until the Government of Ghana formally lodged a complaint and requested for an investigation (Oduro, 2018). After a combined United Nations (UN) and Economic Community of West African States (ECOWAS) team investigation, there was a report issued in 2009 which concluded that the Gambian government was not in any way connected to the migrants' deaths and disappearances, however that undisciplined and criminal elements in Gambia's security services were responsible (Oduro, 2018). However, it was later revealed by Reed Brody, counsel at Human Rights Watch (HRW, 2018a), that the witnesses identified the "Junglers," an infamous paramilitary death squad who received its orders directly from Jammeh, as those who carried out the killings; and that Jammeh's aides went on to destroy vital evidence to inhibit international investigators from discovering the truth. In spite of this, there emerged recently the campaign tagged "*#Jammeh2JusticeCampaign"* being advocated and championed by the sole Ghanaian survivor of the mayhem, Martin Kyere and the families of the victims. They are not only seeking to institute the case against Jammeh and his cohorts who were involved in the massacre, but also demanding the Ghanaian government's support to transfer Jammeh's from Equatorial Guinea so as to face trial for the immoral act (US Department of State, n.d).

Jammeh's complicit was established in the murder of The Point Editor, Deyda Hydara in 2004. In one of his national broadcasts on state owned stations on 21 September, 2009 he threatened to exterminate human rights defenders (La Rue, 2010). According to him, "If you think that you can collaborate with the so-called human rights defenders, and get away with it, you must be living in a dream world. I will kill you, and nothing will come out of it…" (*The Guardian*, 2009, para 4). In one of his usual speeches at Faraba Banta Village, on 27 June 2013, Jammeh repeated his government's disdain for homosexuality which he portrayed as 'evil, anti-human, and anti-Allah' in a speech delivered at the United Nations General Assembly on September 27, 2013 (Centre for Democracy and Development (CDD), 2017).

In addition, the backlash of a 2014 aborted coup plot led to the arrest of an estimated 36 persons along with their family members, three of the arrested persons were executed, while a former army officer was shot and wounded (US Department of State, n.d). Some part the detained persons were women, the elderly and innocent children and they were eventually released after six months incarceration. Other detainees were punished with torture and severe beatings, electric shocks and water boarding carried out by the National Intelligence Agency (NIA) (Amnesty International, 2016).

In 2014, the abuses perpetrated included torture, capricious arrest, elongated pre-trial, forced disappearance and secluded detention among others (US Department of State, n.d). Moreover, the NIA officers were reported to have arrested and incarcerated about six people associated with the #Gambiahasdecided T-Shirts following the December 2016 elections (HRW, 2017). There was also discrimination against LGBTI community in The Gambia whose members experienced homophobic repression. Jammeh later terrorised the homosexuals that their throats would be slit in one of his usual speech as in May 2015 at Farafeni market (Ruble, 2015).

Muslims and non-Muslims also experienced threats to freedom of religion, in spite of the Gambian Constitution which guarantees the freedom of worship devoid of infringement on the rights of others (See section 25/1 (c). Thus, the declaration of the country as the Islamic Republic of the Gambia and the subsequent outlaw of the Christian festivals celebration in the country in December 2015 by Jammeh came to mind here (*British Broadcasting Corporation (BBC),* 2015). Under his government, it was reported that three Imams were incarcerated without trial or explanation from October 2015 (Bureau of Democracy, Human Rights and Labour, United States Department of State, 2015). This was in contrary to the Constitution, which stipulated that the maximum time for detention without trial is 72 hours. In the same vein, the Supreme Islamic Council (SIC) in conjunction with Jammeh government had referred to the Ahmadiyya Muslims as 'non-Muslims' and afterwards deprived them of access to the media (Bureau of Democracy, Human Rights and Labour, United States Department of State, 2015). It was reported by Freedom Newspaper that on 6 January 2016, how the so-called witches and wizards in Kamfenda and Foni villages were arrested en masse and tortured by a killer squad (Jungullars) under the direct order of Jammeh. The said village residents had no option other than to flee to the neighbouring Casamance in Senegal owing to fear of being victimised and killed by the killer squad (*Freedom Newspaper*, 2016).

According to Afrobarometer survey (2018), human rights abuse under Jammeh regime, more than one-quarter (28%) of Gambians say they or a member of their families suffered at least one form of human-rights violation under the regime, including arbitrary arrest or detention without trial (14%); torture, rape, and other brutalities by agents of the state (14%); intimidation by agents of the state (13%); and wrongful dismissal from work (13%), disappearance after arrest by security agencies of the state (8%), destruction or confiscation of property or assets by the state (7%), state-sponsored murder (5%) while (28%) suffered at least one of these human-rights abuses (Jaw, 2018).

From the above, it is safe to state that Jammeh's rule from 1994 to 2017 was characterised by blatant human-rights abuses (Amnesty International, 2018; *Media Foundation for West Africa*, 2014). Stating what could be regarded as the Jammeh administration's epitaph, the administration:

...had been notorious for operating a closed political space, incidents of corruption, human rights abuses, threats to religious freedom, weakened judiciary and legislature, nebulous electoral processes, socioeconomic challenges, undermining of the rights of women and girls, and an enforced ethnic cohabitation (CDD, 2017, p.5).

IN SEARCH OF TRUTH AND JUSTICE IN THE GAMBIA: THE ESTABLISHMENT OF TRRC

On 13 December 2017 in the Gambia, National Assembly adopted Truth, Reconciliation and Reparations Commission (TRRC) Act and assented to by the President on 13 January 2018. The TRRC Act provides for the establishment of the historical record of the nature, causes and extent of violations and abuses of human rights perpetrated during the Yahya Jammeh's rule i.e. between July 1994 and January 2017. It is also to contemplate the granting of reparation to victims while the Commission comprised eleven members and chaired by Dr. Lamin Sise (Law Hub Gambia, n.d).

The Attorney General Ba Tambadou led the process of founding the TRRC. President Adama Barrow eventually appointed Baba Galleh Jallow, an academic as Executive Secretary of the Commission with effect from 1 February 2018 (Shaban, 2018). A request was also made for nominations to the TRRC laying emphasis on the fact that individuals to be nominated should be of sound moral rectitude and integrity, absence of criminal record or participation in previous human rights abuses, no political party activity, and residency in either the Greater Banjul Area or in the Diaspora (*Freedom Newspaper*, 2018). In August 2018, Baba Jallow appointed Alagie Barrow as the Director of Research and Investigation for the Commission (*The Point*, 2018).

According to the TRRC Act, the Commission is expected to operate for a period of two years, and the President may extend this for such further period as he or she determines by publication in the gazette. All the members of TRRC shall be citizens of The Gambia from amongst persons of high moral character and integrity who have distinguished themselves in their respective fields of vocation or communities (Truth, Reconciliation and Reparations Commission (TRRC) Act, 2017).

Regarding the independence, it is stipulated that the Commission is required to (a) be impartial and fair in the performance of its functions; and (b) not be subject to the direction or control of any person or authority. Thus, TRRC in its bid to search for justice for victims is empowered to investigate human-rights violations and abuses perpetrated during Jammeh's reign, dealing with possible prosecution, promoting social unity and national appeasement, valuing the rights and dignity of victims via the stipulation of suitable reparations, and learning appropriate lessons so as to engender valuable mechanisms to avert a re-emergence (Tambadou, 2018). This is a welcome development as far as the majority of Gambians are concerned. However, based on the available extant literature, the assigned role of the TRRC in search for the truth in its bid to reconcile, restore justice and compensate victims of human rights abuse under Jammeh government is not an easy task. There are anticipated impediments that may likely prevent the TRRC from achieving its mandate. This will be the focus of the next section.

THE LIKELY IMPEDIMENTS TO POSITIVE IMPACT OF TRUTH COMMISSIONS WITHIN THE CONTEXT OF OTHER COUNTRIES' EXPERIENCES: LESSONS FOR TRRC IN THE QUEST FOR JUSTICE IN GAMBIA

Some of the identified impediments which may have far-reaching effects on the operations and final outcomes of the TRCC in Gambia are discussed below.

CHALLENGE OF FUNDING

Gambia has already been overstretched economically largely due to mismanagement and corruption that characterised the Jammeh regime. Thus, critics usually question the necessity for a truth commission from an economic standpoint, contending that funds expended on a truth commission should be redirected in the face of competing and more pressing budgetary priorities; especially, in country like Gambia, whereby poverty is a great challenge and its survival depends on external borrowings. Available evidence shows that TRCC is being funded through foreign aid from the UN, Qatar and other countries (*The Gambia Radio*, 2018) while there is general conviction among the enlightened Gambian populace championed by Victims' Centre Chairperson Sheriff Kijera who contended that justice cannot be provided to the victims via dependence on foreign aid (Kijera, 2019).

NEGATIVE IMPLICATION OF LEGALISTIC APPROACH TO THE COMMISSION'S PROCEEDINGS

It has been discovered that conducting the proceedings of truth commissions in a legalistic manner may be counter-productive. Despite the fact that these commissions may possess some of the powers and functions of a legal body, they are inaugurated as quasi-judicial instruments focused on acknowledging and where feasible ensure truth for victims. However, the preponderance of an openly legal disposition can detract commissions from achieving their primary mandate. Hence, establishing a safe space for victims to narrate their testimonies cannot be over-emphasised, thus, the physical layout of the hearings plays an important function in setting the atmosphere For instance, in South Africa, victims who gave evidence before the TRC were further asked about the lessons to be shared with prospective countries establishing truth commissions. Part of the most significant issues raised revolved around the requirement for compassion and uprightness when dealing with victims (Picker, 2005).

It was noted that owing to the kind of evidence and the preceding experiences of ill-treatment and subjugation visited on the victims, caution should be sought in the way the witnesses are handled during the hearings, and that threatening locations that may reawaken memories of debriefings need to be carefully shunned (Picker, 2005). Thus, informal settings were created in South Africa and Timor-Leste to hearten survivors to feel relaxed. In Peru, commissioners and participants were made to sit together at a common table during the proceedings; whereas in Ghana, the layout and tone of the public proceedings were of great concern as expressed by many of the participants (Picker, 2005). As observed by Professor Gyimah-Boadi, former Executive Director of CDD-Ghana, the Ghana's TRC's set up of the public hearings was "exceedingly legalistic" whereby the public hearing room was designated a courtroom while lawyers and commissioners were addressed as "my Lord"; also lawyers were extremely involved in the hearings; and at times witnesses were pressed to be time conscious and stick to facts (Picker, 2005). In essence, public hearings of truth commissions are at variance with proceedings amid judicial effect, even though principles of natural justice and fairness cannot be ruled out, however, they unintended to be knotted by the similar usual of rules of evidence and *audi alteram partem* contemplation (Picker, 2005).

DILEMMA OF BIAS ACCUSATION AND POLITICISATION

The truth commissions are always faced with the accusation of bias and reprimands. This was the case in Ghana's National Reconciliation Commission (NRC) where the Chairperson and commissioners were accused of bias. For instance, the chairperson of the Commission, Justice Kweku Etrew Amua-Sekyi, faced serious criticism for purportedly displaying bias in his treatment of witnesses. Some concluded that this might not be far away from his political background and his personal grudges against former regimes; especially the unfair treatment meted out to those he thought to be supporters of the former Ghanaian's president, J. J. Rawlings. Richard Quashigah, Senior Editor with Radio Ghana and a member of the Ghana Journalists Association (GJA) also corroborated this, when he stated that the chairperson's bearing towards perceived supporters of Rawlings was awkward and exuded confirmation of bias (Valji, 2006).

Some scholars have also argued that in spite of the fact that truth commissions have been viewed as the "second best" alternative right past abuses, others have claimed that in some cases, because of their propensity for political manipulations, truth commissions merely function to manage the balance of power in transitional situations (Leebaw, 2010) and on some occasions become politicised and controversial. Hence, considering past misdeeds can be politically delicate, contentious, even undermining (Bakiner, 2015). That is why Bakiner argued that truth commissions may arise from, and engender influence via complex socio-political processes, but the sponsors, in most cases, that is, the sitting governments, parliaments, courts or international institutions "follow a parochial, if not completely selfish, set of political ends. Thus, the willingness of incoming governments to establish commissions has emboldened the critics to tag these bodies as channel of political legitimisation (Bakiner, 2015). Part of such infused political innuendoes and controversies is the campaign of calumny and repulsion embarked upon by Jammeh's supporters in the print and on social media (International Centre for Transitional Justice, 2018). For instance, national mobiliser for Jammeh's party, Alliance for Patriotic Reorientation and Construction (APRC) and the ex-Mayor of the Kanifing Municipal Council (KMC), Yankuba Colley, has portrayed the TRRC as a witch-hunt targeted at the former president (Bah, 2018).

REFUSAL TO ACCEPT RESPONSIBILITY OR DEMAND FOR FORGIVENESS

It has been noted that there is possibility of truth commissions via their own probe being successful in obtaining some new truth in favour of victims devoid of perpetrator's cooperation. However, it is more dignifying and substantial value is added to the national reconciliation project when perpetrators freely accept their misdemeanour, especially when they make an apology to those wounded by their actions (Cuevas, Rojas, & Baeza, 2002). Acknowledgement is part of re-establishing a moral code in society and boosting healing and reconciliation, especially where retributive justice is ruled out. Equally, obtaining reconciliation is seriously hindered in situations where substantial part of perpetrators refuses to acknowledge responsibility or ask for forgiveness (Valji, 2006). This was a case with a Chilean victim who stated that reconciliation was impossible "while those men keep justifying their crimes … while they remain loyal to their pact of silence" (Cuevas et al., 2002, p.47). Thus, looking for ways through which past violators

of human rights can be encouraged to appear and voluntary participation are a major predicament for all truth commissions.

Numerous reasons can be advanced for this. Part of these is a continued belief and justification of past actions and worry over public shaming, including potential legal implications of a confession (Valji, 2006). Though, it has been argued using a stick approach, that is prosecution threat for wrong doers who refuse to appear, or a carrot approach, that is the possibility of official pardon for those who show up may be ineffective as it happened in the South African case during which perpetrators were to admit wrongdoing was largely unsuccessful, 2006) (Valji, 2006).

Aside this, dealing with a former head of state presents a dangerous direction for a truth commission to traverse (Valji, 2006). Ordinarily, inviting a country's former ruler to testify is a perceptible stance regarding the application of the rule of law to all citizens, notwithstanding the rank or position. This situation has two contrasting implications; it can leverage the opponents of the commission's standpoint by labelling it as a mere tool for shaming political rivals of the sitting government; or promote reconciliation by suiting the victims' frail nerves if the former ruler acknowledges wrongdoing, accepts responsibility for systematic human rights violations. However, further damage can be wrecked if a former ruler or high-profile witnesses refuse to accept the legitimacy of the commission and disregard requests to appear before or accept responsibility or persistently renouncing wrongdoing. Thus, the TRCC should realise that making a major *dramatis personae* in the past human rights violations, especially the past presidents or heads of state, like Yahya Jammeh, to appear before the TRCC may prove abortive. This was the case in Nigeria, Sierra Leone and South Africa. For instance, in Nigeria, three important former military rulers, Generals Mohammadu Buhari, Ibrahim Babangida, and Abdulsalam Abubakar persistently disregarded summons to appear before the Oputa Panel (Nigeria's truth commission) to answer allegations of human rights abuses (Valji, 2006).

INADEQUATE PUBLICITY AND ABSENCE OF TOTAL COMMUNITY PARTICIPATION

Based on the African truth commissions experiences in Ghana, Rwanda, South Africa and Sierra Leone, inadequate publicity which led to limited participation of the relevant communities negatively affected the successful outcomes of the commissions. Thus, as espoused by Abe (2014), it has been established through the submissions of scholars on transnational justice programmes that negative comments often trail truth commissions in terms of participation/mobilisation related problems within the context of inadequate efforts in calling citizens during the process, not getting enough expected attention, recurrent failure to incorporate all social groups and the over- control in methods of participation (Abe, 2014). For instance, the South African and the Sierra Leonean TRCs were reported to have achieved marginal successes because of their failures to reach out to and incorporate the majority of the populace who lived in the countryside and predominantly illiterate. The failure to popularise the process of the South African TRC, in particular, was intensified by the Commission's inability to rebroadcast its hearings in popular media (IIiff, 2012). Thus, the local people were unable to monitor the operation of these two commissions in newspapers and media reports.

DELAYS OR FAILURE TO FULFIL REPARATION PROMISES

Recommending redress remains an integral part of truth commissions' functions, though a far-reaching reparation strategy cannot fully rehabilitate the suffered, but it can play a massive role in healing victims' wounds, promoting reconciliation and affirming the value of citizens earlier left out from the countrywide project. However, delays or failure to fulfil major reparation promises has been the bane of successful output of truth commissions. It has been observed that needless delays in instituting a reparation policy at the end of a truth commission's assignment can reinforce victims' feelings of abandonment, devaluation and marginalisation by the state. Such has been the situation of victims in several countries where the state either did not respond to a commission's recommendations for some years, as in South Africa and Sierra Leone; or where the state discarded the recommendations or failed to respond, as has been the situation in Guatemala (Valji, 2004). Also, in a study carried out by Bakiner, 2015), out of twelve truth commissions who demanded reparation for victims, only one government initiated a reparations programme without any hesitation while governments in El Salvador, Haiti, Nigeria and Liberia completely ignored the recommendations for reparations.

CONCLUSION AND RECOMMENDATIONS

It is contended in this study within the context of its framework that establishing a truth and reconciliation commission as if that of TRRC signifies a kind of restorative and reparative justice which seek to undertake the task of healing a community damaged by cruelty and human rights abuse. The Gambia under Jammeh, as already discussed above, for twenty-two years was a shadow of its real self where tyranny and human rights violations knew no bounds. Thus, the exit of Jammeh signifies a new beginning for Gambians with great expectations, especially when the TRRC was established by Barrow administration with a definite mandate seeking justice for those that their rights have been violated. It therefore, admitted that the establishment of TRRC indeed signifies a secure space where past human rights violators and their victims in Gambia can convene safely and converse about the vicious actions that had occurred; so that, the sufferers and the perpetrators can begin to be reinstated peacefully in the society. Hence, the establishing of TRRC could promote a belief that the truth will free us all (Metta Centre, n.d).

However, in spite of the purportedly successful rate of truth commissions, serious doubts have arisen concerning the heartfelt effects of TRRC on seeking the truth, reconciliatory capability and reparative narratives (Allan & Allan, 2000). That is why it has been argued that advocates of truth-seeking commissions usually exaggerate their substance (Mendeloff, 2004) and that they often fail to attain their stated objectives of achieving justice, documenting a truthful historical narrative, and promoting reconciliation. Thus, with the advantage of hindsight, not every truth commission proposal is successful (Bakiner, 2015).

From the foregoing and beyond any deft political manoeuvre by Barrow government or surreptitious intentions, there is no doubt that the establishment of the Gambian TRRC is a right step in the right direction. Only with full accountability and transparency of the TRRC can the Gambia acknowledge its past errors in order to re-establish confidence in its institutions and ensures that these violations do not reoccur.

However, efforts should be made not to allow the TRRC to go the way of other truth commissions with marginal success. Therefore, first, solid funding arrangement should be intensified for the sustenance of the TRRC while the Commission's proceedings should be devoid of legal encumbrances. Second, the Barrow government should strive be seen to be promoting true reconciliation for peace devoid of bias and politicisation including frequent pronouncements towards reiterating its commitment to the independence of the commission. Third, the main actors in the Jammeh regime should be encouraged by the TRRC to appear before it by demonstrating openness, fairness, transparent proceedings devoid of bias to pave way for accepting responsibility and proper demand for forgiveness when necessary. Fourth, it is imperative for the news, electronic, print and social media, human rights organisations and victims' associations to publicise TRRC daily proceedings and mobilise for total community participation. Lastly, according Afrobarometer survey (Jaw, 2018), the Gambians expectations from the TRRC are diverse.

Gambians' preferences for definite antidotes and reparations for victims, which altogether formed bulk of the responses, were 43% based on the survey should be looked into. Therefore, national and international human rights organisations like International Centre for Transitional Justice and host of others including the donors should exert sustained pressure on Barrow government to fully implement the TRRC's recommendations, especially in the area of victims' reparations, which had been the major bane of most past truth commissions in Africa.

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APPLYING THE STRAFTOEMETINGSLEIDDRAAD IN A CORRUPTION CASE IN INDONESIA

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Abstract: *Criminal Disparity in a corruption case is unacceptable in philosophical reasoning, sociologically, or even from the perspective of legal objectives, which in theory and factual facts lead to judicial caprise and the presumption of judicial corruption in the verdict, where it will adversely affect the fair justice of the convicted or for the Indonesian people as victims of corruption. Criminal Law gives alternative in order to give pressure the criminal disparity through straftoemetingsleiddraad or guidance of sentencing of the judges in prosecuting without violating the principle of freedom of judges, either through the Indonesian Supreme Court Regulations for now as ius constitutum, or through the legislation process of the Anti-Corruption Act for the future as ius constituendium.*
Keywords: *Disparity, straftoemetingsleiddraad, justice.*

INTRODUCTION

Prof. Satjipto Rahardjo (2006: 136) argues that "corruption is a parasite sucking a tree will cause the tree to die and when the tree dies the corruptors will also die because there is nothing left to suck", this statement is already enough to give a picture of what corruption is in this country, so that it is appropriate that the Law of the Republic of Indonesia Number 20 Year 2001 on the Amendment to Law of the Republic of Indonesia Number 31 of 1999 on the Eradication of Corruption Crimes (LNRI.2001 No.134) abbreviated as Corruption Law, give a threat of dead sentence, life imprisonment and imprisonment of a minimum probation and a maximum of 20 years and other penalties, and the indefinite sentence referred in the Corruption Act makes criminal disparity, even though the articles violated are the same or the total amount of the state financial court losses is relatively the same, but criminal sanctions imposed by the Court vary without satisfactory reasons for the present, as in these two cases where the Supreme Court of Indonesia by its Judgment No. 472/K / Pid.Sus / 2012 dated 3 May 2012 stated that the Regent of Langkat Syamsul Arifin (2000-2007) was proven to have violated Article 3 of the Anti- Corruption Law, and was sentenced to six years imprisonment, but on the other side of the Supreme Court trial through Judgment No.

1589 / K / Pid.Sus / 2013 imposed 9 years imprisonment to former Banyuwangi Regent Ratna Ani Lestari (2000- 2005), for violating Article 3 of the Anti-Corruption Act which resulted in state financial losses of up to Rp 19,106,000,000.- (Nineteen billion one hundred and six million Rupiah) these two judgements have raised a query "why is Syamsul Arifin detrimental to state finances more than Ratna Ani Lestari is sentenced lower? and vice versa why is Ratna Ani Lestari which had harmed state finances in smaller number is imposed with higher prison sentence? even though both of them have violated the same Article 3 of the Anti-Corruption Act, at the time they committed their criminal act both were in the course of occupation as regents, but the fact is the Court had sentenced them differently, according to Prof. Muladi and Prof. Barda Nawawi (2010: 52) a situation like this is called criminal disparity, a different punishment for a same crime or toward a crime which dangers can be compared without a clear justification and Prof. Harkristuti Harkrisnowa argues that disparity happened in many issues such as between cases, having the same serious level (Ali & Heryani, 2012: 152), such thing will lead to the presumption of the public that there has been a "judicial corruption" as argued by Prof. Mahfud M.D, that:

" . . whatever judgment is desired can be built up by its acceptable logic. If nothing extraordinary happens, a judicial corruption transaction can easily pass because in making decisions and choosing perspectives, judges can take refuge under the principle of "freedom of judges" to judge in the name of confident as a judge." (Syamsudin, 2012: 208-209).

Other than that according to Prof. Muladi and Prof. Barda Nawawi, (2005: 8) disparity will create:

"Convicted underestimates the law, whereas respect to the law is one of the target of punishment. A serious matter will be seen from here, since this will form an indicator and a manifestation of failure in the system to reach a fair justification in a rule of law and at the same time will weaken public trust in the criminal justice system."

Now or even in the future the national criminal law needs to seek for a pattern or system of punishment that can reduce punishment disparity in cases of corruption that happened so far, creating low public confidence in the judiciary in Indonesia, then in respond to this criminal law problem a problem formulation was made to answer this legal problem, with the question what is the significance and nature of the application of *straftoemetingsleiddraad* in corruption cases? Can this *straftoemetingsleiddraad* system be applied in corruption cases in Indonesia based on the national criminal law? what is the ideal concept of the *straftoemetingsleiddraad* system applied in corruption cases in Indonesia according to the national criminal law in the future ?, Base on this three formulas this research is made and given the title "The Application of *Straftoemetingsleiddraad* in Corruption Criminal Case in Indonesia".

DISCUSSION

This discussion will be carried out through a legal argument built on factual facts not from an empty space with *ius in causa positum* principle deriving from the concepts and theories of the criminal jurists, as the term of the writer that "in research we should lean on the shoulders of a giant", but still refers to the positive law as a characteristic of normative research, then to enrich the insight of this legal argumentation, the writer uses

the Rotterdam school of thought, that "the law is not rigidly fixed (*gefixeerde essenties*) but empty spaces (*lege plekken*), open (*open ruimen*) and is not a determined domain (*gedetemineerde plaatsen*) (Rahardjo, 2016: 87).

THE SIGNIFICANCE AND NATURE OF THE APPLICATION OF *STRAFTOEMETINGSLEIDDRAAD* IN CRIMINAL CORRUPTION CASES

The differences in the severity of imprisonment sanction imposed by the Court against a convicted individual in a conventional criminal offenses (general criminal offenses), both are subject to the same article is a logic, because the judge needs to examine the various aspects of a conventional criminal act, both starting from the cause and effect of *actus reus*, and *mens rea* of the accused, until in a decision the Judge's consideration is found which are things that incriminate and alleviate the accused, which is as a basis for the judge to impose criminal sanctions on the accused, then according to Article 14a *Memori van van Toelichting* (WvS, 1927) that:

"In determining the level of punishment, for each incident the judge must observe the actions and the accused. What rights are being offended by the criminal act, what are the damages caused? What was his previous track record? Is the mistake blamed to him the first step to a misguided path or is it a repetition of an evil character that already appeared before? The limit between the maximum and the minimum must be fixed in the broadest way, so that even all the questions above are answered with the defendant's risk. the ordinary maximum punishment should have been adequate." (Djunaedi, p. 7)

This scheme of punishment is called the definite sentence which is influenced by the neo-classical indeterminism, that is, the flow of law which thinks that punishment can only be imposed for the benefit of the accused as well as protecting the interests of the community, then the consequence of this punishment is the disparity punishment occurred in corruption cases. If disparity occurred in the conventional criminal case as provided in The Republic of Indonesia Law No. 8 year 1981 in the Book of Criminal Law (LNRI Year 1958 No. 127) abbreviated KHUP, it is still acceptable because the accused has definitely *mens rea* or different social background, but in corruption act punishment disparity is unacceptable because its social background or the intelligence capacity of accused to self-ability is relatively the same one and another, and the *mens rea* of the accused is greed, not for the necessities of life but to enrich themselves with certain parties, thus the criminal acts of corruption in various literatures are included in the white collar crime typology or "white collar crime", i.e crimes committed by respectable people and having public power, capitalizing the country's wealth to their interests, such as bribery to pass a policy of laws and regulations expected by the oligarchs, as well as mark up costs and / or embezzle state assets and others. In many various literature white collar crime is an evil act done by persons having high position and authority in the government sector or private sector, which according to the American criminologist Edwin Hardin Sutherland in his book titled White Collar Crime in 1949 is defined as (Fuady, 2004:1):

"Crimes *committed* by person of respectability and high social status in the course of their occupation" (Setyono, 2009: 30) and or "a white collar crime were a crime committed by a person of respectability and social status in the course of his occupation".

Then the development of white-collar knowledge is more extensively described by Edelherz (1970:3) by stating that:

"White collar crime as illegal act or series of illegal acts committed by non-physical means and by the concealment or guile, to obtain money or property, to avoid the loss of money and property, or obtain business or personal advantage".

or a series of illegal act committed by non-physical means to obtain private profits and the white collar crime not only narrowly understood that it is committed by the company officials in the private sector, but broadly than that including people from government and politicians, the most important actor can be identified are "honorable" person, as confirmed by Vijay K Shunglu that corruption is a white collar corruption and the fact is true that the actor of the corruption criminal act is committed by the students and economically established individual, so that the factor they committed corruption is none other than the factor of greed as argued above. Facing this the judge no longer need to consider the actor's *means rea* in giving punishment, because the *means rea* of a corruptor is greed.

Punishment disparity in Indonesia in a corruption case that creates dissatisfaction in society as well as the accused himself, making the application of guidance of sentencing in the Anti-Corruption Act aimed to press the occurrence of:

- Judicial corruption

for the purpose in minimizing the judge's own desire which might be happened as described by Prof. Mahfud M.D., that:

"Actually, in examining and making a decision, a judge can punish or release the defendant, it does not depend on the law, but on" the desire / taste of the judge. If the judge wishes to punish the defendant, he can then use certain perspectives and find his argument. Meanwhile, if the judge decides to free the defendant, then he will choose another perspective, argument, and other laws. . . whatever decision is desired can be built up by its acceptable logic. If nothing extraordinary happens, a judicial corruption transaction can easily pass because in making a decision and choosing perspective, the judge can take refuge under the principle of "freedom of the judge" to give a verdict in the name of confident as a judge " (Syamsudin, 2012:208-209).

- Judicial caprice

The interpretation of disparity in the convicted victim is not in a court because the punishment received is different than of other convict even though the case is same (the same offense), as explained by Professor Muladi and Professor Barda Nawawi (2005:8) that:

"The convict who after comparing punishment then feel as a victim of judicial caprice will become a convict who does not respect the law, though one of the targets of punishment is creating high respect to the law. This will create a serious problem, because it will become an indicator and manifestation failure in a system to achieve equality in the rule of law and at the same time will weaken the public trust in the criminal justice system. Something that not expectable to happen if the disparity is not resolved, namely the emergence of demoralization and anti-rehabilitation attitudes among the more severely punished convict than the others in a comparably cases."

Significance is the initial clue to again seek whether nature is ontological, where it is the thing that wants to be realized by the meaning, due to the occurrence of criminal disparity in corruption cases in Indonesia, so that the application of

straftoemetingsleiddraad is a means to realize justice through the law, where in legal knowledge justice is a legal objective as Aristotle said that the law can only be established when related to justice (Darmodiharjo dan Shidarta, 2006: 156), and according to Gustav Radbruch in Einfurhung indie *Rechtswissenschaf*t that one of the objectives of the law is justice and the occurrence of punishment disparity according to Professor Muladi and Professor Barda Nawawi (2005: 54) is " an indicator and manifestation of failure in the system to reach equality in justice in the Indonesian Law Government," attributable to the raising of judicial corruption and judicial caprice that attack the injustice values, then the ontology of application to the application of *straftoemetingsleiddraad* in corruption cases in Indonesia is to provide legal justice for the whole people in Indonesia as provided in Article 17 paragraph (1) of the 1945 Constitution as the ground norm or as the legal source and the successful achievement of the nation ideals, a social justice for all Indonesian people as referred to the 5th precept of Pancasila as the philosophy of *grondslag* or *staatfundamentalnorm* or mentioned also as the source of all national law sources.

THE APPLICATION OF *STRAFTOEMETINGSLEIDDRAAD* IN A CRIMINAL CORRUPTION CASE IN INDONESIA ACCORDING TO THE CRIMINAL LAW

The scheme of punishment in the national criminal law or even in the Anti-Corruption Act does not recognized the *strafoemetingsleiddraad* system being influenced by the freedom of the judges principle as provided in Article 24 paragraph (1) of 1945 Constitution that "Judicial power is an independent power", so that the Anti-Corruption Act still uses the indefinite sentence punishment pattern as illustrated for example in Article 2 paragraph (1) with life imprisonment sanctions or for a minimum of 4 (four) years and a maximum of 20 (twenty) years, where this situation proves the occurrence of judicial corruption. The criminal legal experts in Indonesia are aware of this situation, therefore they include the guidance of sentencing in Paragraph 2 titled "*Pedoman Pemidanaan*" in the Draft Law of the 2017 Criminal Code (RUU KUHP), where such punishment is hoped to be the benchmark of the judges to later impose the same criminal sanction as punishment in the similar criminal case in the previous corruption case. The disadvantages of the guidance of sentencing in Article 56 paragraph in the Draft Law of the Criminal Code (KUHP) is in fact depends on the judge's subjectivity, and the guidance as referred to in paragraph (1) has been implemented by the judges in sentencing a corruption criminal case.

Punishment disparity has to end according to the Indonesian Supreme Court itself through its authority, as its responsibility being a judicial institution that oversees judges throughout Indonesia other than the judges at the Constitutional Court of the Republic of Indonesia, based on the Anti- Corruption Act said:

"That corruption act has been committed extensively during this time, not only detrimental to the state finances, but is also an offence to the social and economic rights of the community at large, until criminal act of corruption need to be classified as a crime that its eradication must be carried out extraordinarily ,. . "

On such basis, guidance of sentencing could be implemented by giving sentence on criminal corruption cases through the Indonesian Supreme Court (Perma) regulation.

HOW IS THE IDEAL SYSTEM CONCEPT OF *STRAFTOEMETINGSLEIDDRAAD* APPLIED IN CRIMINAL CORRUPTION CASES IN INDONESIA IN THE COMING PERIOD?

Pressuring the occurrence of judicial corruption and judicial caprice is a form of justice in criminal law, so ideally the national criminal law should include the *straftoemetingsleiddraad* in the Anti-Corruption Act with measurable guidelines, by consistently based on the concept as well as theories that already exist in court law, as a legal basis for implementing the system later. The assertiveness of the concept of *strafteoemetingsleiddraad* in criminal corruption cases in Indonesia is required, taking into account that the modus of criminal corruption act in Indonesia always find the cutting-edge forms, and its scope reaches to the judiciary level in Indonesia, and in fact there are dozens of judges at the Corruption Court, who are also apprehended as accused corruptors. Considering the legal understanding in Indonesia tending to adhere to the concept of Plato's justice, that says "that justice can only exist in the laws and regulations made by experts who specifically think about it" (Rato, 2010:63), and confirmed by Hans Kelsen (2010: 48) with his legalism principle that regards fairness only reveals the value of relative compatibility with a norm, so "fair" is just another word for "true", as said by the American Chief Justice Oliver Wendell Holmes, "The supreme court is not a court of justice, it is a court of law ". The concept of justice is also in line with the Constitutional Court Decision No. 003 / PUU-IV / 2006, dated July 24, 2006 states that the Elucidation of Article 2 paragraph (1) of the Anti- Corruption Law along the phrases that in essence reads:

"What is meant against the law in this article covers a tort in formal or in material form, even if the wrong doing is not regulated in a legislation, but doing such actions is considered despicable because it is not in accordance with the taste or norms of social life in the society, such actions can be charged as against the 1945 Constitution and not having binding legal force".

Agreeing with the principle "*nullum delictum, nulla poena sine praevia lege poenali*", the *straftoemetingsleiddraad* should ideally be formulated in the Anti-Corruption Act not through Perma as in the *trias politika* principle, not by the judiciary (Supreme Court of Indonesia).

The application of *straftoemetingsleiddraad* in a criminal corruption case based on legislation theory having:

- *Philosophical Base*. The occurrence of punishment disparity Prof. Muladi and Prof. Barda Nawawi (2005: 54) said, that punishment is an indicator and manifestation of the failure of a system to achieve equality in the Indonesian rule of law, then if equality in justice is not achieved, it is an injustice, and the injustice referred to in this case is the occurrence different criminal punishment in the same case (same offence), while the aim of Pancasila as the philosophy of Indonesian *Grondslag* is "a social justice for all Indonesian people", as also provided in the 1945 Constitution as a *groundnorm*.
- *Sociological Base.* In order that all regulations that will be issued are useful for the needs of the community in the life of the nation and state, and as an effort to eradicate corruption in Indonesia, punishment disparity has been an issue since the past, and has been discussed for a long time in the Symposium of the Indonesian Association of Judges (IKAHI) in 1975 principally that: "To eliminate the feelings of dissatisfaction

to the verdicts of criminal judges whose punishments are strikingly different for the same legal offences, it is necessary to make efforts so that there is an appropriate and harmonious punishment"(Sudirdja, 1984: 3). With regard to punishment disparity, Professor Harkristuti Harkrisnowo (2003:28) argues: “With the real punishment disparity, it is not a surprise if the public questions whether the judge / court has truly carried out their duties to uphold law and justice? When viewed from the sociological perspective, the condition of punishment disparity is perceived by the public as the evidence of the absence of justice (societal justice). Unfortunately, juridically formal, this condition cannot be considered to have violating the law. However, people often forget that basically the element of "justice" must be attached to the verdict given by the judge". Punishment disparity in corruption cases occurred so far could not be explained in logical ratio to the community why such thing happened.

- *Juridical Base.* Arguments on the need of criminal guidelines in the Anti-Corruption Act are indispensable, as submitted in the philosophical and sociological foundations above, and then it needs a juridical basis as a legal basis to complete it, and the juridical basis to include *straftoemetingsleiddraad* or guidelines of sentencing in the future Anti-Corruption Act, for reasons as:

- *Corruption as extra ordinary crime.* The Indonesian Law No.19 Year 2019 on the Second Amendment on Law Number 30 Year 2002 on the Corruption Eradication Commission abbreviated as UU KPK by confirming that: “An extensive and systematic corruption act is also an offence to the social and economic rights of the people, because of these all a criminal corruption act can no longer be classified as an ordinary crime but already as an extraordinary crime. When studied from the result side or the negative impact that have seriously ruined the life structure of the Indonesian people since the New Order government to present time, is is self-explanatory that corruption is a deprivation of economic rights and social rights of the Indonesian people".

This opinion was supported by Chief Justice Artidjo Alkostar and others. Academically base referred to in legislation theory above designates guidance of sentencing in criminal corruption act, become the necessity of national criminal law to be applied in the Anti-Corruption Act in the coming time, as an efforts of the government to crease social justice for the whole people of Indonesia, and this application may be applied as instructed by the Anti-Corruption Act itself, that “corruption act is categorized as a crime with extraordinary eradication”, therefor even *straftoemetingsleiddraad* or guidance of sentencing is not known in the scheme of punishment in our national legal system, but since corruption is an extra ordinary crime according to the Corruption Eradication Commission than according to the Anti-Corruption Act its eradication should be carried out in an extra ordinary action way, including the application of *straftoemetingsleiddraad* in a criminal corruption case, not through Perma or through regulation especially made for that.

Punishment disparity will cause judicial caprice which resulted in the demoralization of the convicted and anti-rehabilitation attitudes, whereas for the community such punishment will lead the minds of the people over there that there have been judicial corruption in the punishment verdict, and both forms are forms of injustice, then the application of *straftoemetingsleiddraad* in the Anti-Corruption Act becomes the need of a national criminal law in order to provide social justice for all Indonesian people " as referred to in the 5th Precept of Pancasila as the phlosophy *Grondslag* state

philosophy of Indonesian *Gronslag* is" and referred to in Article 27 paragraph (1) of the 1945 Constitution as a groundnorm, both its application through the Perma for the present or in the Anti-Corruption Act for the foreseeable future, it is still possible according to national criminal law, because corruption is an extraordinary crime according to the KPK Law, and its action is carried out in an extra ordinary action according to the Anti-Corruption Law.

Finally, In order that the application of *straftoemetingsleiddraad* in corruption cases be measurable*, justitia vindicativa* theory must be determined as an objective of justice by using a precedent system as the basis for imposing penalties in cases of corruption, especially for the same article, and must observe the Article 18 paragraph (1) letter b of The Anti- Corruption Act as the aim in eradicating criminal corruption act.

CONCLUSSION

Punishment is the tool of criminal law to bring order to the members of society from inadequate acts in a certain measure, where the provisions have been formulated as an offense by the legislators and promulgated, this system has a European continental style characterized by legalistic characteristics as in Hans Kelsen's theory as the characteristic of the current Indonesian legal system.

Ideally the criminal provisions must be fair when applied to all parties including to the people of Indonesia, the problems faced by the Anti-Corruption Act is that the application of punishment by the courts are different to obscure the meaning of justice itself, as happened repeatedly, in two or more cases of the same criminal corruption act, the application of the criminal article is given different criminal sanctions, this disparity causes public dissatisfaction to lead to presumption of judicial corruption in handling cases the criminal corruption, dissatisfaction is also felt by the convicted self and felt as a victim of judicial caprice, these two issues is significance in weaken the trust of the Indonesian people towards the national criminal law system and lead the Indonesian people to become apathetic to respect the law as one of the targets in sentencing, facing the disparity issues in the criminal prosecution of corruption, that leads the Indonesian people to become ignorant until they do not respect the law as one of the targets of sentencing needs the application of *straftoemetingsleiddraad* also known as guidance of sentencing or in the Indonesian language referred to as the guidelines of sentencing, the purpose of its philosophy is to reduce the inequality of justice in the application of punishment in criminal corruption acts.

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THE PATTERNS OF TRUTH AND LIE, AS SEEN ON THE POLYGRAPH DIAGRAMS: AN EMPIRICAL STUDY

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Abstract: *Drawing conclusions out of the polygraph diagrams can be a very difficult process. The difficulty is based on various reasons, as shown in the further presentation. We found that, usually, on a given case, not only one reason of difficulty in interpreting a polygraph diagram is found, but two or more. This paper presents the results obtained through an empirical study. A number of 10 polygraph tests were performed, on subjects who were students at the time of the experiment, using the Reid technique of control questions. The analyses of the results focuses on identifying the differences between truth and lie, as well as on finding arguments in order to draw a reasoned conclusion referring to the relevant question.*
Keywords: *Polygraph; forensic science; criminal investigation; lie detection; control question; relevant question.*

INTRODUCTION

The polygraph has been fascinating people since its discovery. The potential uses of the polygraph cover a wide range of human activities, from solving criminal cases to verifying the credibility of employees and even to influencing future moral behaviour (Peleg *et al*. 2019; White, 2018; Injodey & Joseph, 2007). Despite its quite extended use, the efficiency of the polygraph in detecting lie is the subject of a wide debate. There are both sustainers (Lucero, 2015; Horvath & Reid, 1971; Ginton, 2013) and opponents (Cook & Mitschow, 2019; Bingaman, 2004; Zelicoff & Rigdon, 2017; Faigman *et al*., 2003; Iacono & Ben-Shakhar, 2019) of the accuracy, which can be provided by a polygraph. In addition, there are authors who recommend further tests, in order to create a coherent theory, which, eventually, may give polygraph its scientifically correct place (Nortje & Tredoux, 2019). In this paper, we try to bring a little more light on the value of the polygraph examination, by presenting the results we obtained after an empirical research.

METHODS AND TECHNIQUES

In our experiment we tested a number of 10 persons, using the Lafayette LX4000 Computerized Polygraph. The method used was based on the Reid technique of "control questions" (Reid, 1947; Inbau *et al*., Abrams, 2009). The Reid technique was adapted to the specific of the experiment. The testing was carried out in an academic institution, and the persons who were tested were, at that time, students in their final year. In the testing procedure, we first had a pre-test interview with the persons which were about to be tested. Based on this pre-test interview, we established a number of 10 questions which were to be used. The questions were structured on three levels: neutral, control and

relevant questions. Our "target" was to find out if the students had copied on the written final examination at a specific discipline (we will name it here "discipline X"). This was our way to simulate a "criminal offence". In this context, the relevant question we used was: "Have you copied at the written final examination at the discipline X"? The control question used was: "Have you ever copied at a written examination?". We have chosen this control question because students are likely to deny that they ever copied at any written examination. If they deny and they did copy at least once at a written examination, the polygraph will usually register a significant response, compared to the neutral questions. Still, if they deny and they did not ever copy at a written examination, the wide implications of the question are likely to lead to a reaction, visible on the polygraph diagram, even at a non-deceptive subject; this is because there is a great chance that the subject at least thought of copying. Also, the subject is likely to get nervous at the thought that he or she might be suspected of copying. Even more, copying has multiple ways in which it can be done; for example, if the subject has involuntarily seen a few words on the paper of a class mate, he or she may be in doubt about the significance of this "incident" (if it was or not an act of copying).

In refer to the relevant questions and to the control questions, we did not make any suggestions to the subjects. However, in refer to all the other questions (the neutral questions), we asked them to lie at least at one question.

After the test had been carried out for each of the subjects, they told us at which of the neutral questions they lied. Based on all these data, after analysing the polygraph diagrams, we had a twofold goal:

A. To compare the sections of the diagrams corresponding to lies to those corresponding to truthful answers;

B. To find out if, at the relevant questions, the subjects lied or if they told the truth.

RESULTS AND DISCUSSION

We will present the results by reference to the two categories of goals we had.

A. As regards the comparison between sections corresponding to lies and sections corresponding to truth in the polygraph diagrams, the results obtained through this experiment can be structured in three categories:

a. results which prove that, in some cases, there are different lie patterns at the same person;

b. results which prove that, in some cases, there are similarities between sections corresponding to truth and sections corresponding to lies, at the same subject;

c. results which prove that, in some cases, there are a series of reactions when the subject tells the truth which may be interpreted as indicating deception.

B. As regards the truthful or deceptive answer to the relevant question, our results can be structured in two categories:

a. cases where the answer to the control question presents a significant alteration, compared to the answer to the relevant question (we found only one such a case);

b. cases where no significant conclusions can be drawn out of the comparison between the answer to the control question and the answer to the relevant question (the majority of cases in our experiment).

We must emphasize the fact that we specifically wanted to obtain information about the accuracy of the polygraph test in refer to the relevant question. This is because in a real polygraph test, conducted by a forensic investigator, the main purpose would be to obtain crucial information indicating any involvement of the suspect in committing a crime. As we presented above, one of the two purposes of our experiment was to determine if we can make a solid statement about the subject`s behaviour at the written examination at "discipline X", based on the interpretation of the diagram. In achieving this particular goal, our method, based on Reid technique, consisted in comparing the section of the diagram corresponding to the control question with the section of the diagram corresponding to the relevant question. We found that it was considerably harder to achieve this category of results (referring to the relevant question), compared with achieving the first category of results (referring to the aspect of truthful and deceitful answers).

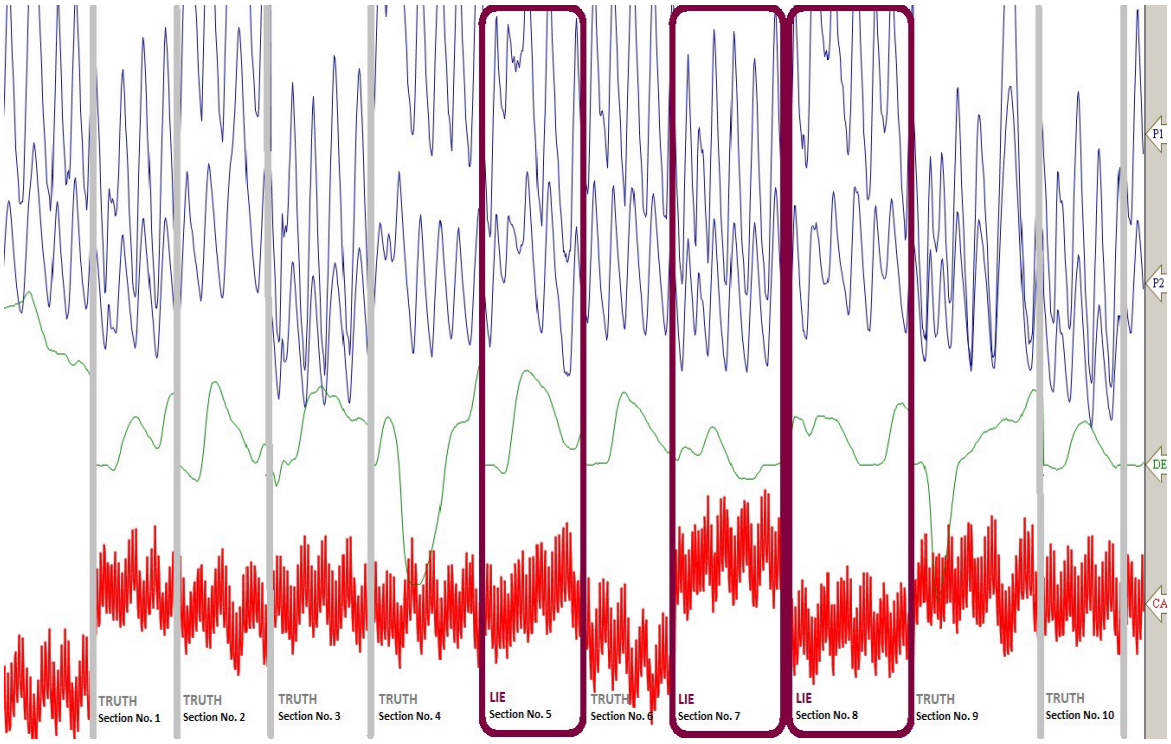
In the following lines we will analyse each category of results.

Different lie patterns at the same person

In this first group of results we include the cases when the same subject had different patterns corresponding to different moments when he or she lied.

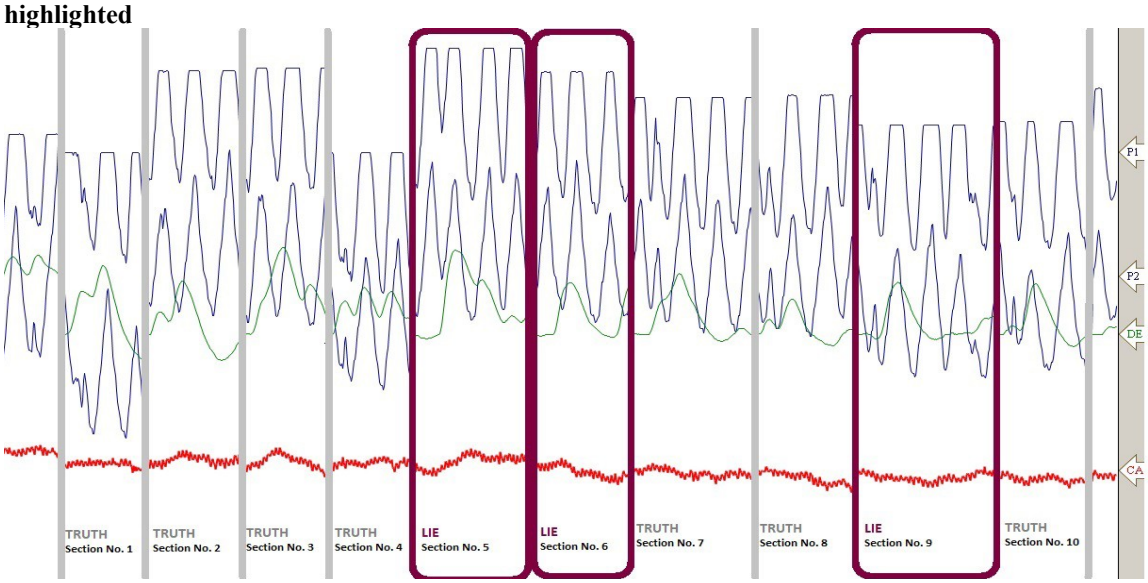
On Figure 1, we can see on the subject`s first lie (Section No. 5) an alteration of his respiratory activity (the blue lines), but the alteration is no longer found, at least not in the same form, on his subsequent lies (Sections No. 7 and 8). Also, the pattern of his blood pressure (the red line) on the three lies is different (see Sections No. 5, 7 and 8).

Figure 1. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted. The sections corresponding to lies are encircled with purple. The parameters seen on the diagram indicate: respiratory activity (the blue lines), electro-dermal activity (the green line), and blood pressure (the red line). This applies to all subsequent figures.



On Figure 2, we can see that the patterns of all parameters are different on each of the subject`s lies, namely the sections No. 5, 6 and 9.

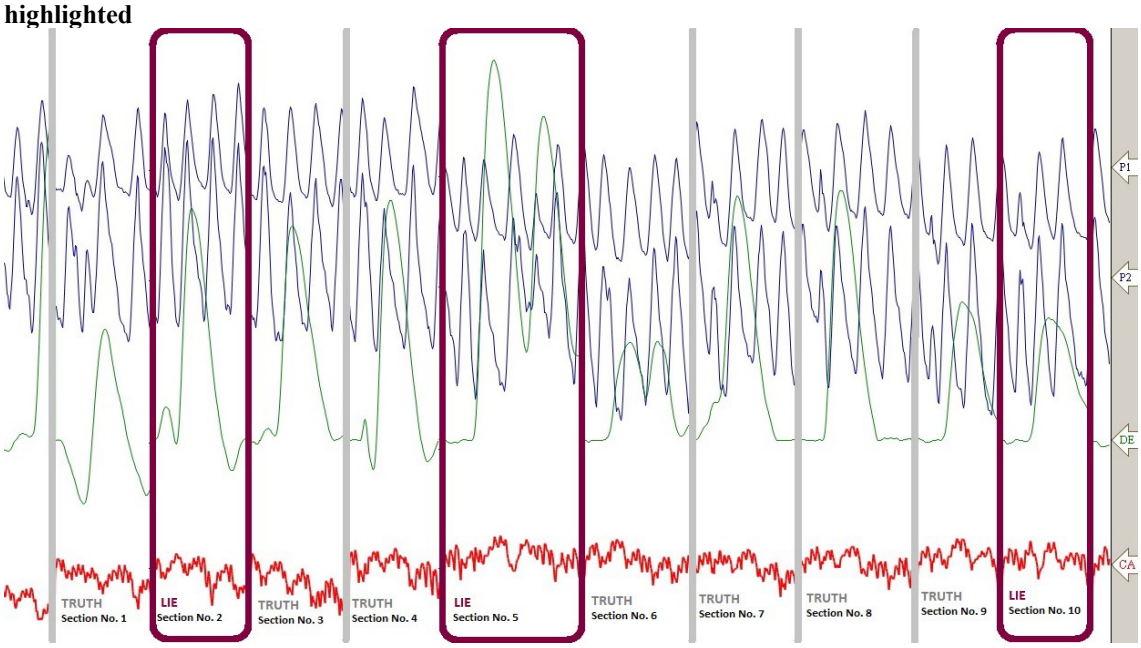
Figure 2. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted



On Figure 3, we can see that the pattern of Sections No. 2, 5 and 10, corresponding to lies, are different. The difference can be seen on the electro-dermal

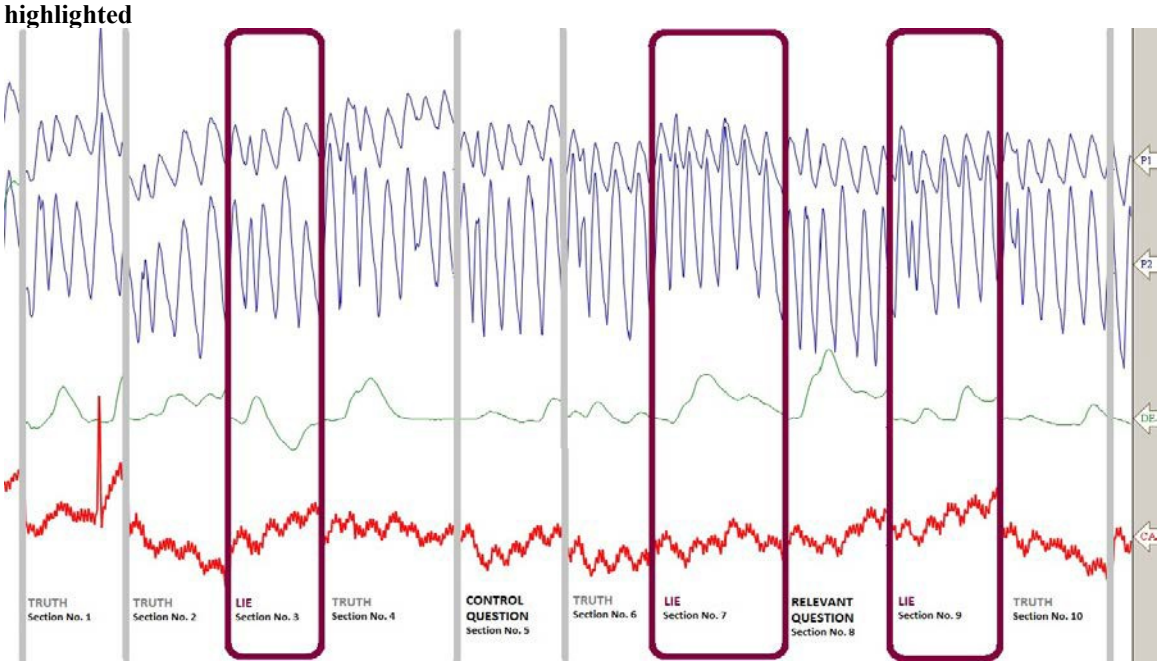
activity (the green line), which is significantly higher at Section No. 2 and, especially, at Section No. 5, compared to Section No. 10. Also, the difference can be seen on the respiratory activity (the blue lines) and on the blood pressure (the red line).

Figure 3. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted



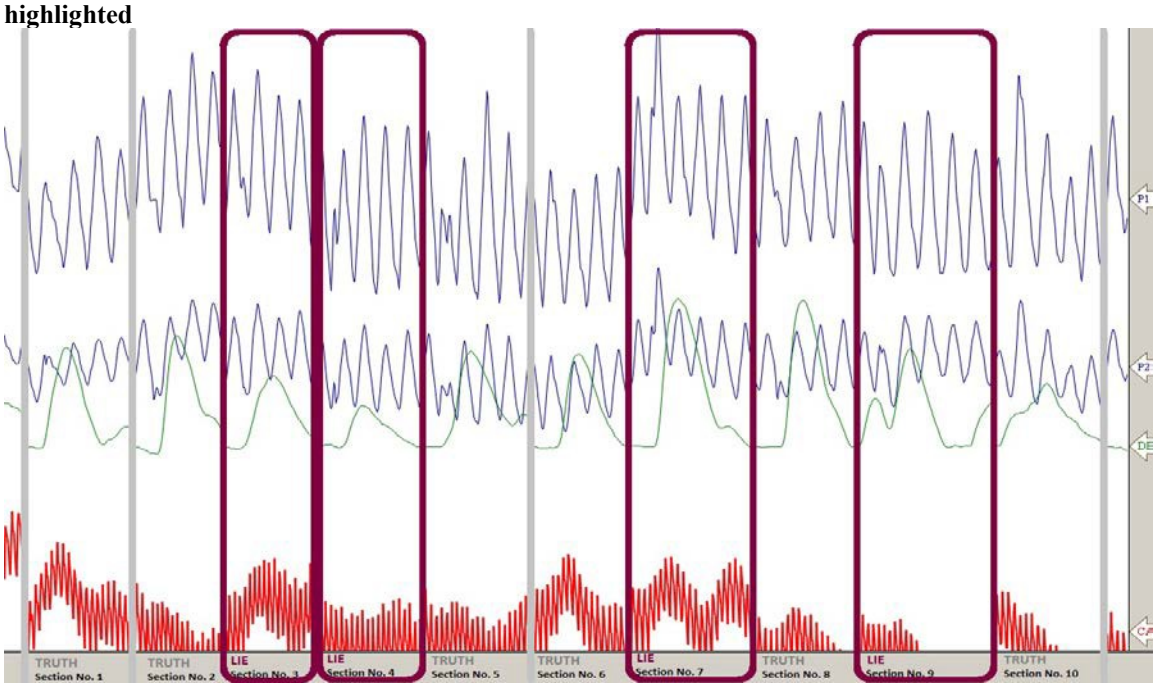
On Figure 4, we can see the differences between Section No. 3 (corresponding to a lie), and Sections No. 7 and 9, also corresponding to lies.

Figure 4. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted



On Figure 5, we can see the differences between Sections No. 3, 4, 7 and 9, all corresponding to lies.

Figure 5. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted

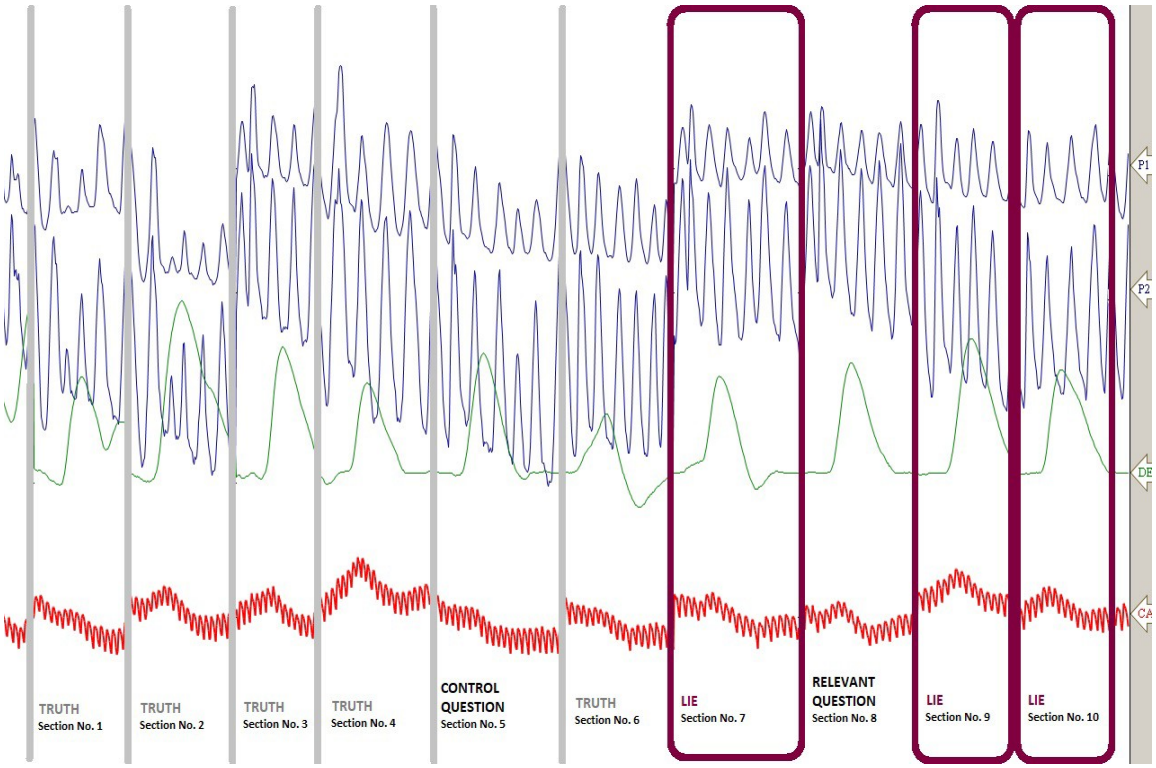


Similarities between sections of the diagram corresponding to truth and those corresponding to lies

Our test proved that, in some cases, there are similarities between sections corresponding to truth and sections corresponding to lies on the polygraph diagrams. This can be interpreted in the sense that the subject can control his or her reactions and, therefore, deceive the investigator.

On Figure 6, we can see similarities between Sections No. 3 and 7, although Section No. 3 corresponds to a truthful answer, and Section No. 7 corresponds to a lie.

Figure 6. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted



On Figure 3 (presented above), we can see the similarities between Section No. 9 (corresponding to truth) and Section No. 10 (corresponding to a lie).

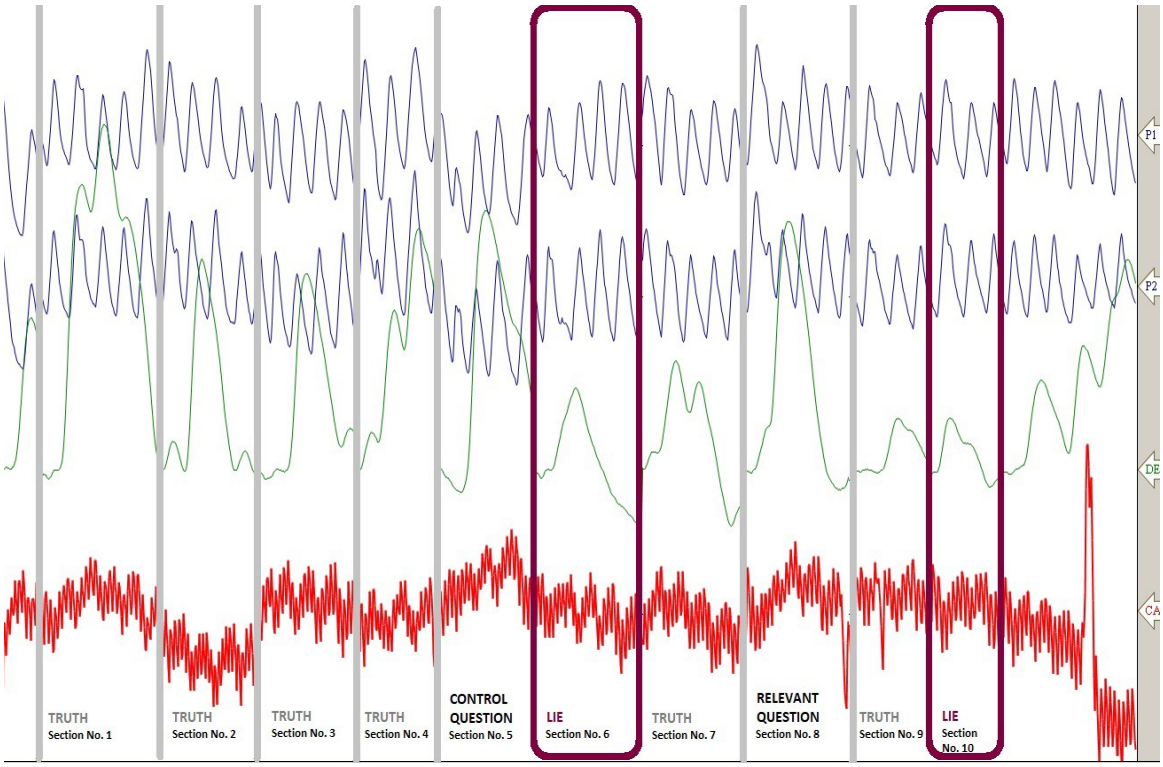
Truthful answers which may be interpreted as deceitful

The analysis of the diagrams showed us some situations where the reactions of the subject while telling the truth were significantly high, which would normally indicate a lie.

In Figure 6 (presented above), we can see at Section No. 2 that the subject had a significant variation on his respiratory pattern (the blue lines) and on his electro-dermal activity pattern (the green line), although he told the truth. This result is particularly interesting, because we do not find this variation at any of the other answers, including the deceitful ones of this subject.

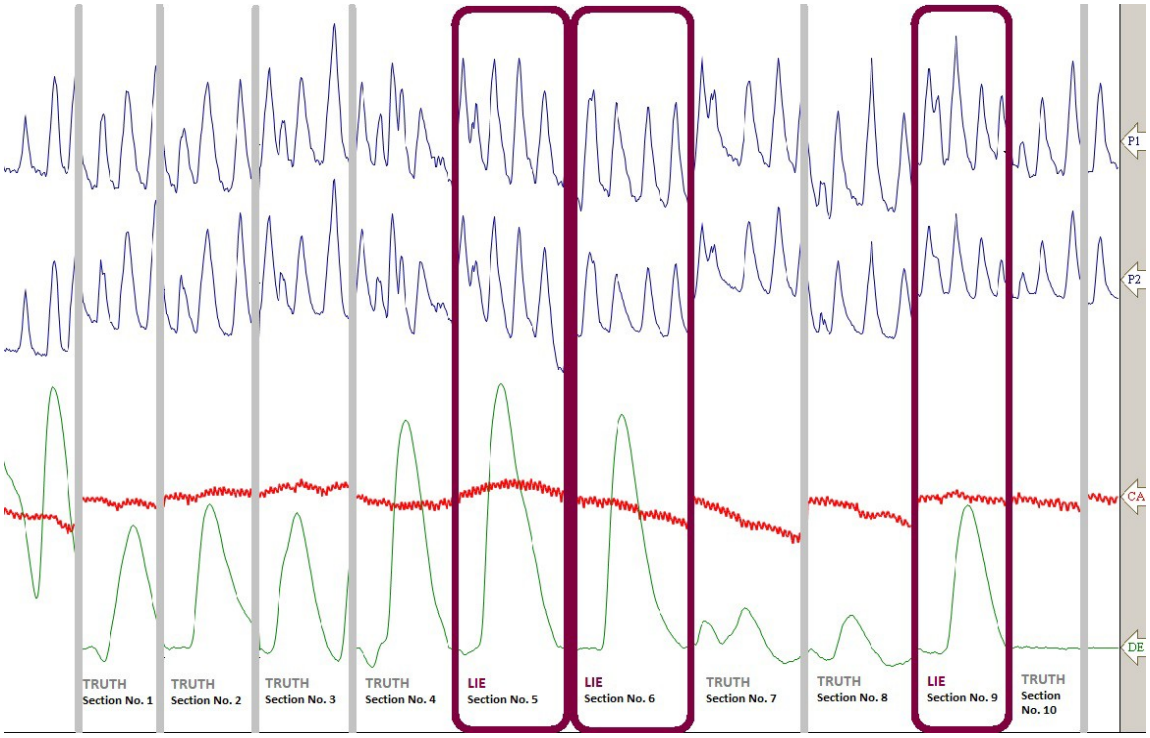
In Figure 7, Sections No. 1 and 4, which correspond to truthful answers, show significantly increased responses than sections corresponding to other answers. At Section No. 1, we can see a high electro-dermal response (the green line), actually the highest on the diagram. At Section No. 4, we can see an altered respiratory pattern (the blue lines), along with a high electro-dermal activity (one of the highest on the diagram). These observations become relevant, when we compare Section No. 1 and Section No. 4 with Section No. 10, where, although the subject lied, there is no significant variation.

Figure 7. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted



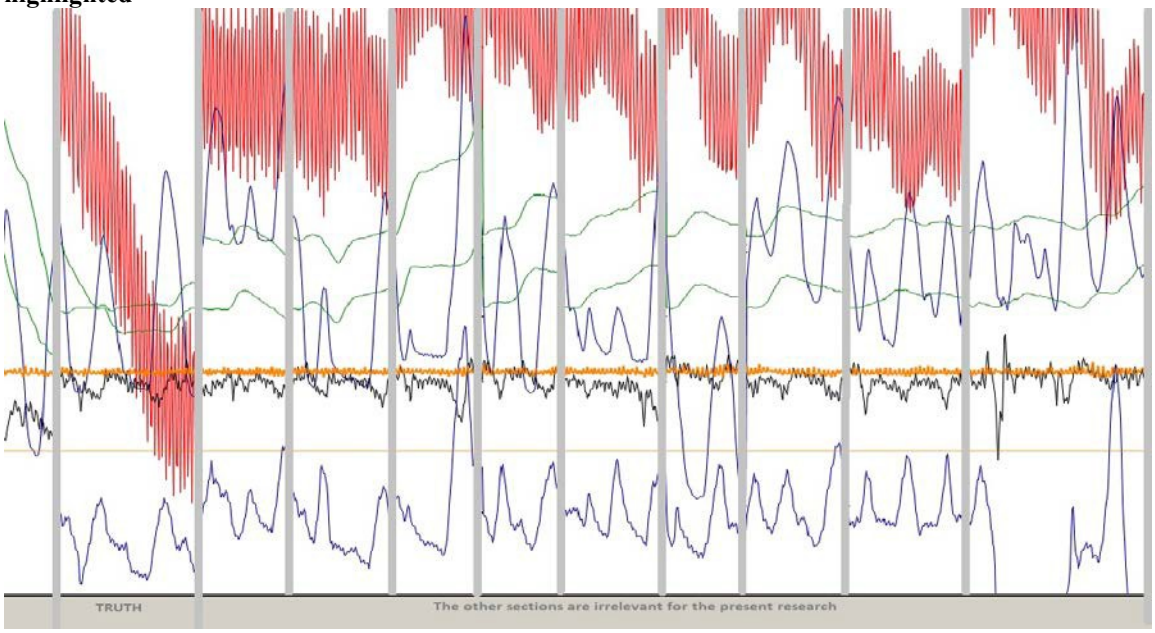
In Figure 8, Section No. 4 presents an alteration of the respiratory activity and, also, an increased electro-dermal activity. This section corresponds to a truthful answer. Due to the pre-test interview, we were able to see that this question had a particularly emotional significance for the subject. So, we can conclude that, when a question is emotionally relevant for the subject, the answer may generate an altered pattern on the polygraph diagram. This pattern can be mistakenly interpreted as indicating a deceit, although the subject has told the truth.

Figure 8. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted



In Figure 9, we can see an obvious exaggerated blood pressure reaction (the red lines) on Section No. 1, although the person has told the truth.

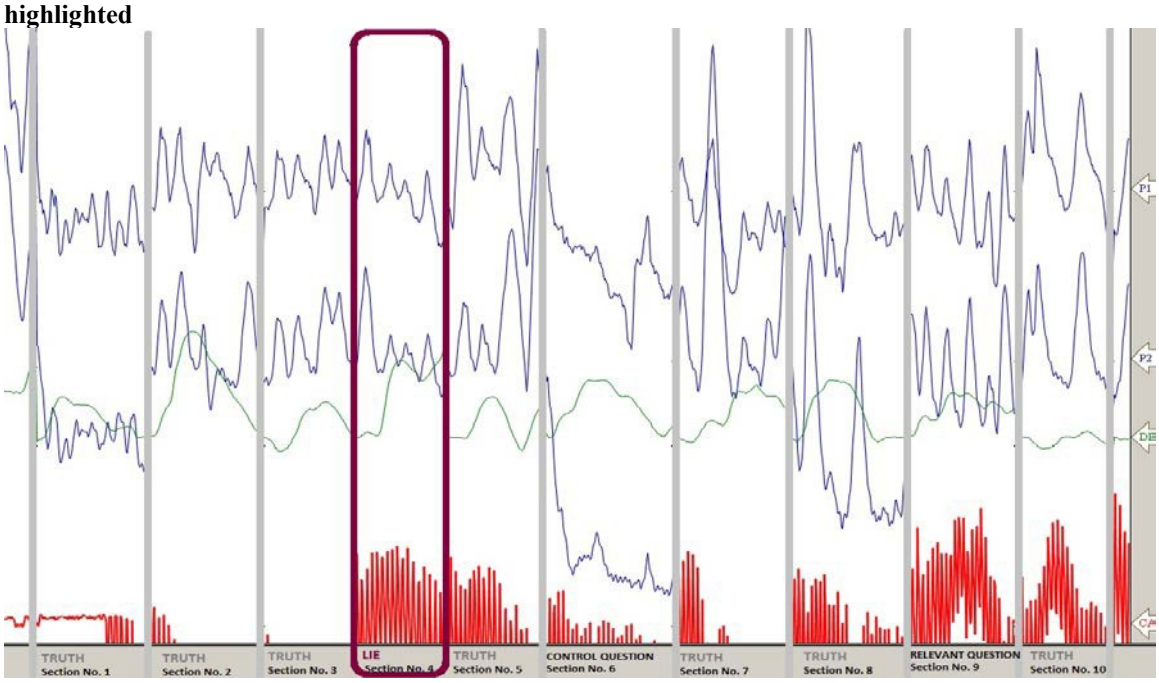
Figure 9. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted



Indicators that the answer to the relevant question is truthful

As a result of our experiment, we have found only one situation which, according to the Reid technique, indicates with a high degree of certainty that the subject had been truthful in the answer to the relevant question. In Figure 10, it is obvious that, at the control question (Section No. 6), the subject had an exaggerate reaction, pointing out that he lied. The subject`s reaction at the relevant question (Section No. 9) is significantly lower, compared to the control question; this, according to Reid technique, indicates that the subject`s stress was considerable lower when answering to the relevant question than when he answered to the control question. The common interpretation of such indicators is that the subject told the truth to the relevant question.

Figure 10. Polygraph diagram in which sections corresponding to each of the 10 answers are highlighted



Cases where no significant conclusion could be drawn referring to the relevant question

Contrary to what we initially expected, we found it very hard to draw viable conclusions referring to the deceitfulness of the answer to the relevant question. This was mainly because it was hard to find significant differences, but, interestingly enough, it was also hard to find significant similarities between sections corresponding to the control question and to the relevant question. In the following lines we will explain our assertion, based on the analysis of some eloquent diagrams.

For example, in Figure 4 (presented above), we can see differences, along with similarities, between Section No. 5 (corresponding to the control question) and Section No. 8 (corresponding to the relevant question). A difference can be seen in the electro-dermal activity (the green line), which is higher at the relevant question. However, we do not consider this difference to be significant, as we can see peaks of high electro-dermal

activity on other sections, for example at Section No. 4 (where the subject has told the truth) and at Section No. 7 (where the subject has lied). A similarity can be seen on respiratory activity (the blue lines), but this similarity is not significant, because this respiratory pattern is also similar with the one found at other sections (for example, at Section No. 6, where the subject had told the truth, and Section No. 9, where the subject lied).

Another example of ambiguous results can be seen on Figure 6 (presented above), where we can also see differences, along with similarities, between the sections corresponding to the control question and to the relevant question. A difference can be seen in the respiratory pattern (the blue lines), but this is not eloquent, as the respiratory pattern of the relevant question can be found also on Section No. 3 (where the subject has told the truth) and on Section No. 7 (where the subject lied). A similarity can be seen on the electro-dermal activity (the green line) between the control and the relevant question, but, also, this similarity is not specific, as we can see that the subject has high electro-dermal activity at virtually all answers.

In addition, Figure 7 (presented above) is eloquent for the difficulties existing in the interpretation of the polygraph diagrams. Here, we can see a difference on the respiratory activity (the blue lines) between Section No. 5 (corresponding to the control question) and Section No. 8 (corresponding to the relevant question). However, the relatively high peak of the respiratory line at Section No. 8 cannot be undoubtedly interpreted as a sign of deceit, as we can see a similar peak at Section No. 4, where the subject has told the truth. A similarity between the control section and the relevant section is seen in what regards the electro-dermal activity, but this kind of pattern (at even a larger degree) can also be found at Section No. 1, where the subject has told the truth; however, at the Section No. 1, the respiratory pattern is different than those found on Section No. 5 (corresponding to the control question) and on Section No. 8 (corresponding to the relevant question), so we cannot necessarily correlate the high electro-dermal activity on Section No. 5 and Section No. 8 with an overall pattern which could indicate a truthful answer.

CONCLUSIONS

Our experiment highlighted the difficulties existing in the interpretation of the polygraph diagrams. We have seen that the same person can have different lie patterns and, also, similarities between patterns of truthful and deceitful answers. In real-life forensic investigations, this kind of results can be confusing and not susceptible of leading to useful information. Although we have obtained in one case a result which can be seen as a clear one, we take into account that this was only one out of ten cases. The low percentage of precision makes us conclude that polygraph examination must be used with caution and that the results provided by a polygraph test must be supplemented with other information, no matter how clear a polygraph diagram may seem.

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Compliance with ethical standards

The persons who were tested with the polygraph have voluntarily agreed to participate in this research. The experiment was conducted in accordance with the legislation existing at the time of data collection. The persons remained anonymous and there is no information which could lead to the identification of the participants in this empirical study.

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REGULATION OF ASSET DEPRIVATION CRIMINAL SANCTION IN TAX CRIMINAL ACTIONS

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Abstract: *Law Number 16 of 2009 concerning General Provisions and Tax Procedures (UU KUP), regulates administrative sanctions and criminal sanctions. Criminal sanctions in the KUP Law are not in accordance with the philosophy of the purpose of the establishment of the Act, which is to raise funds from the public. In addition, the KUP Law method does not regulate how to save state revenue losses because it does not regulate the implementation of criminal fines, the legal implications of varying decisions that cause legal uncertainty, injustice and have not provided benefits, especially in an effort to collect taxes. The purpose of this paper is to find out, analyze and formulate how criminal sanctions should be confiscated assets seizure in tax crime. This research is a normative legal research with legislation approach, historical approach, comparative law approach, conceptual approach and case approach. The legal materials used are primary and secondary legal materials. Primary sources are basic norms and regulations, while secondary sources include new and up-to-date scientific knowledge which includes books, research reports, journals, magazines. Analysis of legal material is done with descriptive perspective. The results of his research explained that the regulation of asset confiscation sanctions in the KUP Law is very important as a basis for the principle of legality that must not be violated. First, criminal law must not apply retroactively. Secondly, criminal law must be written and may not be convicted based on customary law. Third, the formulation of criminal provisions must be clear. Fourth, criminal provisions must be interpreted in a strict manner and prohibited from analogy, so as to guarantee legal certainty, justice and usefulness for the sake of realizing prosperity as stated in the Preamble of 1945 Constitution paragraph IV.*
Keywords: *Taxation, Regulation, Criminal Sanctions, Asset Deprivation.*

INTRODUCTION

Tax as one of the state revenues/revenues is an income, which is used as a source of funding for activities and needs of the state in the context of developing the State (Syamsi, 1995). Taxes are people's contributions to the state treasury based on laws that

can be imposed without direct reciprocal services (Mardiasmo, 2011). Tunggul Anshari Setia Negara (2017) believes that taxes have a function as a budget (budgeter), which is to put as much money into the state treasury as possible for state expenditure. Taxes are more functioned as a tool to withdraw funds from the public to be put into the state treasury, even for Indonesia funds from taxes are considered to be excellent, because more than 80% (eighty percent) of the government's budget is obtained from taxes.

The function of taxes is very important to finance the life of the state. However, revenue targets from the tax sector have not been maximally met, partly because there are still many taxpayers who do not obey taxes and even commit tax crimes. The perpetrators of tax crimes if left unchecked are very dangerous because they involve the continuation of state life.

Tax crimes are serious and extraordinary crimes, so they are categorized as white-collar crimes, because entrepreneurs together with the usual business activities commit the crimes. The responsibility of the entrepreneur contains an opportunity to commit a crime, for example embezzlement, violation of regulations regarding business activities, tax deviations (Ali, 2017). Tax crime is a crime in which the state is the victim, as a result of the actions of the perpetrators of tax crime is very influential on state revenue. This form of tax evasion is one form of crime in the field of taxation or often referred to as tax evasion.

Law Number 6 of 1983, as amended several times, the latest by Law Number 16 of 2009 concerning General Provisions and Tax Procedures (hereinafter referred to as the KUP Law), regulates administrative and criminal sanctions. Criminal sanctions regulated in the KUP Law consist of administration and criminal which include criminal offenses and fines. UU KUP distinguishes between acts of negligence and acts of intent. Tax crimes due to negligence provided for in Article 38 are subject to administrative sanctions. Whereas for criminal acts of intentionality provided for in Article 39 shall be sentenced to a minimum imprisonment of 2 (two) years and a maximum of 6 (six) years and a fine of at least 2 times the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding, and/or proof of tax payment and no later than 6 (six) times the amount of tax in the tax invoice, proof of tax collection, proof of tax withholding and/or proof of tax payment.

Philosophically, criminal sanctions in the KUP Law have not fulfilled the essence of the formation of the KUP Law, which is aimed at collecting state revenue because there are vague norms, so that it has not been beneficial to the state. Juridically, criminal sanctions in the KUP Law give rise to different interpretations, because the norm of criminal sanctions in the KUP Law has a vague meaning especially related to efforts to save losses of state revenue. Fines are calculated from underpayment or unpaid taxes due to tax crime then calculated as loss of state revenue, but in terms of fines, the KUP Law does not regulate substitute confinement if the defendant does not pay fines, from the aspect of loss of state income, the KUP Law also does not regulate the rescue norm state revenue, for example through the confiscation of assets. Sociologically, this obscure besides causing different decisions in law enforcement, as well as many tax offenders, because criminal sanctions are only in the form of fines, especially in judicial practice there are cases if not paying a fine enough to be replaced with confinement, so that this criminal sanction has not had a deterrent effect on the community, especially for the perpetrators of tax crime.

One of the solutions offered in this study is through asset tracing efforts followed by the seizure of assets against tax offenders, this instrument is an appropriate effort to maximize the recovery of state revenues, in addition to the addition of norms related to the confiscation of assets against assets owned by perpetrators criminal, the impact will be a deterrent effect, because at least it will think again if a tax crime is committed, then all assets will be seized, auctioned off for the state. So based on this, it needs to be reviewed comprehensively related to the regulation of criminal sanctions for the confiscation of assets in non-tax penalties.

There are several researchers who discuss specifically related to criminal sanctions in tax crimes, among others, Soeparman (1993) who analyzed the Criminal Law Provisions in Law Number 8 of 1983 concerning General Provisions and Tax Procedures with a focus on studies on the application of administrative sanctions, while this study discusses more deeply the aspect of appropriation of assets to recover losses on state revenues, especially from criminal fines. Simon Nahak (2013) who analyzed the politics of Criminal Law in Criminal Acts against the Actors of Taxation Crimes in Indonesia with a focus on the study of the Political Laws of Criminal Acts of Taxation, while the research in more detail studies and discusses the seizure of convicted assets to recover losses of state revenue in criminal acts taxes especially from criminal fines. Nanang Solihin (2018) who studies the Harmonization of Indonesian Taxation Sanctions with the Criminal Code in the Context of Developing Indonesian Tax Laws with a focus on the study of Criminal sanctions associated with sanctions in the Criminal Code, while this research discusses the deprivation of convicted assets to recover state revenue losses in criminal acts taxes especially from criminal fines. So the novelty in this study compared to previous research is to examine in depth the criminal sanctions of confiscation of assets in tax crimes as an effort to recover the loss of state income.

LEGAL MATERIALS AND METHOD

The type of research chosen is normative legal research or doctrinal legal research, namely legal research that conceptualizes law as the norm (Wignyosoebroto, 2002). The approach used in legal research according to Peter Mahmud Marzuki (2005) is the statute approach, case approach, historical approach, comparative approach, and conceptual approach . The legal material from normative research can be divided into Primary legal material consisting of the 1945 State Constitution of the Republic of Indonesia, Law No. 6/1983 concerning General Provisions, and Tax Procedures, most recently amended by Law No.28 of 2007 (KUP Law), Appropriation Bill Assets, PP No. 74/2011 concerning the Implementation of Taxpayer Rights and Obligations, Constitutional Court Regulation Number 239/PMK.03/2014 concerning Procedures for Investigating Evidence of Preliminary Criminal Acts in the Field of Taxation, Circular of the Director General of Taxes and Judges' Decisions related to Tax Cases with permanent legal force. Secondary legal law, consisting of textbooks, legal dictionaries, legal journals, and comments on court decisions, dissertations, taxation draft laws, the draft law on appropriation of assets, and the draft law on criminal law (Hermansyah, 2009).

The analysis technique in this research uses prescriptive analysis, which is a research that explains the state of the object to be examined through the lens of legal discipline (Marzuki, 2011). Legal materials obtained will be processed by systematizing

legal materials, primarily primair legal materials based on the KUP Law and related laws and regulations, then analyzed qualitatively based on research and compiled and based on statutory regulations, then linked to theories, principles, and legal norms so that answers are obtained for the problems that are formulated.

RESULTS AND DISCUSSION

Model of Asset Sanction Regulation in Tax Crimes in Indonesia

Based on legal comparisons of several laws and regulations in Indonesia, as well as taking into account the importance of tax for development and on the other hand tax crime is a crime that is very detrimental to the state, moreover it can be categorized as a white-collar crime that solely seeks economic gains, then seizure sanctions assets are the right strategy in the effort to recover state revenues. Because tax crime is a classification of economic crime, for the regulation of asset confiscation sanctions can refer to several laws, which can be divided into 2 models, namely Conviction Based Asset Forfeiture (CB) and Conviction Based Asset Forfeiture (NCB).

The Conviction Based Asset Forfeiture (CB) model is actually already adopted in the justice system in Indonesia, namely several laws and regulations in Indonesia have included asset seizures in an effort to save losses of state finances, so the regulatory model can be as a reference in preparing the KUP Bill. As for some of the laws referred to are,

Emergency Law of the Republic of Indonesia Number 7 of 1955 Concerning Investigation, Prosecution and Judgment of Economic Crimes, State Gazette of the Republic of Indonesia of 1955 Number 27

Law of the Republic of Indonesia Number 31 of 1999 State Gazette of the Republic of Indonesia of 1999 Number 140 Jo Law of the Republic of Indonesia Number 20 of 2001 Concerning Eradication of Corruption, State Gazette of the Republic of Indonesia of 2001 Number 134, namely the model of appropriation of assets through criminal conviction first first, by placing sanctions on the confiscation of assets as additional crimes, as regulated in article 18.

Law Number 11 of 1995 concerning Excise, has expressly set norms related to the mechanism of the implementation of criminal fines oriented to saving state financial income that is regulated in Article 59 paragraph 1 and 2 by using the term "taken from wealth and/or income instead" .

Law Number 10 of 1995 concerning Customs, also expressly regulates norms related to the mechanism of the implementation of criminal fines oriented to saving state financial income, the substance of which is the same as Law Number 11 of 1995 concerning Excise, that is stipulated in Article 110 paragraphs 1 and 2 .

Law Number 21 of 2007 concerning Eradication of Trafficking in Persons, by placing the confiscation of assets as additional crimes.

Law Number 32 of 2009 concerning Environmental Protection and Management, Article 117 and Article 119, by placing the seizure of assets as sanctions for disciplinary action.

Tax crimes have caused substantial state financial losses, so it is ironic if the state financial losses cannot be saved. Weak law enforcement from the aspect of saving state financial losses, one of the causes is because KUP does not specifically and specifically

regulate the method of saving assets. As an example of a tax crime case that has obtained a permanent legal force, which causes a substantial loss of state income and can not be saved, one of which is the case of a taxpayer with the convict Hendro Teguh in the decision number: 1092/Pid- B/2009/PN.Dps, which has permanent legal force, with a total state loss of Rp. 5,951,217,355 (five billion Nine hundred fifty one million two hundred seventeen thousand three hundred fifty-five rupiah). The case cannot be recovered, because the KUP Law does not regulate the instrument of fining through the confiscation of assets. The KUP Law normatively has not set limits on how prosecutors and judges make efforts to save assets/recover assets if fines are not paid, so the longer the number of cases increases, the amount of state losses from penalty sanctions increases, so that the consequence of state financial losses is increasingly increased.

The consistency of decisions is actually not enough to solve the problem because of the consistency of decisions so it must be supported by the regulation of fair and useful legal principles, namely the right legal rules and must be regulated is the strengthening of tax penalties by seizing the assets of perpetrators to cover criminal tax fines that do not want/able to be paid by the offender. If the assets of the deprived offender are not sufficient to cover the tax penalties imposed, the substitute imprisonment will be applied proportionally by taking into account the fines paid, both voluntarily, and with the confiscation of property. With this rule of law, the consistency of the decisions created is also based on the right legal norms, so that recovery of state losses from taxes can be done effectively and maximally.

The model of asset seizure in tax crime through the Non-Conviction Based Asset Forfeiture (NCB) model, namely through a civil suit that is using the Republic of Indonesia Supreme Court Regulation No. 1 of 2013 concerning Procedures for handling TPPU's Assets on May 14, 2013 (PERMA RI), (State Gazette of the Republic of Indonesia Year 2013 Number 711), promulgated on May 17, 2013 Jo Circular of the Supreme Court of the Republic of Indonesia Number 3 of 2013 Concerning Case Handling Guidelines: Procedures for Settlement of Requests for Assets in TPPU and other TP, with certain conditions including "in If the alleged criminal offender is not found within 30 (thirty) days, the investigator can submit an application to the district court to decide the Assets as state assets or be returned to those entitled".

PERMA Number 1 of 2013 there is no word 'plunder', this PERMA refines it with the phrase 'handling of assets'. Then through the Supreme Court Circular Letter (SEMA) Number 3 of 2013, the Supreme Court of the Republic of Indonesia reinforced it with the words "deprived of state". If examined from the norm aspect, PERMA No.1 of 2013 concerning Procedures for handling TPPU's Assets dated May 14, 2013 Jo SEMA No.3 of 2013 concerning Guidelines for Case Handling: Procedures for Settlement of Requests for Assets in TPPU and other TPs, instruments can be used law to conduct civil law efforts to seize assets in tax crime cases.

Yunus Husein (2017) proposed that law enforcement officials consider the Non-Conviction Based (NCB) Asset Forfeiture approach. The NCB Asset Forfeiture concept, in essence, is to seize the assets of the perpetrators without the existence of a criminal legal process first. There are two cases handled using this approach;

The narcotics case handled by the BNN of East Java Province which chases the assets of the offender to the Batam District Court, finally granted the request of the BNN

of East Java Province so that the assets of the perpetrators of the crime related to the narcotics crime could be executed.

Cases handled by the National Police Headquarters related to counterfeiting fake emails also serve as a model for the implementation of NCB Asset Photos, which is granted by a panel of judges so that the assets of the perpetrators can be seized without going through a criminal court process.

The NCB Asset Forfeiture concept is a civil seizure aimed at the perpetrators' assets without going through a criminal process. This appropriation is carried out by reversing the burden of proof, which is emphasized on the actions of the assets themselves and not the individuals. The subjects in the NCD Assets Forfeiture itself are the parties who have the potential interest in the assets of the act. Most importantly, the seizure needs a basis that the property is tainted. Some laws in the justice system in Indonesia, apparently have adopted the provisions of criminal sanctions for the confiscation of assets through the Model Non-Conviction Based Asset Forfeiture (NCB), namely through a civil suit. This model is an effort to recover state financial losses, without going through a criminal decision. The regulatory model of several laws can be used as a legal comparison as well as a reference in drafting future KUP Law. The law referred to is the Law of the Republic of Indonesia Number 31 of 1999 State Gazette of the Republic of Indonesia of 1999 Number 140 Jo Law of the Republic of Indonesia Number 20 of 2001 Concerning Eradication of Corruption, State Gazette of the Republic of Indonesia of 2001 Number 134, which has governed several articles with civil lawsuit instruments.

Looking at criminal sanctions in the KUP Law, the enthusiasm is how to punish perpetrators, this is evidenced by imprisonment and fines which are the main crimes applied cumulatively. UU KUP as an administrative law, should apply ultimum remidium imprisonment sanctions, at least not applied cumulatively but in an alternative form, among others in the form of sanctions "and/or, meaning that there is room for taxpayers and judges if taxpayers have returned losses to state revenue then does not need to undergo a prison sentence.

Penalty sanctions for fines that are not complemented by the implementation of criminal fines in the context of saving losses on state revenues, resulting in various interpretations. These interpretations include fines in tax crimes implying loss of state revenue derived from the amount of tax owed which is not or underpaid, so that the meaning is sanctions fines equal to losses on state revenue. Penal sanctions in the current KUP do not reflect the spirit of collecting taxes, on the contrary more inclined to imprison perpetrators, so that norms are needed as a guideline for implementation in an effort to optimize the rescue of state financial losses or asset recovery. Sanctions of assets seizure are essentially criminal sanctions aimed at recovering losses on state revenues due to tax crimes. So that the criminal orientation is not merely imprison the perpetrators but the state, as a victim in this tax crime does not get a refund of income losses that should be received by the State (Gunawan, 2018).

The strategy of composing criminal sanctions in tax crime to be more comprehensive then, of course, must also be supported by a legal comparison, because the essence will change the sanctions. Peter de Cruz (1999) writes that to make changes to the law, comparative law must be carried out in a changing world or an actual comparative study of law in order to change the world better. The approach by comparing

tax law, especially related to criminal sanctions for taxation offenders in the hope that there are better legal benefits in dealing with tax crime in Indonesia, such as the Netherlands, Singapore and Australia are as follows:

Netherlands. Punishment arrangements in the field of taxation in the Netherlands in the form of Administrative Penalties are regulated in the General Tax Act (GTA) and the General Act of Administrative Law (GAAL). The General Tax Provisions Act (GTA) and General Administrative Law Provisions (GAAL) determine: "GTA (General Tax Act) and General Act of Administrative Law between a punitive fine and a default surcharge (veizuimboetes) it is not necessary to have deliberate intent or gross negligence. For a punitive fine on of these elements is necessary, punitive fines the maximum amount of the punitive fine can be 100%, and in some cases even 300% of extra tax levied" (Vries, 2011)

Singapore. Punishment arrangements for tax offenders in Singapore are regulated in Singapore Master Tax Guide Hand Book 2012/13 Chapter 20 Tax Avoidance and Evasion," under section 96, the penalties for willful omission of income, making a false statement or entry in sny return, or giving a false answer, verbsl or orsl, to any question or reques for information are as follow, (Teck, 2012): A penalty of 300% of the amount of tax undercharged; A fine not exceeding $10.000, and/or; Imprisonment of up to three years. Section 96A provides heavier penalties for the following which are considered as serious fraudulent tax evasion) these were previously as part of section 96 before the 2003 amandement), Preparing, maintaining, authorizing the preparation or maintenance of any false books of account or record, and; Making us of any fraud, art or contrivance or authorizing the use of any such fraud, art or contrivance. The section 96 A penalties are of follow A penalty of 400% of the amount of tax undercharged, a fine not axceeding $ 50.000, an/or Imprisonment of up to five years

Australia. Penalties for fines in Australia begin with administrative penalties for taxpayers who try to reduce liability relating to taxes, the penalty for paying fines is 50%, while for taxpayers who avoid tax amounts are penalized for paying 25%.

Woellner, Barkoczy, Murphy, Evans, Pinto, (2012) wrote about:
"Crimes (Taxation Offences) Act 1980……Penalty for breach of act, The penalty for an offence under the act is up to 10 tears' jail and/or a fine up to 1.000 penalty point; and in addition, under 12 (1) the court may order a person to pay to the Commonwelth " such amount as the court thinks fit but not exceeding the amount of the tax money due and payable by the company or trustee on the day of the conviction…" Prosecution may be commenced at any time 9 (2) . Because the act creates criminal offences, the defendant's guilt must be proved beyond reasonable doubt."

In Australia before applying a penalty of imprisonment in the field of taxation up to 10 years in prison, fines and interest first use publications by the Australian Tax Office (ATO) against taxpayers who are not compliant to pay taxes, as stipulated:
"The ATO may take the impact of publicity into account when deciding whether to prosecute, and the ATO's strategy for increasing voluntary compliance relies in part on the effect of publicing prosecution for breach of taxation may deter others from offending (the concept of " general deterrence", or the ripple effect)". Unlike in Indonesia, publicizing taxpayers is prohibited in accordance with article 34 paragraph (1) of the Law of the Republic of Indonesia Number 28/2007 stipulating "Every tax official

or those who carry out taxation duties are prohibited from disclosing taxpayers' confidentiality regarding tax issues.

Law enforcement against tax crime is not only directed to punish criminals both with imprisonment and fines, but must be adjusted to the purpose of the KUP to be established, namely to collect the maximum state revenue from the tax sector, for that efforts are needed to restore loss of state revenue lost due to tax crime through a clear legal basis in KUP. The legal basis is in the form of a set of norms governing efforts to recover assets resulting from crime, which are carried out systematically in the process of law enforcement starting from the stages of investigation, investigation, prosecution, court proceedings as well as on the hold of execution. Substantially, the efforts to recover assets resulting from these crimes are a series of actions which include several stages, ranging from tracking, freezing, appropriation, management, to the stage of asset utilization and maintenance.

Additional Criminal Sanctions as strengthening fines in Law No. 6 of 1983 in conjunction with Law No. 28 of 2007 concerning General Provisions and Tax Procedures Additional crimes accompany the principal crime but do not accompany the Act (maatregel). That the verdict of confiscation or seizure (*verbeurdverklaring*) according to the provisions of Article 9 Sr. is actually an additional crime. Additional crimes can also be imposed without the principal crime as well as additional crimes often having the character of the Act (2016).

Additional crimes become very important especially for strengthening criminal sanctions for fines on tax crimes. Tax crimes as part of economic crimes, state losses caused are very large. The existence of additional crimes in the form of confiscation of assets as one of the legal strategies in providing guarantees so that penalties are paid, moreover criminal penalties for tax crime are counted as a loss in state income.

Juridical problems of criminal sanctions in the KUP Law have a vague meaning because the sanctions in their existence as a principal criminal, but the value/amount is calculated from underpayment tax, this calculation as an element of loss in state revenue. As a criminal fine because it includes the principal crime, its purpose is as a preacher, which if not paid can be replaced with a substitute imprisonment, but in substance, the fine is a loss of state finances, but the KUP Law does not regulate it. As a result, in the imposition of criminal sanctions, a different judge's decision emerged, there was a decision that listed subsdiair confinement in place of a fine, but there was also a decision that stated that the prosecutor auctioned the defendant's property to pay the fine, and there was also a criminal verdict without subsidiair.

Through this research, it will provide a solution to the juridical problems, to create fair law enforcement and legal certainty, so that there is consistency in imposing fine criminal sanctions. The alternative is that in the KUP Law for criminal sanctions a fine is supplemented by an additional criminal namely if the fine is not paid then the defendant's property is confiscated and auctioned off by the Prosecutor to pay the intended fine. The acquired property does not have to meet a fine if it is only partially obtained, so the remaining fine will be calculated by replacing the confinement. To make criminal penalties effective, in several countries such as Sweden, Denmark, Norway, a daily fine penal system is used. This fine is based on a substitute for imprisonment for a minimum of 6 months. The calculation comes from the income of people per day reduced by debt and multiplied by 180 days (Suhariyono, 2009).

Sanctions Actions as strengthening fine sanctions In Law No. 6 of 1983 in conjunction with Law No. 28 of 2007 concerning General Provisions and Tax Procedures The basic idea of the dual track system model of sanctions is the equality between criminal sanctions and action sanctions. The idea of equality can be traced through developments in the criminal sanction system of the classical stream of modern and neo-classical (Solehuddin, 2012). Classical flow in general only uses a single-track system model, which is a single sanction system in the form of a type of criminal sanction. The neo-classical school states unequivocally that the concept of social justice is based on law, is unrealistic and even unjust. This flow stems from the classical flow, which in its development was later influenced by modern flow. The characteristic that is relevant to the principle of individualism is the basic idea of the existence of a double track system model of sanctions is the existence of equality between criminal sanctions and action sanctions. The idea of equality can be traced through developments in the criminal sanction system of the classical streams of modern and neo-classical schools.

From the point of view of the basic idea of a two-track system (double track system) equality of the position of criminal sanctions and sanctions, action is very useful to maximize the use of both sanctions appropriately and proportionally. Criminal sanctions (punishment) are oriented towards suffering and reproach imposed on the perpetrators. While sanctions for actions (*maatregel, treatment*) are relatively more educational and tend to be more anticipatory and mitigating. If viewed from criminal theories, sanctions for actions are sanctions that do not retaliate. Sanctions for actions are only shown in a special intervention that is protecting the community from threats that can harm the interests of the community.

Observing the additional crimes and actions can be conveyed in the following table (Ningrum, et al., 2016):

Table 1. Comparison of Additional Crimes with Action

Additional Criminal	**Actions (*maatregel*)**
Additional crimes consist of: revocation of certain rights confiscation of certain goods and/or bills announcement of the judge's decision payment of compensation fulfillment of local adat obligations and/or obligations according to the law that lives in the community	**Action form:** Care in a mental hospital surrender to the government surrender to someone Actions that can be imposed together with the principal criminal form: revocation of driving license deprivation of profits derived from criminal acts repairs due to criminal acts Work training Rehabilitation and/or care at the institution

Based on the comparison of additional crimes and actions, alternative arrangements for sanction of confiscation of assets in the KUP Act can be in the form of additional crimes in the form of confiscation of certain assets/goods and/or bills, or can also take the form of actions in the form of seizure of profits derived from criminal acts. The essence is either the additional crime or the action is a maximum effort to save assets that have not been regulated in the KUP Law; criminal witnesses in fines in the current KUP Law regulate how the execution mechanism is so that the state can seize the assets of the defendant to pay fines.

For example, if the perpetrators of the corporation, it is still very relevant to apply sanctions in the form of disciplinary action as stipulated in Article 8, Emergency Law of the Republic of Indonesia Number 7 of 1955 concerning Investigation, Prosecution and Judicial Acts of Economic Crimes, as contained in the Republic of Indonesia's Official Gazette Indonesia of 1955 Number 27, regulates the punishment in the form of Standing Orders namely:

Placement of a criminal company, in which an economic crime is committed under capitalization for a period of three years, in the event that the economic crime is a crime and in the case of an economic crime is a violation for a period of two years;

Requires payment of a security deposit of up to a hundred thousand rupiahs and for a maximum of three years in the event that an economic crime is a crime; in the case of an economic criminal offense is a violation, the security deposit shall be no more than fifty thousand rupiahs for an indefinite period of time by the law enforcer;

Obligate to do what is neglected without rights, negate what is done without rights, and perform services to improve the consequences of each other, all at the expense of the law, just the judge does not specify otherwise.

Of course, this action is adjusted to the characteristics of acts that are usually carried out by companies, for example, companies are required to make improvements by making the correct accounting that has been neglected, so that the bookkeeping of their companies that become the object of tax audits becomes correct, so that the act imposed is obliging companies to improve the governance of transactions/make the correct accounting then reported to the Director General of Taxes. Sanctions This action is a form of "rehabilitation" of the company's management so that in the future it will provide benefits for the company towards better corporate governance, as well as facilitate or expedite the Director General of taxes when conducting tax audits in the future.

In the Criminal Code Bill (Version 19 October 2019), also regulates related to sanctions Actions, both against individuals and corporations, namely as follows:

Sanctions for Individual Actions

Article 1 In the Criminal Code Bill (Version 19 October 2019) regulates the sanctions Acts against individual criminal acts, namely:

Article 103;

Actions that can be imposed together with the principal crime in the form of counseling, rehabilitation, job training, care at the institution, and/or improvement due to Criminal Acts.

Actions that can be imposed on any person as referred to in Article 38 and Article 39 are rehabilitation, surrender to someone, treatment at the institution, surrender to the government, and/or treatment at a mental hospital.

The type, duration, place and/or implementation of the actions referred to in paragraph (1) and paragraph (2) are determined in a court decision.

Sanctions for Corporate Actions

RUU KUHP (version 19 October 2019), Article 123 regulates actions that can be imposed on Corporations, namely expropriation of Corporations, funding of job training, placement under supervision, and/or placement of Corporations under support.

Paying close attention to the existence of additional criminal sanctions and action sanctions is very important, in order to recover the loss of state revenue due to tax crimes, it is very necessary to regulate them in the future KUP Law. Additional sanctions in the

form of confiscation of assets resulting from tax crimes as an effort to realize the spirit of the KUP Act towards the enforcement of tax laws that are more useful and fair. It is useful to hold the meaning that the state must be present to confiscate and seize the proceeds of crime whose results are used to finance the continuity of development. Fair means that the offender is not entitled to the proceeds of crime, which should have been to build community welfare, and the offender receives criminal penalties for his actions.

CONCLUSION

The regulation of asset confiscation sanctions in the KUP Law, based on the type that the tax crime is a white collar crime, so that in law enforcement there must be resistance against the perpetrators by adding sanctions of asset confiscation in the KUP Law in order to create a deterrent effect and benefit. Alternative assets confiscation in the KUP Act can be through the model of Criminal Base Forfeiture (CB) and Non Criminal Base Forfeiture (NSB), as stated in Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning Eradication of Corruption Crime by placing seizure assets as additional crimes, as well as the state can still make a civil suit against perpetrators of criminal acts of corruption. Considering the huge state loss caused by this tax crime, a strategy to save state losses is needed, both in the level of investigation, prosecution and execution stage. For example, a country can still conduct a civil suit if the suspect dies during an investigation, prosecution or execution. Methods like this have not been regulated in the KUP Law. Though this method is very important considering the state is very dependent on taxes in developing the country.

Asset saving model in the future KUP Act can be through CB and NSB, considering the state is very dependent on taxes, so efforts to save assets due to criminal acts must also be extraordinary. For example in Law Number 31 of 1999 Jo Law Number 20 of 2001 concerning Eradication of Corruption Crimes includes articles to pursue and save state financial losses including by conducting a civil suit if the suspect/defendant dies before the case is decided by a judge. Even the state can still file a lawsuit against the property of a convicted person obtained from the results of a criminal act of corruption, if the assets are found later and have not been seized when the case has been decided by a judge.

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INTELLECTUAL AWARENESS IN JUDEX JURIS CONTRADICTION AGAINST THE IRREGULARITY OF IUS CONSTITUTUM AND IUS CONSTITUENDUM

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Abstract: *This research will unmask the essence of a more comprehensive legal context by reviewing a Supreme Court (MA) ruling, Cassation Decision Number 1555 K/PID.SUS / 2019. The verdict is contradicted by ius contitutum and ius constituendum. The case that appealed against the alleged corruption with the issuance of the issuance of the BLBI Declaration Letter to the Indonesian National Trade Bank conducted by Syafruddin Arsyad Temenggung was acquitted by the judges of the Supreme Court, who had previously been sentenced to a high court criminal sentence of 13 years in prison and a fine of Rp. 700 million and 3-month confinement, which later sentenced Syafruddin to be increased to 15 years in prison and a fine of Rp.1 billion with 3 months subsidiary confinement on appeal. This research is classified as normative legal research, by inventorying primary and secondary legal materials as well as approaching legal concepts which are then drawn conclusions and presented theoretically. In this study it is more interesting that the Supreme Court judges are more likely to protect public officials from the bondage of the law.*
Keywords: *Supreme Court, Bank Indonesia Liquidity Assistance, Contradiction, ius contitutum, ius constituendum.*

INTRODUCTION

The rule of law as a discipline of rules or rules has a general nature and tends to be normative. In the Dutch legal literature, law is called "objectief recht" and in Dutch legal language, it is divided into two, namely "objectief recht" which means law and "subjectief recht" which means rights and obligations. (W, 2014) Thomas Hobbes sees law as a basic need for individual security. (Bernard L. Tanya, 2013) Is this the case, special attention to ethics in the court of first instance, appeal, cassation feels increasingly relevant and urgent to be able to achieve a legal system that can provide security for each individual. There, it is not only the fate of one's "prisoner" humanity at stake. But also, the quality of humanity of a law enforcer is at stake. (M. Sholehuddin, 2014) That is because in carrying out and obeying the rules of legal discipline as an important matter to note. Fundamentally the norms and rules of law that form the basis for the fate and the spirit of the law itself, the community, law enforcement officers, prosecutors, judges, lawyers and the government itself must understand the legal domains that act as instruments of the path of good.

The occurrence of ethical irregularities in the trial of the legal method which includes exceptions and fraud. Against fraud, legal actions can be held 1) Juridical, which includes (a) civil action; (b) criminal action; (c) enforcement of the state administration; (d) enforcement of the state system; 2) Extra-juridical, as stated by supporters of the theory of "social defense" which states, that in certain incidents of misappropriation the community is guilty. (Soerjono Soekanto, no date) It is clear that in the deviation of the rule of law a claim can be held in accordance with the applicable legal domain. In the struggle law enforcement, the court arena is certainly not as easy as understanding the study of existing theories, it is far more severe than its application which is still colored by cheating in bribery, playing political law, bargaining over decisions with a number of enforcers law, etc. Of course all of that is considered bad for the image of the law itself in the eyes of the public so far.

In 2019 a contradiction in the Judex juris (appeal) Decision issued by the Supreme Court, the Cassation Decision numbered 1555 K / PID.SUS / 2019 dated July 9, 2019 was decided by the Panel of Justices chaired by Salman Luthan and consisted of Supreme Court Judge Syamsul Rakan Chaniago and Mohamad Aski. (Aida Mardatillah, 2019) Being a concern of academics and legal practitioners who had previously been convicted of this case by the Corruption Court, chaired by a panel of judges Yanto, with a sentence of 13 years imprisonment and a fine of Rp. 700 million and 3 months confinement confinement. Not stopping there then on January 2, 2019, Syafruddin's sentence was increased to 15 years in prison and a fine of Rp. 1 billion with a 3-month confinement in appeals.

The contradiction of dissenting opinion begins to be seen with the judges' decision at the judex facti level, each of which has a different perspective, meaning that this decision is still not fully ended in the first level verdict, it can be seen from one of the panel of judges who wants an effort to submit an appeal. . Not only that, interestingly the contradiction in seeing this case from legal experts considers that this case is not a criminal act of corruption, but in the scope of civil law, some also say that this case falls within the scope of state administrative law.

When viewed from the standpoint of the legal system schematically, three different systems of law enforcement can be distinguished, namely: the system of civil law enforcement, the criminal law system, and the administrative law enforcement system. (Sudarto, 2006) In line with that, there is a series of sanction systems that have a different scope for both civil law, criminal sanction systems and administrative legal sanctions (state administration) systems. Of the three legal systems, each of which is supported and implemented by a state apparatus or law enforcement apparatus that has its own rules and domains.

The problem that is currently faced by us, especially with academics, researchers and legal practitioners, is that ironically a verdict handed down by a judge, why is that? A ruling without regard to justice, is the same as eliminating the human future and legal image. Even more than that can cause greater chaos. Hugo de Groot, a Dutch philosopher once warned that "vbi ivdicia devicivnt incipit bellvm", meaning "when a ruling does not provide justice, then the war begins. (Tumpa, 2015) To collaborate this statement, this section is ideal to be studied more deeply, so that the discussion can focus on the independence of judicial power can be seen and felt more comprehensively.

In a paternalistic culture, a judge can become "uncomfortable" and "feel uncivilized" if he has to defeat the government or his officials in a case. (MD, 2017) Meaning: judges domiciled as public servants find it difficult to be neutral and independent in cases involving the government as one of the parties. This is marked by the existence of a paternalistic culture that is familiar with the term understand fatherhood.

MATERIALS AND METHODS

To note that in the literature of jurisprudence approach to problems is determined and limited by the scientific traditions that developed in this era. This research is a normative legal research carried out by examining various legal literature review materials (commonly called secondary data). The approach taken in this research is normative (dogmatic) including the approaching statutory or legislation-regulation approach, conceptual approach, history approach, and comparative approach. The conceptual approach is carried out by examining the overall legal framework that applies to be reflected and theoretically argued based on the basic concepts of law. To complement the above approach, it can also be used to study non-legal science. (Prasetijo Rijadi, 2017)

RESULTS AND DISCUSSION

Economic Policy Instruments

In the economy there is a strong correlation between economic growth and inflation. High growth is usually accompanied by high inflation. Conversely, low inflation growth is followed by low inflation. This shows the trade-off between economic growth and inflation, and this relationship is often illustrated through the Philips Curve.

1) Fiscal policy

Fiscal policy is an instrument owned by the government to influence and control the economy by regulating government spending, regulating the amount of subsidies given to the public, or by regulating the amount of tax imposed on society. This can occur because physical policies affect various economic activities in society related to the allocation of various resources between the public and private sectors which greatly affect the stability and economic growth.

2) Fiscal Policy Implementation

Physical policies are implemented by the government directly at various levels of government consisting of provincial, district / city governments, as well as through various public business entities at every level of government. On the demand side, physical policies can encourage economic growth through a "pump priming" policy that encourages public consumption through the "multipler" effect, which through the "accelerator" effect can drain investment spending from the business world.

The general conclusion of the description is that in the implementation of physical policies which are basically "counter-cyclical", it is necessary to have a variety of rules that are transparent and avoid the implementation of "discretionary" policies. The implementation of physical policies based on "rules" will reduce the direction of

uncertain policies so that the business climate that is less conducive due to uncertain policies can be corrected immediately.

Some rules that need to be considered so that the implementation of fiscal policy is always transparent, disciplined and prudential are as follows:

a. Revenue follows fuctions. An illustration of this rule if applied in reverse is if the regional government which has been autonomous in advance demands an increase in revenue without being able to clearly define what tasks will be carried out.

b. Fiscal sustainability. To assess this sustainability, the rule that applies is: growth in the ratio of the country's debt stock to GDP is set in such a way as to achieve maintenance of low nominal interest rates and low inflation rates (or low real interest rates) along with high GDP growth.

c. Tax productivity. Taxation system that has high revenue productivity. This rule is known as the Tanzi Diagnostic Test. A taxation system must be structured in such a way that it has a high index number for the following: a) Concentration Index; b) Dispersion Index; c) Erosion Index; d) Collection Delay Index; e) Objectivity Index; f) Enforcement Index; g) Collection Fee Index;

d. Tax elasticity. Types of taxes that are elastic, in the sense that the taxation system should have types of taxes whose growth is higher than GDP growth (tax elasticity of more than one GDP).

e. High tax buoyancy. In this taxation system there can be an increase in tax revenue due to the improvement of tax administration in spite of an increase due to GDP growth.

f. Balance. A balance must be maintained between state expenditures that are routine (current expenditures) with expenditures for investment (capital expenditures). The proportion of routine expenditure will sacrifice the state's function to provide development infrastructure so that it can increase business overhead costs, which in turn will weaken the ability of the economy to grow.

State / Regional Owned Enterprises Management Principles

In order for BUMN / D to be able to cultivate profits and continue to exist, and to be able to maintain its social presence and function, the BUMN / D manager must prioritize and apply the principles of good corporate governance, such as: 1) Accountable; 2) Transparent; 3) Competent; 4) Competitive; 5) Building a corporate culture both internal and external; 6) away from unhealthy practices; 7) Independent. (Negara, 2003)

Justice Theory

The issue of justice, is not a new problem that was later discussed by experts, but furthermore the discussion about justice has begun since the time of Aristotales until now. Aristotales also divides justice into two types, namely:

1) Distributive justice;
2) Corrective justice;

Distributive justice is carried out in distributing honor, prosperity, and other assets that are considered important and can be distributed to the community and its worshipers

equally or unevenly by the legislator. The principle of distributive justice places more emphasis on proportional equality.

Corrective justice, is justice that provides corrective principles in private transactions. Corrective justice is carried out by a judge in resolving disputes and providing penalties for the perpetrators of crime. (H. Salim HS, 2017) So in the role of a judge deciding a case, more emphasis is placed on corrective justice that is based on the independence of a judge's freedom in finding law that is equivalent to the form of crime committed by a criminal irrespective of that the judge's decision must be able to provide legal certainty and not neglect the rights of the accused.

Legal ideal

To realize the aspired law enforcement (ius constituendum), the judge in examining, adjudicating, and deciding a case is protected and given free and free power by the state from various interventions from any party even in the form of any intervention, as a manifestation of guarantees and ensure the impartiality of a judge except the priority of law and justice for the implementation of the rule of law in Indonesia. (Maggalatung, 2014) Can be found in Article 24 of the 1945 Constitution concerning Judicial Power. Although it is still found in practice there is a general tendency (mainstream) of judges to follow the legal positivism mindset and it is still rare to find judges who follow non-positivistic ways of thinking in deciding cases. (Syamsudin, 2011) So in that context, the legal system is needed to make a positive contribution in delivering the dynamics of a nation's legal system towards the renewal of a legal product by adjusting the changing times.

The embodiment of Ius Constituendum includes three things: First, reform the old law into a new law. Second, legal changes to the applicable law. Third, the formation of law. Change the old law into new law, especially when it is cooled down by all the people of Indonesia. Whereas legal changes are made by always reviewing positive laws / laws and regulations in force. The formation of law occurs when legal experts, lawyers, judges, legislators, or law teachers can understand and describe precisely the positive law itself (Ius Constitutum). Through legal discovery (rechtsvinding) the judge can also play a role in efforts to realize the Ius Constituendum.

Satjipto Rahardjo in "Teaching Order to Find Disorder" (Teaching Order Finding Disorder) states that the type of law arises and changes from time to time. Who's positive law or lawyer's occupy only one small corner of the map in the whole and large order. Next Soeharjo Sastrosoehardjo stated that the process of the Ius Constitutum (positive law) to become Ius Constituendum must be comprehensive, both its institutions, institutions, and their implementation / implementation. (Maemoenah, 2003)

Difference between Lijdelijke Rol and Leidende Rol

With lijdelijke roll the judge only accepts and gives decisions based on what is recognized or not and is proven or not by the parties who carry out an active role. Leidende roll rather than the judge who acts to lead the judicial process is the basis of H.I.R in criminal and civil cases. Closely related to the difference in the role of the judge is the difference in understanding "materiele waarheid" and "formele waarheid" although

it can be said that the two differences are in pairs "lijdelijke rol: formele waarheid" and "leidende rol: materiele waarheid". The judge found the law to fill the void by using analytical thinking methods, legal constriction methods and a contrario method.(Hidayat, 2013)

Based on the history of the recruitment mechanism of justices there is still no one that can guarantee that the justices are truly reliable and satisfying. In the first system, the Chief Justice is proposed by the Supreme Court to the President. Although the quality of Supreme Court justices is quite good, there are weaknesses that lie in the mechanism, namely judges known by the Supreme Court who can be captured. The second system, the Supreme Court proposed by the Supreme Court to the DPR, the weakness lies in the very high political nuance. The interests of political parties are sometimes very prominent. The third system, the same as the second system, political approach has more role than individual ability. The fourth system, namely the Judicial Commission proposes to the DPR then the DPR continues to the President. If the candidate is rejected by the House of Representatives, it will give more power to the Judicial Commission and thus require more supervision of Judicial Commission. What will be the result, history will speak. (Binsar M. Gultom, 2014).

Upholding of the Eetic Code of Conduct and Judge Guidelines

Various kinds of legal regulations that normatively regulate the entire judicial process which in the end is still very difficult to overcome judicial corruption. According to the International commission of Jurists, Judicial corruption is the highest type of corruption because it destroys part of the pillars of a democratic government. (Hormati, 2017) That is because the markers in the courtroom are still fertile, especially in the integrity of a judge who is seen as a representative of God in determining one's fate so that the need for upholding KEPPH is still a discussion that is still ideal for researchers, academics, and the community at large. Although there is an institution that oversees the behavior of judges, namely the Judicial Commission, it is still not enough without self-awareness for a judge who carries out his duties and responsibilities.

What was revealed by Lord Denning, it appears that to achieve justice is a matter of quality from a judge who decides and is very decisive. In criminal law, the achievement of obtaining a fair verdict requires a long struggle and a process, namely through the legal process. In the process the essence that will be achieved is to find material truth, which is a legal basis in the imposition of criminal sanctions for the achievement of a sense of justice. A fair decision can be obtained if it is handled by a judge who not only has a high personality / scientific integrity, but must also be based on the soul of ahlakul karimah. But we also need to realize that in this world there is no essential justice (only belongs to God), but rather relative justice/relative. (Indonesia, 2014)

Analysis of Case Verdict and Position

For the Judicial Commission, the judge's decision is not just a string of words and sentences that summarizes the process of examining, adjudicating and deciding a case, but also a picture of the personal quality, the quality of the assembly, and the quality of

the trial process itself. Judges' decisions are living documents that can talk and explain many things, which can be interpreted with various interpretations. The verdict illustrates the legal paradigm, commitment, impartiality of the judge, accuracy, accuracy; it even illustrates the struggle of the humanity of the judge as a court in a case.(Komisi Yudisial Republik Indonesia, 2014) It is very clear what was conveyed by the Judicial Commission that the entire set of criminal, civil, and administrative cases of judges play a vital role as a determinant of one's fate.

1) Brief Chronology of Case Position

Decision of the Supreme Court No. 1555 / K / PID.SUS / 2019 who released Syafruddin Arsyad Temenggung as the Head of IBRA (Indonesian Bank Restructuring Agency). It was the main legal consideration that stood out from the Supreme Court when granting Syafruddin Arsyad Temenggung's appeal because of the issuance of the BLBI Payment Certificate (SKL) to the Indonesian National Trade Bank (BDNI) owned by Sjamsul Nursalim which was qualified as administrative or civil error because the settlement could not be resolved. done with criminal punishment. Based on the decision, it is felt that there are many irregularities which become the main attraction to be studied more deeply in the scientific space to be described more comprehensively.

(1) Judex Facti Perspective

The perspective illustrates that the consideration of the Supreme Court which states that judex factie does not consider the aspects of emergency and occasional demand that encourage the chronology of the birth and formation of IBRA as delegated legislation based on Article 37A of Law No. 10 of 1998, which then has reason to be accepted as one of the solutions that cannot be avoided by the Government to solve the BLBI problem.

(2) Judex Juris's perspective

That the judex juris consideration above is seen from the value (value) wanting to place criminal sanctions as a final instrument (ultimum remidium) and not vice versa (premium remidium). In terms of utility, the judex juris consideration provides legal protection to public officials whose duty is to carry out banking economic recovery to take concrete steps that are urgent so that the monetary crisis does not penetrate into other economic pillars. (Isman, 2019) The Supreme Court believes that the legal policy model through banking restructuring from the perspective of positive claims is an efficient policy so it should be maintained as a basis for all parties related to IBRA to comply with.

CONCLUSIONS

That the position of a judge is aware in deciding a case is a determination of one's fate in showing the legal authority itself, and in teaching order to better understand the complex legal reality of the embodiment of ius constitutum and ius constituendum. The judge's reasoning in finding the law is demanded to be able to create a balance between the act and the punishment. The jurisprudence that should be the source of reference for the next judges in deciding a case will be a path that misleads the next judges when in a ruling not in accordance with current law will also be far from the law that has been aspired so far.

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FORMULATIVE POLICY OF DEATH PENALTY FOR CORRUPTORS IN INDONESIA

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Abstract: *Corruption is committed by state officials, law enforcement and other related parties. Various efforts have been made by the government in preventing and eradicating corruption in Indonesia, but the efforts that have been made have not yet gotten optimal results. The fundamental weakness in eradicating corruption in Indonesia is the formulation of the main criminal sanctions in the form of criminal threats that are facultative, uncertain or must be. So that the corruptors are never deterred or afraid. In the future, the legislators need to reformulate the provisions of Article 2 paragraph (2) of the Republic of Indonesia Law Number 31 of 1999 as amended to Law of the Republic of Indonesia Number 20 of 2001 concerning Eradication of Corruption. Various criminal law policies still need to be carried out by the state in order to eradicate corruption to achieve the expected results. This type of research in this paper uses the type of normative legal research. The type of approach is in the form of a legal approach related to corruption. There are two legal materials used, namely primary legal materials and secondary legal materials, with legal material collection techniques used in the form of library studies. The analysis technique used is descriptive, interpretation, evaluation and argumentative techniques. The research in this paper intends and aims to examine and analyze the facts and phenomena of corruption that are stated in specific legislation concerning criminal sanctions (capital punishment) for corruptors in Indonesia. Moreover, corruption is qualified as an extraordinary crime so it needs extraordinary handling as well.*
Keywords: *Policy Formulation, Death Penalty Sanctions, Corruptors.*

INTRODUCTION

Behaviors, attitudes, statements are not always held fast as commitment to oneself. Psychological disorders of a law will be tested when faced with the lure of a pile of banknotes with fantastic nominal value. The phenomenon of the above situation and position as well as the facts have proven in the statement of a former Chief Justice of the Constitutional Court, Judge M. Akil Mochtar who is currently serving a life sentence for corruption, as quoted by Muhammad Yusuf, his statement when it highlighted the existence of corruption in Indonesia, with: "Corruption in Indonesia has reached its pulse. Corruption in this country is so severe, deep-rooted, even entrenched. Corruption practices occur in almost every layer of the bureaucracy, both legislative, executive and judicial, and have spread to the business world. Like a disease, corruption is a chronic disease, so it is very difficult to treat it" (Yusuf, 2013).

Conscious or not, remember or not M. Akil Mochtar once made a statement of his attitude towards the corruption pandemic that occurred in Indonesia like that of the former Chief Justice of the Constitutional Court and former Advocate, now for him to be a material for self-reflection and introspection, to be aware of his actions that have denied the principle his life, violated the oath of office when he was appointed as a high state official in various top positions in a country based on the Pancasila state law and ideology. Rice has become porridge, regret always comes later. Hopefully now for him arises a sense of regret accompanied by an attitude of repentance as an effort to redeem the great sins he has done for the nation and nation of Indonesia.

The act of the corruptor who caused the greatest sin for him was to betray the goals of the proclamation of the country on August 17, 1945, which had a significant impact on the actions of harming the country's finances and disrupting the economy. Corruption phenomenon in Indonesia as described above is related to the fact according to the findings of Transparency International Indonesia (TII) released its data that the Corruption Perception Index (CPI), that the existence of Indonesia's position in 2019/2020 shows the score of the Indonesian Perception Index currently at position number 40 with the highest score of 100, CPI assessment is based on a score of 0 (zero) with very corrupt qualifications, and with a score of 100 (one hundred) means a country is free from corruption. When viewed according to the ranking of the position of the countries in the world, Indonesia is in the ranking of 85 (eighty-five) of the 180 (one hundred eighty) countries surveyed.

The Percepcy Corruption Index refers to the existence of 13 (thirteen) surveys and from expert assessments to measure public sector corruption in 180 countries and territories in the world. According to his findings, that Indonesia's position at the level of corruption is the same as 5 (five) countries such as Burkina Faso, Guyana, Leshoto, Kuwait, and Trinidad and Tobago, then overtake Indonesia. When explored further, that the most corrupt countries according to TII's findings are the Countries of Somalia, South Sudan, Syria, Yemen and Venezuela. The opposite situation, countries clean of corruption according to the results of an initial survey in 2020 with a score of 87 is in the countries of Denmark and New Zealand, followed by Finland with a score of 86, and there are 3 (three) countries having the same score of 85 , these countries are Singapore, Sweden and Switzerland.

Related to the amount of state financial losses that cannot be recovered into Indonesian state treasury, according to a search from ICW (Indonesian Corruption Watch), in the range of 2018 it reached a quite fantastic amount with a nominal value of 9.29 Trillion Rupiah. In addition, according to ICW data, there are 271 cases recorded of corruption that occurred throughout 2019, with state financial losses reaching 8.4 Trillion Rupiah, with 580 corruptors. As one example of corruption in Indonesia that occurred in 2019 involving a public official/ state organizer (in this case the East Waringin City Regent with the initials SH) with the mode of issuance of mining business licenses which turned out to be fabricated and fictitious resulting in state financial losses ranging 5.8 Trillion Rupiah (Kompas.com, 2020).

Based on the phenomena and facts above, it shows that the criminal acts of corruption that occurred in Indonesia where the perpetrators involved public officials and state administrators prove that the corruption that occurred as a cause of the decline in national development activities. The amount of state financial losses that have not been returned

to the state treasury, which is unknown, is the main cause of obstruction of the mandate of the Opening of the 1945 Constitution of the Republic of Indonesia. The Indonesian people who are just and prosperous and prosperous remain mere dreams and delusions.

Based on the background explanation above, the problems of this writing are: (1). Why is there no corruption perpetrators sentenced to death in Indonesia?, (2). How is the formulation policy for capital punishment for perpetrators of corruption in the perspective of ius constituendum? This writing is an original scientific paper or it is not the same as other previous scientific papers. The scientific papers related to this topic with other previous scientific papers include: (1). "The Criminal Law Formulation Policy in Corruption Crime Mitigation", written by Ridwan, from Diponegoro University, Semarang, with the formulation of the problem: a. What is the policy on the formulation of corruption in the current legislation?, b. What is the policy formulation for the upcoming corruption? (2). "The Existence of the Corruption Eradication Commission in Corruption Judiciary in Indonesia", written by Abdul Kholik, M., from the Islamic University of Indonesia, in 2011, with the formulation of the problem: a. Does the Corruption Eradication Commission need to coordinate with the Attorney General's Office? B. What is the form of cooperation between the KPK and the prosecutor's office in eradicating corruption in Indonesia? (3). "Analysis of the Corruption Criminal Prosecution Authority by the Corruption Eradication Commission (KPK) and the Prosecutor's Office according to Indonesian Positive Law", written by Syabilal Jihad, in 2018, with the formulation of the problem: a. Is there no dualism in prosecuting corruption in Indonesia? b. What are the criteria in the prosecution of corruption cases carried out by the Corruption Eradication Commission (KPK) ?.

Based on the presentation in the form of the title and formulation of the problems that existed in the previous scientific writings above, compared to the writings of the author, both the title and the problem are different. The author presents the title regarding capital punishment for corruptors, with the problem of why corruptors in Indonesia are not sentenced to death by law and in the future policies need to have a formulative policy regarding capital punishment for corruptors.

RESEARCH METHOD

This research uses normative legal research, according to I Made Pasek Diantha, stated that normative legal research is a method that examines positive legal rules of internal perspective, the object of research is legal norms (Diantha, 2017). The approach used in this scientific work is in the form of a legal approach and a case approach. Sources of legal materials used are primary legal materials related to applicable laws relating to corruption such as the Corruption Eradication Act, the UN Convention concerning Corruption Crimes (UNCAC and UNCATOC). Secondary legal materials include the results of previous research, legal textbooks, scientific journals, newspapers, and tertiary legal materials such as dictionaries, encyclopedias, and internet sites that are relevant to the problem under study.

RESULTS AND DISCUSSION

Essence of Corruption and Death Penalty

Terminology, Definition, Characteristics and Impact of Corruption

The term corruption is etymologically derived from Latin, namely "corruptio" or "corruptus" which then appears in many European languages such as English and French, namely "corruption", in Dutch "korruptie" which subsequently also appears in the Indonesian treasury: corruption, which can mean like being bribed (Hamzah, 1995). Corruption also comes from the word "corrupteia" or "bribery" which means to give or give it to someone so that the person has done for the benefit of the giver, or also means seducation which means something that is interesting for someone to deviate (Koeswadji, 1994). The interesting thing is usually associated with power, which is generally in the form of bribery, embezzlement and the like.

The term corruption in the Indonesian General Dictionary as concluded by Poerwadarminta is a bad act such as embezzlement, receipt of bribes and so on (Hamzah, 1995). Regarding the term corruption itself, according to Sudarto, it began to be general in nature and only became a legal term for the first time in the Military Ruling Regulation Number PRT/PM/06/1957, concerning Eradicating Corruption Soedarto, 2007).

In the legal sense as affirmed in Act Number 31 of 1999 concerning Eradication of Corruption, as amended by Act Number 20 of 2001 concerning Amendment to Law Number 31 of 1999 concerning Eradication of Corruption. Corruption is a disease that often occurs especially in developing countries like Indonesia, where the development of Indonesia's corruption is considered by some experts to be very alarming. M. Abdul Kholik (2011) stated: "For the Indonesian people, it seems to have been destined as a problem that seems to never run out to be discussed". Even the Working Team of the National Commission on Human Rights noted, there are fundamental issues for hampering the fulfillment of the protection and respect for human rights and placing corruption as the main factor hampering such protection (Amidhan, 2006). Thus the acute corruption in Indonesia, Azhar (2009) stated: "That corruption is a social disease that is universal and has occurred since the beginning of the human journey".

Such a broad impact on corruption will basically be a very serious threat to the survival of the nation and state. Even Romli Atmasasmita (2005) stated: "That the problem of corruption has become a serious threat to the stability and security of the national and international community". Based on such conditions there is a lameness in the portion of income received by various groups of people referred to as relative inequality or there is an absolute level of poverty (absolute poverty). Such conditions are certainly the most disadvantaged are the people at the grassroots level, which should receive welfare guarantees in accordance with the guarantees set forth in the constitution. This is confirmed in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia: "The earth, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Constitutionally the people's welfare is a human right that must be realized by the government as the organizer of the state, one of the efforts is the utilization of existing natural resources, which in its use is for the greatest prosperity of the people (Ridwan, 2009). As a rich country with all abundant natural resources, it is inappropriate for the Indonesian people to live in poverty and misery with a variety of sadness, from malnutrition to the problem of inability to fulfill decent living needs and adequate health.

Corruption with such a broad impact that according to the UN Convention in the UNCAC-2003 protocol (United Nations Convention Against Corruption-2003) which is a

translation of the United Nations Convention on UNCATOC (United Nations Convention Against Transnational Organized Crime-2000), that corruption crime is interpreted as a crime serious because according to Tom Obokata (2015) : "That corruption according to the convention is intended to get directly or indirectly financial or other material benefits".

The qualifications of corruption crimes besides being classified as extraordinary crimes have also penetrated jurisdictions across national borders. Transnational crime is given meaning or understanding by Passas N. (2003) as follows: "Cross-border crime is behavior that endangers the interests protected by law in more than one national jurisdiction and is criminalized in at least one of the countries or jurisdictions related ". Corruptors often run and hide outside the jurisdiction of their home country to make it difficult to find them to be arrested and processed legally. So the corrupt home government requires cooperation between countries and between law enforcers through bilateral and multilateral legal means among countries parties to the 2003 UNCAC convention. In fact, according to Harkristuti Harkrisnowov(2002): opportunity or means available to him ". According to Marella Buckley in Hans Otto Sano, et.al. (2003): "Corruption is the misuse of public office for personal gain through bribery or illegal commissions". In line with the opinion above, Indriyanto Seno Adji (2006) stated: "It is undeniable that corruption is a White Collar Crime with actions that always undergo dynamic mode of operation from all sides so that it is said to be Invisible Crime whose handling requires criminal law policies".

This criminal law policy must certainly have the characteristics of the values of justice that can be felt by all Indonesian people, so the main consideration is in favor of the people's economic interests or the public interest. Regarding actions that include corruption, Carl J. Friedrich, as quoted by Martiman Prodjohamidjojo (2009), argues that: "The pattern of corruption can be said if a person holds the authority that is authorized to do certain things such as an official who is responsible through money or some other kind of gift that is not permitted by law; persuading to take steps that help anyone who provides gifts and thus truly endanger the public interest."

Responding to this corruption problem, Robert Klitgaard (2008) critically states that "Corruption exists when someone illegally places personal interests above the interests of the community and something entrusted to him to do so. Corruption takes many forms and can range from small to monumental. Corruption can involve misuse of policies, tariff provisions, and credit, irrigation and housing system policies, law enforcement and regulations relating to public safety, contract implementation and loan repayment or involve simple procedures. That can happen to the private sector or the public sector and often occurs in both sectors simultaneously. It can be widespread, in a number of developing countries, corruption has become systemic. Corruption can involve promises, threats or both; can be started by a civil servant or community concerned, can involve illegal or legitimate work; can be inside or outside public organizations. The boundaries of corruption are very difficult to define and depend on local laws and customs".

According to the author, the formulation given by Robert Klitgaard above shows that corruption is a crime that is of extraordinary quality and quantity and can significantly undermine the interests of the people's economy. Ronny Rahman Nitibaskara (2005) even stated: "Corruption in our society has become endemic which is

difficult to overcome. Corruption is not an extraordinary crime, only the quality and quantity of breeding is extraordinary".

EXISTENCE OF DEATH PENALTY AND ITS RELATIONSHIP WITH CORRUPTION

In the legal literature, not enough is found in the notion of capital punishment by scholars or legal experts. Most notions of capital punishment are found in language dictionaries, which also use the term "capital punishment". Yon Artiono Arba'i (2012), uses the term death sentence and interprets it by quoting the meaning of the Big Indonesian Dictionary. According to him, the death sentence was defined as "a sentence carried out by killing a guilty person". In addition to using the term death sentence, in the Big Indonesian Dictionary also found the term death sentence, which is interpreted as "Criminal form of revocation of the life of the convict". A death sentence can also be interpreted as a criminal or reaction to or misery in the form of death imposed on a person who commits a criminal offense, whereas the meaning of death taken from the word basic death means the loss of a person's life or no longer alive. This death will occur through the failure of the function of one of the three pillars of life (Modi of Death), namely: brain (central nervous system), heart (circulaty of system), and lungs (respiratory of system)" (Amri, 2007).

Capital punishment is the heaviest of all types of basic crimes, so that it is only threatened against certain perpetrators. So far the need for capital punishment to be threatened against perpetrators raises many opinions. Capital punishment is exceptional in nature, meaning that capital punishment is only handed down by judges if necessary. Capital punishment is always threatened alternatively with other basic crimes; this is the choice of the judge so that the death penalty is not carried out arbitrarily. If a person is found guilty by a judge found guilty of a serious crime as a crime threatened with capital punishment, the judge can impose capital punishment. In practice, the execution of capital punishment can be postponed until the President gives Fiat Execution, meaning that the President approves the implementation of capital punishment to the convicted person (Lumintang, 2010).

In law enforcement for crimes that are extraordinary and serious in nature, capital punishment sanctions are still relevant to be carried out, according to Hendarman Supandji (2008) Indonesia still requires capital punishment as a threat to prevent and frighten potential criminal offenders. The same thing is also illustrated that capital punishment sanctions need to be maintained in order to prevent and eradicate serious and other serious crimes such as narcotics abuse and other extraordinary crimes (Winandi & Lukito, 2010).

Based on the history of capital punishment is not a criminal form that is relatively new in the course of the Indonesian nation. This death sentence has been known since the days of the kingdoms. In positive Indonesian law we recognize the existence of capital punishment or capital punishment. In the Criminal Code Chapter II regarding Criminal Law, Article 10 states about various types of criminal acts, which consist of basic and additional crimes, and capital punishment including the main criminal types which rank first. Other laws and regulations in Indonesia also include threats of punishment in the form of capital punishment, for example RI Law 7/Drt/1955 concerning Economic

Crimes, RI Law 35/2009 concerning Narcotics and Psychotropic Crimes, Republic of Indonesia Law Number 31 of 1999 as amended by Republic of Indonesia Law Number 20 of 2001 concerning Eradication of Corruption, Indonesian Law Number 26 of 2001 concerning Crimes Against Human Rights and Indonesian Law Number 5 of 2010 about Terrorism.

Roeslan Saleh (1978) said that the Indonesian Penal Code limits the possibility of capital punishment for a number of serious crimes. What is meant by serious crimes are:

- "Article 104 (plots against the president and/or vice-president);
- Article 111 paragraph 2 (inducing a foreign country to be hostile or to fight, if hostility is carried out or become a war);
- Article 124 paragraph 3 (assisting enemies during war);
- Article 140 paragraph 3 (treason against the king or head of friendly countries planned and resulting in death);
- Article 340 (premeditated murder);
- Article 265 paragraph 4 (theft by force resulting in serious injury or death);
- Article 368 paragraph 2 (extortion with violence resulting in serious injury or death);
- Article 444 (piracy at sea, coast and river resulting in death)".

Debate arose when many people began to ask whether capital punishment was still relevant or appropriate as a punishment in Indonesia. The question was asked not without reason, but most of them consider capital punishment violates Human Rights (HAM), namely the right to life. That right is contained in the 1945 Constitution of the Republic of Indonesia NAD Article 28A which states: "Every person has the right to live and has the right to defend his life and life". Based on this understanding they assume that the right to life is the most fundamental right and cannot be reduced under any circumstances (Lubis & Lay, 2009).

Both the pros and cons, the reasons given all rely on Human Rights (HAM). It is necessary to elaborate on the arguments for both, of course by still referring to national law (Waluyadi, 2009). The tendency of experts who agree with capital punishment is still maintained, generally based on conventional reasons, namely capital punishment is needed to eliminate people who are considered endangering public or state interests and are deemed irreparable, while those who are contravened of capital punishment usually make excuses capital punishment is contrary to human rights and is a form of crime that cannot be remedied if after the execution is carried out an error is found in the sentence handed down by the judge.

POLICY ON THE FORMULATION OF DEATH PENALTY THREATS IN THE CORRUPTION ERADICATION ACT

According to Robert R. Mayers and Ernest Greenwood, as quoted by Sultan Zanti Arbi and Wayan Ardana (1997), the term "policy" is taken from the terms "policy" (English) or "politiek" (Dutch). Related to the substance of criminal law policies, according to Barda Nawawi Arief (2002):

The problem of criminal law policy is not merely legal engineering work that can be done in a normative and systematic dogmatic manner. Besides factual juridical approaches can also be in the form of a sociological, historical and comparative

approach, even requiring an integral approach to social policy and national development in general.

Efforts and policies to make good criminal law regulations in essence cannot be separated from the purpose of overcoming crime by using criminal penalties. Crime prevention efforts with criminal law are essentially also part of law enforcement efforts (specifically criminal law enforcement). Because of this, it is often said that criminal law policies are part of the law enforcement policy.

The policy of regulating death penalty formulations in the Corruption Eradication Act is currently only 1 (one) article that regulates it, namely in Article 2 paragraph (2) and supplemented with the Elucidation of Article by Article in Article 2 paragraph (2). The full article cited again in Article 2 paragraph (2) and its explanation in the Corruption Eradication Law, namely:

Article 2 paragraph (2): "In the event that a criminal act of corruption as referred to in paragraph (1) is carried out under certain circumstances, the death penalty may be imposed".

Elucidation of Article 2 paragraph (2): "What is meant by certain circumstances in this provision is a condition that can be used as a reason for criminal prosecution for corruptors, that is if the crime is committed against funds intended for the handling of a state of danger, natural disaster national level, countermeasures due to widespread social unrest, overcoming the economic and monetary crisis, and repetition of criminal acts of corruption ".

Some weaknesses in the Corruption Eradication Act related to the formulation of capital punishment (Article 2), according to the author, can be summarized in 2 (two) types of weaknesses, namely:

1. Formal Weakness;
2. Material Weakness (substance).

Formal weaknesses, i.e. weaknesses related to the problem of compilation and/or editorial choice of sentences, namely in the case of: The use of the phrase "certain circumstances" and "can" be dropped. That the formulation of "certain circumstances" which is the reason for the imposition of a criminal offense for the death penalty can not be formulated clearly and clearly in the formulation of the article. In various formulations of the law both inside the Criminal Code and outside the Criminal Code, "certain circumstances" which are the reasons for criminal charges are generally formulated explicitly and clearly in the formulation of the relevant offense. In the Criminal Code for example, criminal charges for abuse in Article 356 of the Criminal Code and criminal charges for theft in Article 365 of the Criminal Code, all of them are stated explicitly and clearly in the formulation of these articles. Likewise, the formulation of articles which includes capital punishment in the Narcotics Act or the Terrorism Act.

The formulation of "certain circumstances" contained in Article 2 paragraph (2) of the Corruption Eradication Act, which is the reason for the imposition of capital punishment, was not formulated explicitly and clearly in the formulation of the article, but was included in the Elucidation of Article 2 paragraph (2) of the Eradication Act Corruption Crime. This condition creates a blurring of norms because an explanation both general explanation and article-by-article explanation in a statutory regulation cannot be used as a basis for making new regulations and may not contain or create new norms. This is in accordance with Appendix I of RI Law Number 12 of 2011 concerning

Formation of Laws and Regulations number 177, which is explained explicitly: "Explanation cannot be used as a legal basis for making further regulations and may not include formulations that contain norms".

The formulation of the phrase "can" be dropped stated in the formulation of Article 2 paragraph (2) of the Corruption Eradication Act also has clearly caused bias in its implementation because it depends on the subjectivity of law enforcement, in this case the judge who hears and decides cases of corruption the. The formulation of the phrase "can" in its implementation will be interpreted "can be applied" or "can also not be applied". In this context, the judge can use his authority to interpret the phrase "can" as "can be sentenced to death" or vice versa "can not be sentenced to death".

As an illustration in RI Law Number 30 Year 2014 concerning Government Administration, Article 23 letter a and its Explanation are stated: "One of the discretion of a government official is characterized by the word" can "which means a choice to implement or not implement a decision and/or action. Sounds Article 23 letter a and the explanation as follows: Article 23 letter a:

- Government Officials' discretions include:

"Decision making and/or action based on statutory provisions that provide a choice of decisions and/or actions";

Explanation of Article 23 letter a: "Choice of Decisions and/or Actions of Government Officials is characterized by the word can, may, or be given authority, rights, should, be expected, and other similar words in the provisions of the legislation. Whereas what is meant by the choice of decree and/or action is the response or attitude of the Government Official in implementing or not implementing Government Administration in accordance with the provisions of the legislation".

Material weaknesses (substantial), namely weaknesses related to the substance or content of the article, namely:

According to Barda Nawawi Arief (2012), capital punishment as a criminal charge is only threatened corrupt acts as in Article 2 paragraph (1) of the Corruption Eradication Act, namely: "Committing acts of enriching oneself or other people or corporations in violation of the law". When referring to the General Explanation of the Law on the Eradication of Corruption, the aim of the Law on the Eradication of Corruption is to eradicate "every form of corruption". With the formulation of the death penalty in the Corruption Eradication Act only for the types of acts as stated in Article 2, it means that capital punishment is not possible to be imposed on criminal acts other than and the rest.

The formulation of criminal threats in Article 2 paragraph (2) of the Law on the Eradication of Corruption is a criminal offense against offense in Article 2 paragraph (2) which is threatened with life imprisonment or a maximum prison sentence of 20 years.

Corruption is threatened with life imprisonment or a maximum imprisonment of 20 years in the Corruption Eradication Act not only criminal offenses as stated in Article 2 above. Some formulations of types of criminal acts contained in the Corruption Eradication Act which are threatened with life imprisonment or a maximum sentence of 20 years imprisonment include: Abuse of authority/opportunity/facility/because of office or position (Article 3); Acceptance of Bribery (passive bribery) by civil servants/state administrators, judges and advocates (Article 12).

When viewed from the nature of corruption as an offense for office, the act of "abusing the authority of the office/position" (Article 3) and "accepting bribes by civil

servants/state abuse, judges and advocates" (Article 12), the substance is more reprehensible than "enriching themselves" , or at least it must be viewed as equal and therefore also deserves to be threatened with capital punishment, especially the offense of bribery is the most prominent in various corruption cases so far.

The imposition of capital punishment in Article 2 paragraph (2) is only aimed at "people". There are no criminal charges against corporations that commit acts of corruption in "certain circumstances" as mentioned above. Although capital punishment cannot be imposed on corporations, there should also be criminal charges for corporations whose weight can be identified with capital punishment, for example by revocation of business licenses for ever or corporate dissolution/closure.

The formulation of the existence of "certain conditions" required in the Elucidation of Article 2 paragraph (2) of the PTPK Law is very difficult to fulfill or rarely occurs. "Certain circumstances" according to Barda Nawawi Arief are "conditional/situational reasons". These conditional/situational reasons include: the state is in danger, there is a national natural disaster, and there is a monetary economic crisis.

According to the author, "conditional/situational reasons" as stated by Barda Nawawi Arief mentioned above will indeed be difficult to realize or occur. This is based on the juridical meaning and the opinions of scholars regarding "certain circumstances" namely:

Hazard Management;

The regulation regarding the state of danger or "State emergency" is regulated in Article 12 of the 1945 Constitution of the Republic of Indonesia which reads "The President declares a state of danger. The conditions and consequences of the hazard situation are determined by law. " At present the applicable law is Law (Prp) Number 23 of 1959 concerning Dangerous Conditions. Article 1 paragraph (1) states:

"A state of danger with a degree of civil emergency or military state or state of war, occurs when:

Security or law order in all regions or parts of the Republic of Indonesia are threatened by rebellion, riots or due to natural disasters, so that it is feared that they cannot be handled normally by equipment;

The war arises or the danger of war or the rape of the territory of the Republic of Indonesia is feared in any way;

The life of the State is in danger or from special conditions, it turns out there is or is feared that there are symptoms that can endanger the life of the State ".

Provisions regarding compulsory urgency are also contained in Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which reads: "In the case of compulsory urgency, the President has the right to stipulate government regulations as a substitute for the law." The meaning in the provision of Article 22 paragraph (1) of the 1945 Constitution of the Republic of Indonesia NRI mentioned above, the Constitutional Court has provided an interpretation of the "compelling urgency" in the Constitutional Court's decision Number: 138/PUU-VII/2009. In the ruling, the Constitutional Court is of the opinion that there are 3 (three) conditions for forced coercion as referred to in Article 22 paragraph (1) of the 1945 NRI Constitution, namely:

"There are circumstances namely the urgent need to resolve legal issues quickly under the law;

The required law does not yet exist so that there is a legal vacuum, or there is a law but it is not adequate;

The legal vacuum cannot be overcome by making the law in the usual procedure because it will require quite a long time while the urgent situation needs certainty to be resolved ".

National Natural Disasters;

The requirements for determining national disasters are regulated in RI Law Number 24 Year 2007 concerning Disaster Management (Disaster Management Law). Article 7 paragraph (2) of the Disaster Management Law states:
"Determination of the status and level of national and regional disasters as referred to in paragraph (1) letter c contains indicators which include:
a. Number of victims;
b. Property losses;
c. Damage to infrastructure and facilities;
d. Wide coverage of the area affected by the disaster; and
e. The socio-economic impact caused ".

Countermeasures due to widespread social unrest;

Regarding the meaning of "social unrest", Sulaeman Munandar (2009) gave the following definition:
"That in fact the phenomenon of social unrest that often arises lately is an indicator of the ongoing process of social transformation, in the form of representation of the clash of social values and religious values and that there is a shift in the setting of mastery of strategic resources in the form of power or politics and the economy".

As a result of this social unrest cannot be underestimated, this is because social unrest can break the foundation of the existence of the Indonesian people themselves by reason of differences in ethnicity, race, religion and class. So that acts of corruption carried out in these circumstances will muddy the social atmosphere of the Indonesian people.

Mitigation of the Economic and Monetary Crisis;

According to economists, the understanding of the economic crisis is simply: "A condition where a country whose government cannot be trusted by its people, especially financial problems (Sari, 2016). Identification of variables that potentially cause a monetary crisis, namely:
a. "Economic growth;
b. Exchange Rates (Exchange Rates);
c. Total Money Supply;
d. Inflation;
e. Interest rate;
f. Composite Stock Price Index;
g. Balance of Payments;
h. Debt Payment Ratio (Debt Service Ratio (DSR)" (www.bi.go.id:http://www.go.id).

Barda Nawawi Arief said, related to "certain circumstances" in the form of "crime countermeasures" (recidive) which he referred to as juridical reasons, the most likely to occur. In this case, the authors disagree. In terms of meaning, repetition of a crime or known as a recidive is the behavior of someone who repeats a criminal act after being convicted by a decision of a judge who has permanent legal force because the criminal act has been committed first. A person who often commits a criminal act, and because of his actions that have been sentenced to a criminal even more often sentenced to a

criminal is called a residivist. If the residive shows the behavior of repeating a crime, then the residivist refers to the person who commits the repeat of the crime (Ali, 2015).

In the context of repetition of corruption, this is very difficult to do. This is because the repetition of corruption is also influenced by one of the positions held by the perpetrators, in this case the residivist of the criminal act of corruption must be in the same position as in the previous corruption.

In order to better anticipate the future (futuristic) so that it will not be more tragic repetition of corruption cases until there is a verdict free of corruptors from a judge who examines and decides the accused of corruption, if a verdict occurs (vrijspraak) in a criminal act of corruption will clearly bring a bad impression and precedent for the world of justice, ordinary people of the law are still difficult to accept the existence of a free verdict (vrijspraak/acguittal) if the defendant is a corruptor. There have been many studies on acquittal in corruption cases, but it has been hindered from being able to influence the facts and phenomena concerning criminal acts, which are classified as very detrimental to the nation (Pasaribu, et al., 2008).

LEGAL CONSTRUCTION OF DEATH CRIMINAL THREATS IN CORRUPTION PERSPECTIVE IUS CONSTITUENDUM

The criminal law formulation policy in the framework of tackling future criminal acts of corruption has actually been pursued, namely through the drafting of a Law (RUU) on the Eradication of Corruption (2015 PTPK Draft Bill) (http://reformasihukum.org/file/peraturan/RUTipikor). The draft bill refers to the 2003 United Nations Convention Against Corruption (UNCAC) convention, in which the consideration of the Corruption Eradication Bill was emphasized:

"Whereas with the 2003 United Nations Convention Against Corruption (UNCAC) ratification (2003 Anti-Corruption Nations Convention) with RI Law Number 7 of 2006 concerning Ratification of the 2003 United Nations Convention Against Corruption (2003 Anti-Corruption Nations Convention), then RI Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by RI Law Number 20 of 2001 needs to be adjusted to the 2003 Anti-Corruption Nations Convention".

The Department of Justice's National Legal Development Agency in the National Criminal Law Reform Symposium (1986), said that:

"The renewal of criminal law is one of the major problems in the development of national law facing the Indonesian people. Renewed criminal law is a comprehensive change that includes renewal of material criminal law (substantive), formal criminal law (criminal procedural law) and criminal implementation law (strafvollstreckungsgesetz). The main purpose of criminal law reform is to tackle crime as it is well known that the three areas of law are very closely related.

According to the "vom psychologishen zwang" theory related to the principle of legality of Von Feurbach, this theory basically recommends that in determining the acts that are prohibited in the regulations not only about the types of actions that must be written clearly, but also about the kinds of crimes that are threatened. In this way, then the person who will commit the prohibited act beforehand has known what criminal will be imposed on him if later the act is committed (Moeljatno).

In the 2015 Corruption Eradication Bill, the definitions or use of terms regarding certain matters in Chapter I (General Provisions) are as follows:
Article 1 of this Law is meant by:
"Corporation is a group of people and/or assets that are organized, whether they are legal entities or not legal entities;
Public Officials are:
Everyone who holds legislative, judicial, or executive positions that are appointed or elected permanently or temporarily is paid or not paid regardless of that person's seniority;
Everyone who carries out public functions including for the benefit of a public agency or public company or who provides public services based on statutory regulations;
Everyone who is appointed as a public official in the legislation.
Foreign Public Officials are:
Everyone who holds an executive, legislative or judicial position of a foreign country based on appointment or election, including all levels and sections of government;
Everyone who carries out public functions for the benefit of a foreign country, including public agencies or foreign public companies; or
Any official or representative of an international public organization.
Official of a Public International Organization is any international civil servant or any person who is given authority by that organization to act on behalf of that organization;
Wealth is any form of assets, whether corporate or non-corporate, movable or immovable, tangible or intangible, and legal documents or instruments that prove the rights or interests of these assets;
Confiscation is a series of investigative actions to take over and/or keep under his control movable or immovable, tangible or intangible objects for the purposes of investigation, prosecution and trial;
Deprivation is a permanent takeover of assets by a court decision or other authorized body;
Original Criminal Acts are every criminal act that results in a criminal offense that is the object of another crime;
Criminal Action Results are any assets obtained directly or indirectly from a criminal act;
7. Gifts or promises are any forms that provide benefits or enjoyment for those who receive"

The definitions set out in Chapter I (general provisions) mentioned above seem to adjust to the editors at the 2003 UNCAC convention, namely:

Article 2. Use of terms:
For the purposes of this Convention:
"Public official" shall mean: (i) any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person's seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a "public official" in the domestic law of a State Party. However, for the purpose of some specific measures contained in chapter II of this Convention, "public official" may mean any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party;

"Foreign public official" shall mean any person holding a legislative, executive, administrative or judicial office of a foreign country, whether appointed or elected; and any person exercising a public function for a foreign country, including for a public agency or public enterprise;
"Official of a public international organization" shall mean an international civil servant or any person who is authorized by such an organization to act on behalf of that organization;
"Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;
"Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence;
"Freezing" or "seizure" shall mean temporarily prohibiting the transfer,nconversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;
"Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;
"Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as defined in article 23 of this Convention".

of the articles on corruption in the 2015 Corruption Eradication Bill seem to be adjusted to the editors of the 2003 UNCAC Convention, which are regulated in several articles, including:

Article 2 of the Corruption Crime Eradication Bill:

"Any person who promises, offers, or gives directly or indirectly to a Public Official an improper advantage for the benefit of the official himself, another person or the Corporation, so that the official does or does not do anything in the performance of his post;

Public Officials who request or receive directly or indirectly an improper advantage for the benefit of the official himself, another person or the Corporation, so that the Public Official does or does not do anything in the performance of his duties."

The formulation of a criminal offense in Article 2 of the above PTPK Bill is an editorial adjustment in Article 15 of the 2003 UNCAC Convention, which is as follows:

"Promises, offers, or giving to public officials, directly or indirectly, undue benefits, for public officials in their official duty capacity or other persons or bodies so that officials act or stop acting in carrying out their official duties;

Requests or acceptance by a public official, directly or indirectly, undue benefit, for the public official in the capacity of his official duties or other persons or bodies so that the official acts or stops acting in carrying out official duties".

As a step in criminal law policy in tackling corruption, the Draft Bill of the 2015 Criminal Code formulates criminal acts of corruption in chapter, XXXII regarding criminal acts of corruption, as stipulated in Article 680, Article 681, Article 682 (scope of bribery). Article 683, Article 684, Article 686, Article 687 (Scope of abuse of authority that harms State Finances). In other parts of the category as a criminal act of corruption, it is also regulated in the concept of the 2015 Criminal Code Bill regarding Position Criminal Acts regulated in Chapter XXX Article 655, Article 658, Article 659, Article 660, Article 662, Article 663, and Article 664.

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is also regulated in the concept of the 2015 Criminal Code Bill regarding Position Criminal Acts regulated in Chapter XXX Article 655, Article 658, Article 659, Article 660, Article 662, Article 663, and Article 664.

The nature of the formulation of corruption with the scope formulated in the 2015 Draft Criminal Code Draft is sufficient to provide a deterrent or countermeasure against corruption, especially for White Collar Crimes involving state officials, including law enforcement, as outlined in Article 660 Concept 2015 Criminal Code Bill. Capital punishment in criminal law reform is still recognized, especially in the context of the Criminal Code Bill. The preservation of capital punishment in the renewal of criminal law is based on the idea of avoiding community demands/reactions that are revenge, emotional, arbitrary, uncontrolled, or extralegal execution. The provision of capital punishment is intended to provide emotional channels/demands of the community, the unavailability of capital punishment in the Act, is not a guarantee of the absence of capital punishment in reality in the community, therefore to avoid emotions of personal/community revenge that are not rational, it is considered more good and wiser if the death penalty is still maintained its existence in the Act (Arief, 2013).

Death penalty charges against perpetrators of corruption have been carried out throughout the course of law enforcement against perpetrators of corruption in Indonesia. This was done by the prosecutor/public prosecutor to the defendant Ahmad Sidik Mauladi Iskandardinata or Dicky Iskandardinata in the Decision of the South Jakarta District Court No. 114/Pid.B/2006/PN. Jak Cell. That has permanent legal power with the Judicial Review decision is decision Number: 114 PK/Pid.Sus/2008. Based on the decision, it was found that the defendant was legally and convincingly guilty of committing a criminal act of corruption, which was carried out jointly and continuously.

The case of the defendant above is carried out jointly and continuously is a reason that aggravates the criminal, so it is not wrong if the prosecutor/public prosecutor in his lawsuit demands the defendant with capital punishment or death sentence. Decision handed down by the judge in the South Jakarta District Court against the defendant Ahmad Sidik Mauladi Iskandardinata or Dicky Iskandardinata is a 20-year prison sentence upheld by the decision of the Jakarta High Court No. 175/Pid/2006/PT.DKI and the cassation ruling namely the Supreme Court's Decision No. 181 K/Pid/2007 and the Judicial Review decision is decision No. 114 PK/Pid.Sus/2008, with a sentence of 20 years imprisonment means that the demands submitted by the public prosecutor/prosecutor were not granted.

Observing from what has been explained above, it is difficult for the judge to give a death sentence to a defendant in a corruption case who commits a criminal act of corruption other than with the reasons stated in the explanation of Article 2 paragraph (2) of the Corruption Eradication Act. According to the author there are a number of things that should be considered or justified in constructing the formulation of the threat of capital punishment in eradicating future criminal acts of corruption (the Corruption Eradication Bill), namely:

“In the formulation of articles governing acts of corruption with capital punishment in the future not only formulated with 1 (one) article provisions but can be formulated with several article provisions, such as regarding the concept of "certain conditions" contained in the explanation of Article 2 paragraph (2) The current Act on the Eradication of Corruption, namely the handling of dangerous situations, national

natural disasters, countermeasures due to widespread social unrest, handling of economic and monetary crises, and repetition of criminal acts of corruption. The norm arrangement that regulates the limitative conditions must be the norm rather than the substance contained in the explanation so that in imposing capital punishment to the perpetrators of corruption that have fulfilled certain elements of the said condition, it can be implemented properly or imposed.

If a criminal act of corruption is carried out in an organized manner and continues to be organized; The point in this case is that the act was carried out by more than 1 (one) person in a way that is used very neatly to cover up an act which causes a loss of state finances or the state's economy in large enough quantities. The continuing action referred to in this matter is the act carried out continuously so as to cause financial or economic losses to the country. According to the author, if a criminal act of corruption is carried out with elements that aggravate the crime, namely that together and continuing it is appropriate to be threatened and sentenced to death.

If a criminal offense is committed by a state official; That the understanding of state officials as regulated in Article 1 Number 4 of the Law of the Republic of Indonesia Number 43 of 1999 concerning Amendment to the Law of the Republic of Indonesia Number 8 of 1974 concerning Personnel of Personnel, State Gazette Number 169 of 1999, Supplement to State Gazette Number 3890 is: "The leaders and members of the highest/highest state institutions as the 1945 Constitution of the Republic of Indonesia and Other Officials are determined by the Law. According to the author, if a criminal act of corruption is committed by a state official, it is appropriate to be rewarded or sentenced to death.

If corruption is continued with money laundering; Whereas criminal acts of corruption and money laundering constitute 2 (two) criminal acts which are currently rife, not a few people who commit criminal acts of corruption are followed by money laundering, this is done with the intent to clean up the money they get from criminal acts. According to the author, it is also appropriate if someone who commits corruption and is aggravated by the crime of money laundering is sentenced to death.

By providing a minimum sentence of 20 years imprisonment, life imprisonment, and capital punishment. Each refers to the value of the state loss. For example, the State of China which is a capital punishment for perpetrators of criminal acts of corruption based on the provisions of Article 386 and Article 838 of the Chinese Penal Code which is no less detrimental to the country 100,000 Yuan or Rp. 200,000,000.00 (two hundred million rupiah)" (https://www.kompasiana.com/rekamahrdika/55010ee1a333113e095111e5/perbandingan-uptodate-hukum-cina-dan-indonesia-terkait-korupsi).

By taking the parameters of the value of corruption as applied in the State of China, then if it is applied in Indonesia with the state loss value model for example Rp. 10,000,000,000 (ten billion rupiah), then this will certainly make state officials think again about committing criminal acts of corruption. It also needs to be understood that in the imposition of severe criminal sanctions such as capital punishment many factors such as the ideological-political-sociological-legal aspects (Syamsudin, 2010).

CONCLUSION

Based on the descriptions of the chapter above, conclusions can be drawn to answer the problems contained in this scientific paper, namely:

1. The threat of capital punishment in the current laws and regulations on corruption (ius constitutum) is regulated in Article 2 paragraph (2) of the Republic of Indonesia Law No. 31 of 1999 jo. RI Law Number 20 of 2001 concerning Eradication of Corruption Crimes. Since the ratification of the Corruption Eradication Act, no corruption actor has been sentenced to death, this is due to weaknesses in the Corruption Eradication Act related to the formulation of Article 2 paragraph (2), namely the phrase "state Certain "reasons for criminal prosecution were not formulated explicitly in the formulation of the article, also the phrase" certain circumstances "in Article 2 paragraph (2) is further regulated in the Elucidation section of Article 2 paragraph (2) of the Corruption Eradication Act. Such formulation or construction of Article 2 paragraph (2) creates a vague norm. In addition, the existence of the phrase "can" in Article 2 paragraph (2) of the Law on the Eradication of Corruption, gives an understanding that the imposition of capital punishment can be applied or may not be applied.
2. The threat of capital punishment in the laws and regulations of corruption in perspective ius constituendum, is associated with the policy formulation of criminal law in the context of overcoming the criminal act of corruption that will actually have been attempted in the process of drafting the Law (RUU) on Eradicating Corruption compiled based on the 2003 United Nations Convention Against Corruption (UNCAC) Convention. The death penalty should be handed down to corruptors if the criminal act of corruption is carried out in an organized manner, if the criminal act of corruption is carried out by state officials, if the criminal act of corruption is followed by money laundering.

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JURIDICAL ANALYSIS OF LIABILITY OF INCOME TAX AND VALUE ADDED TAX ON E-COMMERCE BUSINESS ACTIVITIES

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Abstract: *E-commerce business activities use electronic media connected to the internet to conduct trade transactions. The development of e-commerce business activities brought many changes to the business activity sector carried out conventionally so far. The types of e-commerce business activities are business to business, business to the customer, customer to the customer, and costumer to business. E-commerce business activities are regulated in the Law Number 11 of 2008 on the Information and Transaction of Electronic stating that electronic data transaction information is a valid proof of law. The problems discussed in this research are how to set up e-commerce business activities in Indonesia, how to impose an income tax and value-added tax on e-commerce business activities using delivery services. This research used normative legal research methods of descriptive analysis using normative juridical approaches and interviews to obtain the necessary data associated with the problems. The entire data were collected by collecting literature and field studies in the form of interviews with parties deemed competent in this study. Based on research results about The Juridical Analysis Of Income Tax And Value Added Tax on E-Commerce Business Activities regulated in the Circular of General Directorate of Taxes Number SE-62/PJ/2013 and SE-06/PJ/2015, the imposition of income tax for delivery service providers is regulated in Article 23 of the Law of Income Tax further regulated in PMK 141/PMK.03/2015 and Article 22 of the Law of Income Tax further regulated in PMK 34/PMK.010/2017. The imposition of value-added tax for delivery service providers is regulated in PMK 121/PMK.03/2015 and PMK 112/PMK.04/2018.*
Keywords: *E-Commerce, Income Tax, Value Added Tax, Freight Forwarding Tax.*

BACKGROUND

The use of the internet in business activities has a positive impact on speed, ease, and sophistication in conducting global interactions with unlimited place and

time, which is now commonplace. E-commerce users in Indonesia, according to Ernst & Young's analysis data, always increase by 40 percent every year. There are about 93.4 million internet users and 71 million smartphone users in Indonesia. The crowd of e-commerce business users keeps their transaction value growing. Data from the Director of Commerce showed that 80 percent of retailers admitted that the percentage of online sales increased with an average growth of 25 percent (Quoted from https://www.cnnindonesia.com/teknologi/20160122170755-185-106096/nilai-transaksi-e-commerce -di-indonesia-menggiurkan, accessed on 12 May 2018, at 02:08 pm).

E-commerce business activities that are beginning to shift conventional business activities also have an impact on tax obligations for those who use technological advances in this trade. The General Directorate of Taxes has conducted a study on e-commerce. First, the study was carried out on all aspects of taxation that exist, so that the study identified what should be developed in the e-commerce world. Second, the General Directorate of Taxes created a team that will decide the regulations or procedures for taxation aspects, management, and extracting tax potential (Nufransa Wira Sakti, "Pemenuhan Kewajiban Perpajakan Bagi Pelaku e-Commerce Di Indonesia," Paper, Jakarta, 27 August 2014. p. 5).

Seeing the rapid increase in users of e-commerce business activities, the General Directorate of Taxes reissued a Circular of the General Directorate of Taxes Number SE-06/PJ/2015 on Withholding and/or Collection of Income Tax on E-Commerce Transactions (hereinafter referred to as SE-06/PJ/2015). Basically, SE-62/PJ/2013 and SE-06/PJ/2015 explained that principally, there are no new types of taxes in e-commerce but only applying existing rules. In other words, business management through e-commerce attains the same taxation treatment as ordinary trade. Therefore, in general, e-commerce actors also have tax obligations, both starting from registration, calculation, payment, and reporting that has been regulated in the rules and regulations of the General Directorate of Taxes. Hence, with the existence of SE-62/PJ/2013 and SE-06/PJ/2015, it is expected that every user of e-commerce business activities, both local and foreign individuals can better understand and implement their tax obligations. This thesis research aimed to find out and analyze the regulation of e-commerce business activities, the tax regulations applicable in Indonesia related to e-commerce business activities, and the application of taxation in e-commerce business activities in Indonesia.

LITERATURE REVIEW

The theory serves to explain why specific symptoms or certain processes occur, and theory must be tested by exposing it to facts that can show untruth (J.J.J M. Wisman, *Penelitian Ilmu-Ilmu Sosial, Asas-Asas,* Universitas Indonesia, Jakarta, 1996. p. 203). A theoretical framework is a thought framework or points of opinion, theories, theses of the author on a case or problem to be the consideration for the readers whether they agree, and theoretical framework becomes an external insight for the readers. Explaining theory in this study aims to provide direction, predict, and explain the observed symptoms.

This research used the theory of legal certainty and justice. Legal certainty (rechtszekerheid) is the clarity of statutory regulations regarding the rights and obligations of a person's status or legal entity. The certainty of these rights and obligations brings order, regularity, and calmness to the person concerned because with clarity as regulated by law; one really knows how his status or position, how far the rights or obligations in that position (M. Solly Lubis, *Filsafat Ilmu dan Penelitian*, Mandar Maju, Bandung, 1994. P. 80). The theory of justice, according to Aristotle, is the opinion that justice must be understood in terms of equality. The relation of legal certainty and justice theories to this research can be concluded that e-commerce business activities that are inseparable from legal actions must obtain legal certainty for all service users of these business activities, and receive the same legal treatment as conventional business activities. In this study, e-commerce business activities were also obliged to be taxed in accordance with applicable regulations. The task of law principles is to guarantee legal certainty. By this understanding of the legal norms, the publics truly realizes that the shared life will be orderly if there is legal certainty in relations between people (Sudarsono, Pengantar Ilmu Hukum, Rineka Cipta, Jakarta, 1995. p.49-50).

This theory of legal certainty and justice is in accordance with the objectives of SE-62/PJ/2013 and SE-06/PJ/2015 so that every user of e-commerce business activities both individuals and entities is required to have an income tax and value-added tax as legal certainty for e-commerce businesses activities to avoid sanctions in accordance with taxation and justice regulations. Therefore, every business activity in Indonesia is required to pay a certain amount of tax.

RESULTS AND DISCUSSION

Regulation of E-Commerce Business Activities in Indonesia

The history of the development of e-commerce started from the emergence of the Internet, which then progressed to be useful as a source of business activity. The application of electronic commerce began in the early 1970s with innovations, such as Electronic Fund Transfers (EFT). At that time, the application was still very limited to large-scale companies, government financial institutions, and some daring middle and lower companies, then emerged to so-called Electronic Data Interchange (EDI) (Adi Sulistyo Nugroho, op.cit. p.4.). The development of e-commerce business activities has brought many changes to the business activity sector carried out in conventional ways so far. E-commerce business activities often used in Indonesia has several models, namely online marketplaces, classified ads, daily deals, and online retail.

E-commerce business activities are inseparable from the agreement so that the provisions regarding the legal basis of the agreement stipulated in the Civil Code remain applied. Substantively, e-commerce business activities in Indonesia constitute an agreement as stipulated in Article 1233 of the Civil Code, stating that "An agreement is made due to the law." It can be interpreted as a relationship that is made due to an agreement between the parties to bind themselves in the agreement or because of the law. A relationship originating from a deal is regulated in Article 1313 of the Civil Code, stating that "An agreement is an act by which one or more people commit themselves to one or more other people." Besides, e-commerce business

activities obtained legal certainty through Law Number 11 of 2008 on Information and Electronic Transactions, stating that electronic data transaction information is legal proof, as well the Law Number 7 of 2014 on Trade, stating that providers of e-commerce business services are required to provide complete and correct information on what is offered.

The Imposition of Income Tax to E-Commerce Business Activities Using Shipping Services

Income tax is imposed on an individual or entity income received or obtained in a tax year regulated in Law Number 36 of 2008 on the Fourth Amendment to Law Number 7 of 1983 on Income Tax. The object of income tax under the Income Tax Law is income, that is, any additional economic capability received or obtained by taxpayers, both originating from Indonesia or outside Indonesia, which can be used for consumption or to increase the wealth of the taxpayer concerned by name and in any forms (Article 4 of the Law Number 36 of 2008 on the Fourth Amendment of the Law Number 7 of 1983 on Income Tax). Not all income or additional economic capacity can be categorized as an income tax object is regulated in Article 4 paragraph (3) of the Income Tax Law.

The large scope of income tax objects is the first step in the imposition of income tax on e-commerce business activities regulated in the Circulars of the General Directorate of Taxes Number SE-62/PJ/2013 on Affirmation of Tax Provisions for E-Commerce Transactions and Number SE-06/PJ/2015 on Withholding and/or Collection of Income Taxes on E-Commerce Transactions. Income tax rates on e-commerce business activities vary based on the type of business. The provisions of Article 17 of the Income Tax Law are classified into individual domestic taxpayers, domestic corporate taxpayers, and permanent establishments. The income tax rate in Article 23 of the Income Tax Law on income from service providers of places and/or times in other media for the delivery of information is 2% of the gross amount, not including value-added tax, usually used for the process of buying and selling goods and/or services. The income tax rate in Article 26 of the Income Tax Law on income from service providers for time and place in other media for the delivery of information is 20% of the gross amount, not including value-added tax or based on the applied double taxation avoidance agreement.

Shipping services often used in e-commerce business activities are freight forwarding. Freight forwarding services are business activities that are shown to represent the owner's interest to take care of all/some parts of the activities required for the delivery and receipt of goods through the land, sea and/or air transportation, which may include receiving, storing, sorting, packing, marking, measuring, weighing, handling of document settlement, issuance of transportation documents, calculation of transportation costs, claims, insurance for the delivery of goods, as well as a settlement of bills and other costs relating to the shipment of the goods until receipt of the goods by the rightful recipient (Article 2 verse (6) of Minister of Finance Regulation Number 141/PMK.03/2015 on the Type of other Services as referred in Article 23 verse (1) c number 2 of the Law Number 7 of 1983 on Income Tax as has been changed many times and the last change is the Law Number 36 of 2008).

The imposition of income tax on freight forwarding services is regulated in Article 23 of the Income Tax Law and the Minister of Finance Regulation Number 141/PMK.03/2015 on Other Types of Services as referred to in Article 23 verse (1) letter c number 2 of the Law Number 7 of 1983 on Income Tax as amended several times, the latest by the Law Number 36 of 2008 (hereinafter referred to as PMK 141/PMK.03/2015). Freight forwarding services are subject to an income tax rate of 2% of the gross amount, not including value-added tax. However, taxpayers who do not have an NPWP are subject to tariffs that are 100% higher than the tariffs that should be 4% in accordance with Article 1 verse (7) of PMK 141/PMK.03/2015.

The imposition of Value Added Tax on E-Commerce Business Activities Using Shipping Services

Value-added tax is imposed on consumption indirectly. Value-added tax collection is carried out indirectly by the seller at the time of delivery of taxable goods or services to the buyer by issuing a tax invoice as proof of value-added tax. Thus, the amount of value-added tax deposited to the country will be the same as the value-added tax paid by consumers. Therefore, the purpose of taxation on consumption will be in accordance with this mechanism; the tax is imposed on the final consumer.

The legal basis for the application of value-added tax in Indonesia is regulated in the Law Number 42 of 2009 on the Third Amendment to the Law Number 8 of 1983 on Value-Added Taxes on Goods and Services and Sales Tax on Luxury Goods. Value-added tax rates in Indonesia are generally 10%, but the rates may change according to statutory provisions at least 5% and at most 15%. This case is due to economic development considerations and/or increasing the need for development funds so that the government has the authority to set value-added tax rates (Article 7 verse (3) of the Law Number 42 of 2009 on the Third Change in the Law Number 8 of 1983 on Value-Added Tax on Goods and Services, and Sales Tax on Luxury Goods).

The method used by the Law of value-added tax in the application of the destination principle is the zero rate method, namely the export of taxable goods and services determined as the surrender of value-added tax payable at a rate of 0% (Article 7 verse (2) of the Law Number 42 of 2009 on the Third Change in the Law Number 8 of 1983 on Value Added Tax on Goods and Sevices, and Sales Tax on Luxury Goods).

The imposition of value-added tax at a rate of 0% has made the export of taxable goods and services free from the imposition of value-added tax so that export entrepreneurs can still credit the input tax on the acquisition of the exported taxable goods and services. The basis of value-added tax can be classified as selling price, replacement, import value, export value, or other values that are useable as a basis for calculating value-added tax and the sales tax on luxury items owed (Article 9 of the Government Regulation Number 1 of 2012 on the Implementation of the Law Number 42 of 2009 on the Third Change in the Law Number 8 of 1983 on Value Added Tax on Goods and Services, and Sales Tax on Luxury Goods). The imposition of value-added tax on e-commerce business activities is emphasized in the Directorate General Circular Number SE-62/PJ/2013 on Affirmation of Tax Provisions for E-Commerce Transactions.

Basically, the tax obligation for e-commerce business activities is not a new type of tax, but it is the same as the tax on conventional business activities. The difference is only in the media for carrying out these business activities. Therefore, parties in e-

commerce business activities obtain income tax or value-added tax obligations in accordance with statutory provisions. Also, it is expected that activators of e-commerce business activities will be compliant with tax for the common goal (The results of an interview with Dodi Irawan and Khairul Azwar as Account Representative in the Primary Tax Service Office in Medan City, on 16 May 2019, at 09.57 am).

The imposition of value-added tax on shipping services using freight forwarding services in e-commerce business activities is regulated in the Minister of Finance Regulation Number 121/PMK.03/2015 on the Third Amendment to the Minister of Finance Regulation Number 75/PMK.03/2010 on Other Values As Basis of Tax Imposition (hereinafter referred to as PMK 121/PMK.03/2015). Article 2 letter m of PMK 121/PMK.03/2015 states that for the delivery of transportation management services (freight forwarding) in which the transportation management services bill contains freight charges, the tax is 10% of the amount billed or that should be collected. The value of 10% is assumed to be the cost of freight forwarding services, which as the basis for the imposition of value-added tax on freight forwarding services. The value-added tax (VAT) rate based on Article 7 verse (1) is 10% so that the value-added tax rate for freight forwarding services of 1% is obtained from the basis of the imposition of VAT x freight charges (10% x 10% = 1%). For example, a freight forwarding company to a service user of Rp. 70,000,000 will be a value-added tax of Rp. 700,000.

Preventing the mode of avoiding import duties and taxes in importing, the government issued the Minister of Finance Regulation Number PMK 112/PMK.04/2018 on the Amendments to Regulation of the Minister of Finance Number 182/PMK.04/2016 regarding Provisions on the Import of Shipments (hereinafter referred to as PMK 112/PMK.04/2018), which sets a free onboard value limit of USD 75.00. This provision makes entrusted perpetrators no longer able to break down the value of goods ordered by buyers on a shipment basis because the value of USD 75.00 is the total value of all shipments per day with an import duty rate of 7.5% and insurance costs of 0.5 % of the total price of goods and transportation costs.

CONCLUSION AND RECOMMENDATION

Conclusion

E-commerce business activities develop rapidly in Indonesia due to the use of technology of the internet, which has increasingly penetrated daily activities changing the pattern of business activities from conventional businesses to e-commerce businesses. E-commerce business activities are inseparable from the agreement, and the provisions regarding the legal basis of the agreement stipulated in the applied Civil Code. Besides, e-commerce business activities obtain legal certainty through Law Number 11 of 2008 on Information and Electronic Transactions, which states that electronic data transaction information is legal proof, as well as in the Law Number 7 of 2014 on Trade, which states that providers of e-commerce business services are required to provide complete and correct information on what is offered.

The broad scope of the income tax object is the first step in the imposition of income tax on e-commerce business activities regulated in SE-62/PJ/2013 and SE-06/PJ/2015, while the providers of freight services (freight forwarding) are regulated in Article 23 of Income Tax Law, which is further regulated in PMK

141/PMK.03/2015 and Article 22 of the Income Tax Law, which is further regulated in PMK 34/PMK.010/2017. The income tax rate for e-commerce business activities is in accordance with the provisions of Article 17 of the Income Tax Law grouped on individual domestic taxpayers, domestic corporate taxpayers, and permanent establishments. Meanwhile, the income tax rate for freight forwarding is 2% based on PMK 141/PMK.03/2015.

The imposition of value-added tax on e-commerce business activities is based on the submission of taxable goods, taxable service providers, and the use of importable taxable goods. However, not all users and/or organizers of e-commerce business activities can collect value-added tax, only to taxable employers. The general value-added tax rate is 10%, but it may change according to statutory provisions to a minimum value of 5% and a maximum value of 15%. In one side, shipping services are subject to a tariff of 1% of the total bill regulated in Regulation of the Minister of Finance Number 121/PMK.03/ 2015.

Recommendation

The shift in the business activity model from conventional to e-commerce business activities shows the enormous economic potential of e-commerce business activities. This phenomenon must be supported by technological developments and regulations by the government to maximize the potential for the development of e-commerce business activities. The perpetrators of e-commerce business activities classified as income taxpayers should be willing to register and report any additional economic ability to obtain a tax ID and avoid the imposition of 100% higher than the normal tax rate. More complex regulations regarding the tax treatment of e-commerce businesses are needed.

There should be socialization and coordination between the tax office and the e-commerce business actors classified as taxable entrepreneurs in the order they are willing to register and report their business activities as tax compliance. This case is because there is often the avoidance of value-added tax obligations, especially in the case of imports by individuals.

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LEGAL STATUS OF FLAT UNIT OWNERSHIP CERTIFICATE (STRATA TITLE) IN INDONESIA

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Abstract: *This study seeks to examine the legal status of flat unit ownership rights between Law Number 5 of 1960 and Law Number 20 of 2011; by using normative legal research (statute approach and concept approach), this research concludes: the legal status of flat unit ownership certificate as stipulated in the Law Number 5 of 1960 and Law Number 20 of 2011 cannot be said to have a conflict of legal norms. The difference in interpretation of those laws can be resolved by: (1) The principle of lex specialis derogat lex generale, means specific laws (in this case is Law Number 20 of 2011 concerning Flats) overrides general laws (in this case is Law Number 5 of 1960 concerning Basic Agrarian Law); (2) Article 16 paragraph (1) letter h of Law Number 5 of 1960 concerning Basic Agrarian Law provides: other rights not included in the previously mentioned rights will be stipulated in the law, as well as the temporary rights as referred to in article 53; thus, the term flat unit ownership certificate can be accepted because it does not conflict with applicable laws and regulations.*
Keywords: *Legal Status, Flat Unit Ownership Certificate, Conflict.*

INTRODUCTION

Based on Article 17 of Law Number 20 of 2011 concerning Flats, flat can be built on: a. rights of ownership; b. rights to build or utilize on state's land; and c. rights to build or utilize on land with management rights. For land with management rights, the law provides specific arrangements. The developer must clarify the status of the land before selling the flat units. Article 17 of the law states that flat can be built on:

a. Rights of ownership;
b. Rights to build or utilize on state's land;
c. Rights to build or utilize on land with management rights.

Article 18 provides that in addition to being built on land categories as mentioned in Article 17, public and/or special flats can also be built with: The utilization of state's/regional property in form of land; The utilization of waqf (endowment) land.

Article 19 paragraph (1) concerning the utilization of state's/regional property in the form of land for the construction of flat as referred to in Article 18 letter a is carried out by way of lease or utilization cooperation. Paragraph (2) stated that the land referred in paragraph (1) must prove to have been registered with a certificate of land rights in accordance with statutory provisions. In Paragraph (3), the execution of leasing or utilization cooperation as referred in paragraph (1) shall be carried out in accordance with statutory regulations. Article 20 paragraph (1) provided that the utilization of waqf land for the construction of flat as referred to in Article 18 letter b shall be carried out by way of lease or utilization cooperation according to the endowment pledge. As in Paragraph (2), if the use of waqf land as referred to in paragraph (1) is not in accordance with the

endowment pledge, the designation may be changed after obtaining approval and/or written permission from the Indonesian Waqf Board in accordance with the provisions of the legislation. Further regulated in Paragraph (3), the change of the designation as intended in paragraph (2) can only be done for the construction of public flats. In Paragraph (4) gives condition that the implementation of lease or utilization cooperation as referred to in paragraph (1) is carried out in accordance with sharia principles and legislation. At last, Paragraph (5) states that further provisions concerning the utilization of waqf land for public flats are regulated by government regulations.

Based on the description above, using the normative research method, the question being asked is whether the legal status of flat unit ownership specified in Law Number 20 of 2011 conflict with article 16 of Law No.5 of 1960 or not?.

RESEARCH METHOD

The type of research chosen is normative legal research or doctrinal legal research, namely legal research that conceptualizes law as the norm (Wignyosoebroto, 2002), because this research is normative legal research, so as to solve or answer the proposed problems (legal issues), conceptual approach, case approach and historical approach are used (Marzuki, 2011). The legal material from normative research can be divided into three namely,

1. Primary legal material, is the main legal material in this study, consists of laws and regulations relating to land.
2. Secondary legal law, includes library materials that provide explanations about primary legal materials31 such as books, works from the legal community, literature, magazines, newspapers, electronic media as well as other data references relating to the issue of compensation for land acquisition for development in the public interest (Hermansyah, 2009).

The technique of searching primary and secondary legal materials is done by studying literature and internet searching (Rahardjo, 2000). The processing of legal materials is carried out by systematizing written legal materials. Analysis of the materials that have been collected must be done according to methods of analysis or interpretation (interpretation) of known law, such as authentic interpretation, interpretation according to grammar (grammatical), interpretation based on the history of the law (historical wets) or based on the history of law (historical rechtshistoris), systematic interpretation, sociological interpretation, theological interpretation, functional interpretation or futuristic interpretation (as an estimate). Of the several ways of analysis or interpretation (interpretation) the authors choose analysis using systematic interpretation, grammatical (grammatical), teleological interpretation (Abdlatif & Ali, 2010).

RESULTS AND DISCUSSION

Flat Unit Ownership Rights (FUOR) is a new rights institution which introduced through the Law on Flats (LoF). According to the LoF, FUOR is individual and separated. In addition to ownership of flats unit, FUOR also includes joint ownership rights called "shared parts", "shared land", and "shared objects", which all constituting an integral part of flats unit; since the ownership of flats unit includes the shared land, the flats unit can only be owned by an individual/legal entity who meet the requirements of holding the shared land rights.

Article 46 of Law Number 20 Year 2011 stipulates:
(1) Flat Unit Ownership Rights is an ownership rights to an individual flats unit which separated from the shared rights over the shared parts, shared objects, and shared land.
(2) The right to shared unit and shared land as referred to in paragraph (1) shall be calculated based on the Proportional Comparison Value (PCV).

Shared parts are the parts of a flat block, which owned separately for shared use in one unitary function. For example: columns, stairs, roof, in-out access of the flats, public rooms, foundations and so on. The owner of flat unit cannot use the shared parts because it is a joint right of all the flat unit owners. Shared land is a piece of land that used based on separate joint rights on which flats are built and the boundaries of the building are determined with the permit conditions. Article 17 of LoF determines that flats can only be built on rights of ownership, rights to build or utilize on state's land, and rights to build or utilize on land with management rights. The rights to shared land determine whether or not a person/legal entity to possess a flat unit. Shared objects are objects that not part of the flat but are shared and inseparable for shared use, for example: parks, sports and recreation facilities, fire extinguishers, clean water networks, electricity, gas, telephones, sewerage, drain, garbage bin, elevator/escalator, and others. According to Imam Kuswahyono (2004), the ownership system for multi-story building units is divided into 2 (two): Single ownership; Multi ownership.

Single ownership can be seen from the ownership of the land where the high rise building stands, so that the certificate holder is also the owner of the building. The shared ownership system is divided into two, by looking at whether or not there is a legal binding that previously exists between high-rise buildings, as follows:

- Bound Joint Ownership, the main basis is the existence of legal binding between the owners. The rules are based on the Regulation of the Minister of Internal Affairs Number 14 of 1975.
- Free Joint Ownership, i.e. between owners; there is no prior legal relationship other than the joint rights to be the owner for shared utilizations. The basic rule is the LoF jo. Government Regulation No. 4 of 1988 concerning Flats. This free joint ownership system is known as condominium.

Referring to the above description, land ownership rights on a flats unit in the perspective of law on objects refers to condominium system as regulated in book II of the Civil Code, where individual owners of a Flats unit are the occupants' rights. Beside that, there are common ownership rights over the land where the building is located (common areas) and common property rights over the building facilities (common elements).
In Article 6 and Article 77 of the Government Regulation No. 4 of 1988 concerning Flats, it is stipulated: Flat units can be on the surface of the land, above the ground, below the surface of the land, partly below and partly above the ground level. Flat units must have a direct connection to the exit or have access to public roads. In Article 47 of Law No. 20 of 2011 concerning Flats:

- Proofs of flat unit ownership on land with rights of ownership, rights to build or utilize on state's land, or rights to build or utilize on land with management rights, are issued in form of certificates of Flat Unit Ownership Rights (FUOR).
- FUOR as referred to in paragraph (1) is issued to every person who qualifies as a holder of land rights.
- FUOR as referred to in paragraph (1) constitutes an inseparable unit consisting of:

- A copy of land book and the measurement letter on the shared land in accordance with statutory regulations;
- Draw on the floor plan at the level of the related flats which shows the owned flat unit;
- Explanation regarding the portion of the right on the shared parts, shared objects, and shared land for the person concerned.

FUOR as referred to in paragraph (1) shall be issued by the district/municipal land registration office. FUOR can be used as collateral for a loan by being burdened with mortgages according to the provisions of the legislation.

When compared with other countries abroad, according to Arie S. Hutagalung (2003), the term "strata title" is more likely to have horizontal joint ownership in addition to vertical ownership. Furthermore, according to Maria SW Sumardjono (2008), strata title is a system that allows the distribution of land and buildings in units called parcels, each of which is a separate right. In addition to individual ownership, it is also known the terms land, objects, and parts, which are common property. In the Housing and Settlement Law, common property is referred as social and public facilities. Based on the Regulation of the Minister of Internal Affair No. 1 of 1987 concerning the Submission of Environmental Infrastructure, Public Facilities, and Social Housing facilities to local governments, the composition is 60% (buildings): 40% (social facilities and public facilities). The concept of strata title can be applied to buildings such as high-rise, residential, town houses, factories, offices and retail. According to Djuhaendah Hasan (2008), in several countries including Australia, New Zealand, Singapore, Malaysia and Hong Kong, the problem of providing land ownership for horizontal housing construction was replaced with vertical housing construction using the strata title system, that is a system that regulates the portion of land consisting of layers (strata), namely: the lower and upper layers. Strata is a plural form of stratum, which is defined as the following: “stratum means any part of land consisting of a space of any shape below on or above the surface of the land, dimensions of which are delineated”.

In order to guarantee legal certainty and legal order in the matter of someone's ownership, it must be within the legal framework of property. One's ownership on a flat unit must have proof on its land rights. According to Arie S. Hutagalung (2003), as proof of ownership rights to a flat unit, a powerful evidential tool is provided in the form of a certificate of ownership rights over the flat units. The form and procedure for the registration of land books and the issuance of FUOR certificates are regulated in the Regulation of the Head of National Land Agency No.4 of 1989. The administration of FUOR and the issuance of certificates are based on the information/data contained in the deed of the split, which has been approved by the regional government. Government Regulation No.4 Year 1988 concerning Flats establishes that FUOR is one of the products of a series of licensing processes in the flat system that highly dependent on the previous/upstream licensing products, including Location Permits and Building Construction Permits (IMB). The licensing sequence to the certification process must include, among others: location permit, land acquisition, building permit, ratification, livable permit, ratification of the deed of the split for the flats into flat units, registration of the deed of split, and issuance of the FUOR certificate.

The certificate is a proof that acts as a strong evident of the physical data and juridical data contained therein, as long as the physical data and the juridical data are in

accordance with the data contained in the measuring certificate and land book of the relevant rights. For flats that stand on leased land which status is the state's land, or an endowments/waqf land, it will issue a Certificate of Building Ownership (SKBG). Unlike the land title certificate, the FUOR certificate and the SKBG, which used as collateral, will be encumbered with the Mortgage Right, instead of the land. Therefore, the security rights imposed in the FUOR and SKBG are the status of ownership on which the shared parts, the shared objects, and the shared land.

Based on Article 16 of Law Number 5 of 1960 concerning Basic Agrarian Principles, the types of existing rights are: rights of ownership, rights to function, rights to utilize, rights to use, rights to lease, rights for land opening, and rights to collect forest products. Other rights not included above will be determined by law (Setiawan, 2010).

CONCLUSION

Based on the above description, Law Number 16 of 1985 concerning Flats has been replaced by Law Number 20 of 2011 concerning Flats; it cannot be said that there is conflict of norms between Law Number 5 of 1960 on Basic Agrarian Principles in Article 16, and Law Number 20 of 2011 concerning Flats. The difference in interpretation of the above law can be resolved by, first: the principle of lex specialis derogate lex generale, means specific laws (in this case is Law Number 20 of 2011 concerning Flats) overriding the general laws (in this case is the Law Number 5 of 1960 on Basic Agrarian Principles); secondly: Article 16 Paragraph (1) letter h of Law Number 5 of 1960 concerning Basic Agrarian Principles provided: other rights not included in the rights mentioned above will be determined by the law, as well as the temporary rights mentioned in article 53; thus the term certificate of ownership over a flat unit is accepted because it does not conflict with applicable laws and regulations.

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